Hardy-Herpolsheimer Division of Allied Stores of Michigan, Inc.; Francis Van Riper d/b/a Frances Van Riper Jewelry and Watch Repair; Almo Millinery, Division of Allied Purchasing Corporation; Wohl Shoe Co. *and* Retail Store Employees Union, Local No. 20, Retail Clerks International Association, AFL–CIO. Case 7–CA–7863

August 27, 1970

DECISION AND ORDER

BY MEMBERS FANNING, BROWN, AND JENKINS

Upon a charge filed by Retail Store Employees Union, Local No. 20, Retail Clerks International Association, AFL–CIO (hereinafter called the Union), the Regional Director of the National Labor Relations Board for Region 7 issued a complaint dated April 17, 1970, alleging that Hardy-Herpolsheimer Division of Allied Stores of Michigan, Inc. (hereinafter sometimes called the Respondent Hardy-Herpolsheimer); and Francis Van Riper d/b/a Francis Van Riper Jewelry and Watch Repair; Almo Millinery, Division of Allied Purchasing Corporation;and Wohl Shoe Co. (hereinafter sometimes called, respectively, Respondent Van Riper, Respondent Almo, and Respondent Wohl and referred to collectively as the Respondents), had engaged in and were engaging in unfair labor practices within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge, complaint, and notice of hearing before a Trial Examiner were duly served on Respondents.

With respect to the unfair labor practices the complaint alleges, in substance, that on or about March 9, 1970, pursuant to an election in which a majority of unit employees cast ballots for the Union, the said Union was certified by the Board[1] as the exclusive bargaining representative of Respondent's employees in the unit found appropriate; that since on or about March 19, 1970, the Union has requested, and is requesting, Respondents to bargain collectively with it with respect to wages, hours, and other terms and conditions of employment of employees in the unit found appropriate; and that since on or about March 27, 1970, Respondents have refused and are refusing to recognize or bargain with the Union as such exclusive bargaining representative. On April 29, 1970, Respondents filed their answer, denying the commission of the unfair labor practices alleged.

On May 13, 1970, the General Counsel filed with the National Labor Relations Board in Washington, D.C., a motion to transfer case to and continue proceedings before the Board and for judgment on the pleadings. The General Counsel contends, in effect, that, considering Respondents' answer, the facts affirmatively pleaded and admitted, and the facts established and issues resolved in the representation proceeding, there are no issues in fact or law requiring a hearing of Trial Examiner's Decision and recommendations. Therefore, General Counsel requests the issuance of a Decision and Order finding the violations as alleged in the Complaint. On May 15, 1970, the Board issued an order transferring proceedings to the Board and on the same date a Notice To Show Cause on or before May 29, 1970, why the General Counsel's motion for judgment on the pleadings should not be granted. On June 1, 1970, Respondents filed their answer in opposition to the General Counsel's motion for judgment on the pleadings and memorandum in support of said answer. The Charging Party filed a statement in support of the General Counsel's motion. Respondents have failed to respond to the Notice To Show Cause.

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 case to a three-member panel.

Upon the entire record in this case, the Board makes the following:

Ruling on the Motion for Judgment on the Pleadings

The record establishes that pursuant to a Decision, Order, and Direction of Second Election issued by the Board on December 4, 1968,[2] an election was conducted on March 21, 1969, among employees in a unit found appropriate and consisting of:

> All full-time and regular part-time employees of Hardy-Herpolsheimer Division of Allied Stores of Michigan, Inc., at its store located at 315 Western Avenue and its warehouse at 410 Morris Avenue, Muskegon, Michigan, including all full-time and regular part-time employees of leased departments operated by Wohl Shoe Company, Almo Millinery, Division of Allied Purchasing Corporation and Francis Van Riper d/b/a/ Francis Van Riper Jewelry and Watch Repair at said store; also including selling assistants, assistants to buyers, warehousemen and shuttle van truck driver; but excluding buyers, all contingent employees (except contingent employees included

[1] Decision and Certification of Representative in Case 7–RC–7718

[2] 173 NLRB No 165

as regular part-time employees), professional employees, guards, and all supervisors as defined in the Act employed by any of the joint Employers.

The challenged ballots were determinative of the ultimate outcome of said second election. Thereafter, on or about August 12, 1969, a Hearing Officer for Region 7 issued a Hearing Officer's report on challenged ballots in which he recommended that certain challenges be overruled and that others be sustained. On or about August 22, 1969, Respondent Hardy-Herpolsheimer and the other Respondents, as well as the Union, filed exceptions to the Hearing Officer's report. The Acting Regional Director for Region 7, on or about September 22, 1969, issued his Supplemental Decision on Challenged Ballots wherein he ordered that the challenges to the ballots of 14 individuals be overruled and that these ballots be counted and a revised tally of ballots be prepared along with an appropriate certification reflecting the ultimate result of the election. The Acting Regional Director further ordered that the challenge to the ballots of five other voters be sustained.

