

Josephine Furniture Company, Inc.¹ and Retail Clerks Union Local 1288, AFL-CIO, affiliated with Retail Clerks International Association² and Teamsters Local 431, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.³ Cases 20-RM-1022 and 20-RM-1023

June 26, 1968

DECISION, ORDER, AND DIRECTION OF ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND BROWN

Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held at San Francisco, California, before Sue D. Valladao, Hearing Officer of the National Labor Relations Board. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The Employer-Petitioner and Clerks filed briefs with the Board.

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, including the Employer's and Clerks briefs, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved in Case 20-RM-1022 claims to represent certain employees of the Employer. For the reasons set forth below, we find that no claim to representation exists in Case 20-RM-1023.
3. In Case 20-RM-1023, the Employer seeks an election among its truckdrivers,⁴ contending that it had voluntarily granted recognition to Teamsters Local 431 on April 19, 1967, but that the present majority status of that union is in doubt. The Teamsters did not appear at the hearing herein, although served with notice, and it is not disputed in this record that subsequent to such recognition the Teamsters took no further action to effectuate its representative status. The Employer argues that by failing to attend the hearing the Teamsters does not protest the direction of an election. However, we construe the failure of Teamsters to act in

furtherance of its recognition as representative of the truckdrivers between April 19 and October 17, 1967, the date of the filing of the petition, and its failure to appear at the hearing, as either an abandonment of its representative status or as a disclaimer that it represents the truckdrivers. It thus appears that, with respect to the truckdrivers unit, the Employer is not now presented with a claim by any individual or labor organization to be recognized as the representative defined in Section 9(a). Accordingly, we conclude that no question affecting commerce exists concerning the representation of truckdrivers of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act, and we shall therefore dismiss the petition in Case 20-RM-1023.

In Case 20-RM-1022, the Employer seeks an election in a unit of its selling and nonselling employees, excluding truckdrivers. Retail Clerks contends that the recognition granted to it by the Employer on April 19, 1967, bars an election at this time, under the principle of *Keller Plastics Eastern, Inc.*⁵

The record shows that the Retail Clerks, by letter dated April 6, 1967, requested recognition in the unit involved herein. Thereafter, on April 18, the Employer met with the Clerks at the office of the Employer's attorney, and on April 19 the Employer, in a letter to the Clerks, stated that "in keeping with our discussion at the meeting of the 18th, the Company has no doubt that you represent a majority" of the employees sought and granted recognition. After the Clerks submitted proposals for a collective-bargaining contract the parties met on August 22, 29, September 18, and October 2, generally for brief periods. On October 2, the Employer questioned the Clerks majority status and on October 6 requested that the Clerks file a representation petition. When the Clerks failed to comply with this request, the Employer filed the instant petition on October 17.

It is the Clerks contention that it was entitled to a reasonable time after recognition in which to negotiate a collective-bargaining contract. The Employer argues, however, that at the time recognition was granted the Clerks had not established its majority status and at no time had the Employer ever checked the Clerks authorization cards. Careful examination of the record reveals no indication that the Clerks cards were checked at that time.

In *Keller Plastics*, an unfair labor practice case,

¹ The name of the Employer appears as amended at the hearing. Referred to herein also as Petitioner or Employer

² Referred to herein also as Retail Clerks or Clerks. The name of the Clerks appears as amended at the hearing

³ Referred to herein also as Teamsters

⁴ The unit for which the Teamsters requested and received recognition consisted of all truckdrivers, excluding all other employees, guards, and supervisors.

⁵ 157 NLRB 583.

the issue was "whether a bargaining relationship established by lawful recognition of a union *representing a majority* of the employees can be disrupted by the union's subsequent loss of majority status prior to execution of a contract." (Emphasis supplied.) In a subsequent case, the Board, in determining whether in a representation proceeding the informal recognition granted to a union constituted a bar to a petition by a rival labor organization within the *Keller Plastics* principle, found that such recognition did not bar the proceeding because it did "not affirmatively appear . . . that the Employer extended recognition to the Intervenor in good faith on the basis of a *previously demonstrated showing a majority* and at a time when only that union was actively engaged in organizing the unit employees." (Emphasis supplied.)⁶ These requirements are equally applicable in the instant case, and as it does not affirmatively appear that the Retail Clerks had demonstrated its majority prior to the granting of recognition it is clear that such recognition cannot bar an election at this time.

In view of the above, we find that the petition

⁶ *Sound Contractors Association*, 162 NLRB 364 (Member Fanning concurring in the result).

⁷ 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 after the date of this Decision and Direction of Election. The Regional Director shall make the list

was timely filed, and that a question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. In accordance with the stipulation of the parties, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All selling and nonselling employees employed by the Employer at its facility located at 922 Van Ness Avenue, Fresno, California, excluding truckdrivers, confidential employees, guards, and supervisors as defined in the Act.

ORDER

It is hereby ordered that the petition in Case 20-RM-1023 be, and it hereby is, dismissed.

[Direction of Election⁷ omitted from publication.]

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. *Excelsior Underwear Inc.*, 156 NLRB 1236.