

Santa Barbara Distributing Co., Employer-Petitioner and Joseph A. Ricchetti, d/b/a Kings County Distributing Co.,¹ Employer-Petitioner and Louis J. Basso, d/b/a Basso Distributing Co.,² Employer-Petitioner and Roy P. Denney, Inc., Employer-Petitioner and Teamster Brewery and Soft Drink Workers Joint Board of California.³ Cases 31-RM-76, 31-RM-85,⁴ 31-R-86,⁵ 31-RM-88, 31-RM-90,⁶ and 31-RM-91⁷

August 21, 1968

DECISION AND DIRECTION OF ELECTIONS

BY CHAIRMAN McCULLOCH AND MEMBERS BROWN
AND JENKINS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing, pursuant to Section 102.82 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, was held before Hearing Officer Max Steinfeld. The Employer-Petitioners, hereinafter referred to as the Employers, filed a brief with the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel.

The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The Board has considered the entire record in these cases, including the brief, and makes the following findings:

1. The Employers are engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction in this proceeding.

2. The parties stipulated, and we find, that the Joint Board is a labor organization within the meaning of the Act. The Joint Board claims to represent certain employees of the Employers.

3. A question affecting commerce exists concerning the representation of employees of the Employers within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. Prior to 1962, most California beer wholesalers were represented in labor negotiations by the California Beer Wholesalers Association's labor fund. Joint negotiations in 1962 between the

labor fund and the Joint Board resulted in a collective-bargaining agreement which terminated in 1964. Some time after the 1962 negotiations had been completed, Erwin Lerten was retained by various California beer wholesalers as their collective-bargaining representative. These wholesalers resigned from the labor fund and proceeded to bargain individually through Lerten.

In 1964, Lerten sent individual letters on behalf of each client terminating the contract with the Joint Board. The Joint Board also sent similar individual letters to each wholesaler. The Joint Board was told that Lerten represented each client on an individual basis and that none of his clients would be bound by the actions of any other wholesaler. After some bargaining, the Joint Board called a strike against some wholesalers but not all, and ultimately an agreement was reached on August 18, 1964. A majority of Lerten's clients authorized him to sign on their behalf, although not all of Lerten's clients authorized such action. While most of Lerten's clients signed the 1964 agreement with the Joint Board, some refused to sign any contract and others had individual contracts with Teamsters locals.

At the time that the 1964 contract terminated in 1967, Lerten represented about 160 of California's approximately 200 beer wholesalers. The 1964 contract was terminated in the same manner as the 1962 contract had been terminated. Lerten sent individual letters of termination on behalf of each wholesaler which, in addition to declaring that he represented each client on an individual basis, stated that the beer wholesaler on whose behalf the letter was written withdrew from any previously existing or present multiemployer unit. Again the Joint Board sent separate letters to each beer wholesaler demanding recognition; and, as he had done in 1964, Lerten announced at the outset of negotiations that he was representing each of his clients on an individual basis.

During the 1964 and 1967 negotiations, Lerten was the sole negotiator for his clients. He held prenegotiation meetings in order to ascertain the individual demands of his clients, and various clients attended negotiating sessions as they wished or when called upon for advisory purposes.

On June 6, 1967, after reaching a proposed agreement, Lerten agreed to submit it to his clients. Although a formal vote was not taken, a majority of the clients rejected the agreement. Lerten told the

¹ Name given as amended at the hearing

² Name given as amended at the hearing

³ Teamster Brewery and Soft Drink Workers Joint Board of California, hereinafter referred to as the Joint Board, is an Intervenor in this proceeding. The Joint Board was afforded full opportunity to participate in the

hearing and to submit a brief in support of its position to the Board

⁴ Formerly Case 20-RM-987

⁵ Formerly Case 20-RM-986

⁶ Formerly Case 21-RM-1315

⁷ Formerly Case 21-RM-1316

Joint Board which clients accepted and which rejected the agreement, but the Joint Board refused to submit the agreement to its membership unless an overwhelming majority of the wholesalers agreed. Shortly thereafter, a second agreement was reached. On June 22, 26, and 30, Lerten gave the Joint Board lists of the beer wholesalers who agreed to the second proposed agreement. On July 27, the Joint Board signed it, Lerten signed on behalf of those clients authorizing him to do so. The Employers involved herein were not the only clients who refused to sign the agreement; approximately 50 of Lerten's other clients also refused to sign the agreement on July 27.

Subsequent to signing the agreement on July 27, Lerten met on various occasions with the Joint Board or a Teamsters local in order to reach an agreement satisfactory to Lerten's clients who had refused to sign the July 27 agreement. Meetings were held on August 23, 28, and 31, September 1 and 21, October 26, and November 3. A number of these meetings concerned a group of nonsigners in a particular area of California, although a few of the meetings were limited to individual nonsigners. While some of the meetings resulted in adoption of the July 27 agreement with specific modifications, not all of the meetings were successful nor did all of

Lerten's clients who refused to sign on July 27 engage in these later sessions. None of the Employers involved herein reached agreement with the Joint Board.

On the basis of the above facts, it is our opinion that in 1967 each of the Employers involved herein retained Lerten solely for its own individual convenience and for the added efficiency and probable reduced cost that Lerten was able to offer, and did not thereby intend to participate in any multiemployer unit. We further find that this intent was effectively and timely communicated to the Joint Board.

Accordingly, we find that the following employees of each of the Employers constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

- (a) All truck drivers and warehousemen,⁸ excluding salesmen and merchandisers, clerical employees, guards, professional employees, and supervisors as defined in the Act.⁹
- (b) All salesmen and merchandisers, excluding truck drivers and warehousemen, clerical employees, guards, professional employees, and supervisors as defined in the Act.¹⁰

[Direction of Elections ¹¹ ¹² ¹³ omitted from publication.]

⁸ It is unnecessary for us to determine whether the term bottlers or warehousemen should be used in the unit description since it appears that the parties do not disagree on which employees are actually included in the unit.

⁹ This unit applies to each of the four Employer-Petitioners herein.

¹⁰ This unit applies to Employer-Petitioners Roy P. Denney, Inc., and Joseph A. Ricchetti, d/b/a Kings County Distributing Co.

¹¹ The Joint Board has indicated that it may wish to disclaim representation in any or all units here found appropriate. If the Joint Board does so disclaim representation within 10 days from the date of the issuance of this Decision and Director of Elections, the related RM petition will be dismissed and the following shall be applicable in lieu of a Direction of Election for the unit so disclaimed:

Any petition filed by the Joint Board within 6 months from the date of disclaimer will not be entertained unless good cause is shown to the contrary. Moreover, in the event the Joint Board makes a new claim for recognition within 6 months from this date, a motion requesting reinstatement of the related RM petition will be entertained.

¹² Robert and Daniel Litchfield are employees of Santa Barbara Distributing Co. But since each is one-ninth owner of the Company and their father is an owner and president of the Company, we find that they should be excluded from the list of eligible voters.

¹³ 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 elections should have access to lists of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236, *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that election eligibility lists, containing the names and addresses of all the eligible voters, must be filed by the Employers with the Regional Director for Region 31 within 7 days of the date of this Decision and Direction of Elections. The Regional Director shall make the lists available to all parties to the elections. No extension of time to file these lists shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the elections whenever proper objections are filed.