On or about October 2, 1969, Respondents filed with the Board in Washington, D.C., a request for review of the Acting Regional Director's Supplemental Decision on Challenged Ballots and, on or about October 8, 1969, the Union filed its opposition to the Respondents' request for review and its conditional request for review of the Acting Regional Director's Supplemental Decision. On October 23, 1969, the Board granted Respondents' request for review only as it related to the disposition of the challenges to the ballots of employees Caywood and Schroder and denied it in all other respects. Also the Board denied the Union's conditional request for review and stated that it would resolve the issues raised as to the eligibility of Caywood and Schroder if their ballots could affect the results as shown by the revised tally to be prepared by the Regional Director.

On October 27, 1969, a revised tally of ballots was issued by the Regional Director which showed that of 184 valid ballots counted, 89 were cast for and 88 against the Union, and 1 ballot was void. The challenged ballots of Caywood and Schroder were therefore determinative of the results of the election. Thereafter, both parties filed briefs on review. Hence, on February 20, 1970, the Board issued its Decision on Review and Direction in which it affirmed the findings of the Acting Regional Director with respect to the challenges to the ballots of Caywood and Schroder. Inasmuch as Caywood's ballot could affect the election results, the Board directed the Regional Director to open and count her ballot, serve on the parties a revised tally of ballots, and issue the appropriate certification. The revised tally of ballots indicated that a majority of employees in the bargaining unit designated the Union as their statutory bargaining agent and, on March 9, 1970, the Regional Director issued a Certification of Representative to the Union as collective-bargaining agent within the meaning of Section 9(a) of the Act.[3]

In its letter dated March 19, 1970, the Union requested that the joint Respondents bargain with it collectively The Respondents refused this request on or about March 27, 1970, and the Union filed the charge on which these proceedings are predicated.

Respondents in both their answer to the complaint and their answer in opposition to the General Counsel's motion basically contend that the Certification of Representative issued herein is invalid because there is no substantial evidence in the record in support thereof. More particularly, Respondents, by virtue of their answers to the complaint and the General Counsel's motion, are attempting to test once again the validity of the Supplemental Decision of the Acting Regional Director wherein he disposed of some 19 challenged ballots involved in the rerun election. As detailed, *supra,* the Board has previously granted review concerning the eligibility of employees Caywood and Schroder and affirmed the Decision of the Acting Regional Director in other respects.[4]

Although the Respondents, in their present posture, apparently are requesting the right to relitigate the issues surrounding the Board's previous disposition of the challenges to four ballots,[5] they have made no proffer of newly discovered or previously unavailable evidence. It is well-settled that the Board has the requisite power to consider and determine motions for judgment on the pleadings and that in such proceedings there is no unqualified right to a hearing where there are no factual issues presented for resolu-

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[3] The final result of the election as shown by the revised tally is 90 votes for and 88 against the Union

[4] Notwithstanding the Board's Decision on Review and Direction, dated February 20, 1970, Respondents are still endeavoring to relitigate issues concerning the voting eligibility of Caywood and Schroder on the ground that, at best, the Board's Review of these matters was only perfunctory In this context, Respondents cite *Pepsi-Cola Buffalo Bottling Co*, 171 NLRB No 28, remanded 409 F 2d 676, cert denied 396 U S 904 Citation of *Pepsi-Cola* is inapposite here because the Board has reexamined the entire record in the underlying representation proceeding (including the Acting Regional Director's Supplemental Decision) as a corollary of its earlier grant of review Accord *The Herald Company,* 181 NLRB No 62 As to the Regional Director's rulings on Norris and Broek, which Respondents also seek to relitigate, we have independently reviewed the record in Case 7-RC-7718 and find that the Regional Director's conclusions as to them were correct

[5] In view of the ambiguity inherent in Respondent's answer in opposition to the General Counsel's motion for judgment on the pleadings, it is not entirely clear whether Respondents are demanding the right to relitigate the matters in dispute or are requesting that the Board merely reconsider its previous Decision on Review and Direction

tion. Accordingly, based on our present independent review of the record and our Decision on Review in Case 7–RC–7718, we conclude that Respondents' contention that the Acting Regional Director erred in his Supplemental Decision on Challenged Ballots is lacking in merit and raises no material issue affecting the validity of the outstanding certification.[6]

