

**Kachco Corporation d/b/a Hickory Farms of Ohio,  
Employer-Petitioner and Retail Clerks Union,  
Local 648, RCIA, AFL-CIO. Case 20-RM-1208**

January 15, 1970

**DECISION AND DIRECTION OF  
ELECTION**

**BY CHAIRMAN McCULLOCH AND MEMBERS  
FANNING AND BROWN**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Morton H. Orenstein, Hearing Officer. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 20, this case was transferred to the National Labor Relations Board for decision. Briefs were filed by the Employer and the Union.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein for the following reasons.

The Employer is a California corporation engaged in the retail sale of specialty foods at stores in Daly City and in San Francisco, California. During the past year, it purchased supplies from outside the State of California in excess of \$50,000. The San Francisco store opened in November 1966, and the Daly City store opened in September 1968. The Union began picketing both stores on December 10, 1968, which picketing continues to date.

The Union urges that the Employer's petition be dismissed, because the Employer did not have annual gross revenues of \$500,000, the minimum figure used by the Board in asserting jurisdiction over retail enterprises. The Employer advances several theories involving the projection of sales at the Daly City store combined with the receipts from the San Francisco store 1 year prior to the picketing, that would result in its attaining the \$500,000 figure. The Union argues that no reasonable method of projection would allow the Employer to reach the Board's jurisdictional standard.

Admittedly the problem here is that the Employer has suffered a loss of business due to picketing, and the total gross income from the two stores for the past year does not meet the Board's \$500,000 retail standard. As stated in past decisions, however, a drop in volume of business, as a result of picketing, cannot be taken into consideration as a factor in defeasance of the Board's jurisdiction.<sup>1</sup>

The question to be determined is how much annual income would the Employer have derived from his operations but for the picketing? To ascertain this figure, we shall use the revenues received by the Employer during the 12-month period preceding the picketing — December 1967 through November 1968.<sup>2</sup>

The revenues of the San Francisco store during this period were \$204,000. Revenues of the Daly City store were \$66,000 from its opening on September 12, 1968, through November 1968 — a period of 79 days. By using a factor of 4.63 (365 divided by 79 equals 4.63) we find that the Employer could reasonably expect annual revenues of approximately \$304,000 from its Daly City store. As this amount together with the revenues from the San Francisco store exceeds the \$500,000 required under the retail jurisdiction standard, we shall assert jurisdiction.

2. The labor organization involved claims to represent the employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act, for the following reasons:

A demand for recognition was made by the Union on October 29, 1968. Subsequently the Union engaged in recognition picketing of both stores of the Employer on December 10, 1968, which picketing is continuing to date. Under these circumstances we find, contrary to the Union's contention, that the demand for recognition is current.

4. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed at the Employer's San Francisco and Daly City stores excluding guards and supervisors as defined in the Act.

The parties disagreed as to the status of the following four employees, all of whom would be included by the Employer but excluded by the Union:

Janell Janssen is a high school student who regularly works 1 or 2 days a week at the Daly City store making cheese balls for both stores. She does no selling and does not wear a uniform as other

<sup>1</sup>*Cox's Food Center*, 164 NLRB 95 See also *Hygienic Sanitation Company*, 118 NLRB 1030; *Fairmont Construction Company*, 95 NLRB 969

<sup>2</sup>*Cf. District 76, Retail, Wholesale and Department Store Union, AFL-CIO (Irvin Morgan t/a Morgan Shoe Company)*, 129 NLRB 1339

clerks do, but she works under the same supervisor. We find that she should be included in the unit as a regular part-time employee.

Alton Tom has worked for the Employer for 2 years. He did not work for 2 months beginning in September 1969, because he wanted to prepare himself for returning to college. The last 3 days of October he worked 4 hours a day, and averaged 30 hours per week during the summer of 1969. We find that he should be included in the unit as a regular part-time employee.

Patricia Granucci is the wife of Oliver Granucci, General Manager of the Employer. She has no authority to hire, fire, suspend, discipline, or assign work. Neither she nor her husband has an ownership interest in the corporation. Her husband is salaried, but she is hourly paid. Mr. Granucci is supervisor of the San Francisco store, and of Mrs. Brandt, the supervisor of the Daly City store. When Mrs. Brandt is not working, Mr. Granucci will arrange the schedule so that either he or his wife will be at the Daly City store. With one exception, Mrs. Granucci is the only nonsupervisory employee

who works in both stores. In these circumstances we find that Mrs. Granucci possesses a special status closely related to management and should be excluded from the unit.

June Rouse is a clerk at the San Francisco store. She has no authority to hire, fire, layoff, promote, discipline, or recommend wage increases and is not a supervisor within the meaning of the Act. She should be included in the unit as a regular employee.  
[Direction of Election<sup>3</sup> omitted from publication.]

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<sup>3</sup>In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236; *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 20 within 7 days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.