Inasmuch as all material issues have been decided by the Board, or are admitted by the Respondents, there are no matters requiring a hearing or reconsideration by the Board. Consequently, the General Counsel's motion for judgment on the pleadings is granted. On the basis of the record before it, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENTS

Respondent Hardy-Herpolsheimer and its licensees Respondent Van Riper, Respondent Almo, and Respondent Wohl are, and at all times material herein have been, engaged in a single, integrated enterprise in the operation of a retail department store, all conducting their respective businesses at Respondent Hardy-Herpolsheimer's Muskegon store without distinctive signs or other indications of separate identity from Hardy-Herpolsheimer, with common advertising and credit facilities and with personnel and labor relations policies being established by Respondent Hardy-Herpolsheimer and applicable to all the employees of each of the above-named Respondents, who work under similar working conditions, including hours and employee benefits. During the year ended December 31, 1969, which period is representative of its business operations during all material times, Respondent Hardy-Herpolsheimer, in the course and conduct of its business operations, sold and distributed products, the gross value of which exceeded $1 million and purchased and caused to be transported and delivered to its Muskegon store, clothing and other goods and materials valued in excess of $100,000, of which goods and materials valued in excess of $50,000 were purchased, transported, and delivered to its store in Muskegon, Michigan, directly from points located outside the State of Michigan.

Upon the basis of the foregoing, we find that Respondents' business operations satisfy the Board's jurisdictional standard governing retail department stores and that the joint Respondent constitutes an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondents admit and we find that Retail Store Employees Union, Local No. 20, Retail Clerks International Association, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

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

> All full-time and regular part-time employees of Hardy-Herpolsheimer Division of Allied Stores of Michigan, Inc., at its store located at 315 Western Avenue and its warehouse at 410 Morris Avenue, Muskegon, Michigan, including all full-time and regular part-time employees of leased departments operated by Wohl Shoe Company, Almo Millinery Division of Allied Purchasing Corparation and Francis Van Riper d/b/a/ Francis Van Riper Jewelry and Watch Repair at said store; also including selling assistants, assistants to buyers, warehousemen, and shuttle van truck driver; but excluding buyers, all contingent employees (except contingent employees included as regular part-time employees), professional employees, guards, and all supervisors as defined in the Act employed by any of the joint Employers.

2. The certification

In a secret ballot election on March 21, 1969, conducted under the supervision of the Regional Director for Region 7, a majority of employees of the Respondents in said bargaining unit designated the Union as their representative for the purpose of collective bargaining with the Respondents. On March 9, 1970, the said Regional Director certified the Union as the exclusive bargaining representative of the employees comprising said unit, and the Union continues to be such representative.

B. *The Request to Bargain and Respondents' Refusal*

Commencing on or about March 19, 1970, and continuing to date, the Union has requested and

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[6] See, e g, *Union Carbide Caribe, Inc*, 173 NLRB No 131, *Provincial House, Inc*, 182 NLRB No 45

is requesting the Respondents to bargain collectively with it as the exclusive bargaining representative of all the employees in the above-described unit. Since on or about March 27, 1970, and continuing to the present, Respondents have refused, and continue to refuse, to engage in collective bargaining with the Union as the exclusive bargaining representative of all the employees in said unit.

We hereby find that the Union was duly certified by the Board as the collective-bargaining representative of the employees of the Respondents in an appropriate unit and that the Union at all times since March 9, 1970, has been the exclusive collective-bargaining representative of all the employees in the above-described unit, within the meaning of Section 9(a) of the Act. We further find that the Respondents have, since on or about March 27, 1970, refused to bargain collectively with the Union as the exclusive bargaining representative of its employees in the appropriate unit and that, by such refusal, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.[7]

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The acts of the Respondents set forth in section III, above, occurring in connection with their operations as described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and its free flow.

V. THE REMEDY

Having found that the Respondents have engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that they cease and desist therefrom and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit, and, if an understanding is reached, embody such understanding in a signed agreement. Under the circumstances it is reasonable for us to provide that the subject employees will be accorded the services of their elected bargaining agent for the full period allowed by law. Consequently, we shall construe the initial year of certification as beginning on the date the Respondents commence to bargain in good faith with the Union as the recognized bargaining agent in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785; *Commerce Company d/b/a Lamar Hotel,* 140 NLRB 226, 229, enfd. 328 F.2d 600 (C A 5), cert. denied 379 U.S. 817, *Burnett Construction Company,* 149 NLRB 1419, 1421 enfd. 350 F.2d 57 (C.A. 10).

CONCLUSIONS OF LAW

1. Hardy-Herpolsheimer Division of Allied Stores of Michigan, Inc ; Francis Van Riper d/b/a/ Francis Van Riper Jewelry and Watch Repair; Almo Millinery, Division of Allied Purchasing Corporation; Wohl Shoe Co. are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Retail Store Employees Union, Local No. 20, Retail Clerks International Association, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act

3. All full-time and regular part-time employees of Hardy-Herpolsheimer Division of Allied Stores of Michigan, Inc , at its store located at 315 Western Avenue and its warehouse at 410 Morris Avenue, Muskegon, Michigan, including all full-time and regular part-time employees of leased departments operated by Wohl Shoe Co , Almo Millinery, Division of Allied Purchasing Corporation, and Francis Van Riper d/b/a Francis Van Riper Jewelry and Watch Repair at said store; also including selling assistants, assistants to buyers, warehousemen, and shuttle van truck driver; but excluding buyers, all contingent employees (except contingent employees included as regular part-time employees), professional employees, guards, and all supervisors as defined in the Act employed by any of the joint Employers, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since March 9, 1970, the above-named labor organization has been and is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about March 27, 1970, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive representative of all of Respondents' employees in the aforesaid appropriate unit, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondents have interfered with, restrained, and coerced, and are interfering with, restraining, and coercing their employees in the exercise of the rights guaranteed them in Section 7 of the Act and have thereby engaged

[7] See *Riverside Press Inc*, 169 NLRB No 107, enfd 415 F 2d 281 (C A 5)

in and are engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act

7. The above-described unfair labor practices are unfair practices affecting commerce within the meaning of Section 2(6) and (7) of the Act

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Hardy-Herpolsheimer Division of Allied Stores of Michigan, Inc.; Francis Van Riper d/b/a Francis Van Riper Jewelry and Watch Repair; Almo Millinery, Division of Allied Purchasing Corporation; Wohl Shoe Co., Muskegon, Michigan, their officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning the rates of pay, wages, hours, and other terms and conditions of employment with Retail Store Employees Union, Local No. 20, Retail Clerks International Association, AFL–CIO, as the exclusive bargaining representative of their employees in the following appropriate unit.

> All full time and regular part-time employees of Hardy-Herpolsheimer Division of Allied Stores of Michigan, Inc., at its store located at 315 Western Avenue and its warehouse at 410 Morris Avenue, Muskegon, Michigan, including all full-time and regular part-time employees of leased departments operated by Wohl Shoe Company, Almo Millinery Division of Allied Purchasing Corporation and Francis Van Riper d/b/a Francis Van Riper Jewelry and Watch Repair at said store; also including selling assistants, assistants to buyers, warehousemen, and shuttle van truck driver; but excluding buyers, all contingent employees (except contingent employees included as regular part-time employees), professional employees, guards, and all supervisors as defined in the Act employed by any of the joint Employers.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement

(b) Post at their Muskegon, Michigan, place of business, copies of the attached notice marked "Appendix."[8] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by the Respondents' representative, shall be posted by the Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify said Regional Director for Region 7, in writing, within 10 days from the date of this Decision and Order, what steps the Respondents have taken to comply herewith.

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[8] In the event that this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing and Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Retail Store Employees Union, Local No. 20, Retail Clerks International Association, AFL–CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union as the exclusive representative of all our employees in the bargaining unit described below with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

> All full-time and regular part-time employees of Hardy-Herpolsheimer Division of Allied Stores of Michigan, Inc., at its store located at 315 Western Avenue and its warehouse at 410 Morris Avenue, Muskegon, Michigan, including all full-time and regular part-time employees of leased departments operated by Wohl Shoe Co.,

Almo Millinery, Division of Allied Purchasing Corporation, and Francis Van Riper d/b/a Francis Van Riper Jewelry and Watch Repair at said store; also including selling assistants, assistants to buyers, warehousemen, and shuttle van truck driver; but excluding buyers, all contingent employees (except contingent employees included as regular part-time employees), professional employees, guards, and all supervisors as defined in the Act employed by any of the joint Employers.

HERPOLSHEIMER DIVISION OF ALLIED STORES OF MICHIGAN, INC.; FRANCIS VAN RIPER d/b/a FRANCIS VAN RIPER JEWELRY AND WATCH REPAIR; ALMO MILLINERY, DIVISION OF ALLIED PURCHASING CORPORATION; WOHL SHOE CO.
(Employer)

Dated By
(Representative)
(Title)

This is an official notice and must not be defaced by anyone.

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions, may be directed to the Board's Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone 313-226-3200.