

Angelus Furniture Manufacturing Co., Employer-Petitioner and Retail Clerks Union, Local 770, affiliated with Retail Clerks International Association, AFL-CIO, Union-Petitioner. Cases 31-RM-238 and 31-RC-1685.

August 24, 1971

DECISION ON REVIEW

BY CHAIRMAN MILLER AND MEMBERS JENKINS
AND KENNEDY

On April 23, 1971, the Regional Director for Region 31 issued a Decision and Direction of Election, the pertinent excerpt of which is attached hereto as an appendix, in which he found appropriate a unit consisting of all regular full-time and regular part-time sales employees at the Employer's Chatsworth, California, store. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's Decision, challenging the factual basis of the unit determination and asserting that the only appropriate unit is one which includes the salesmen at all of the Employer's stores in the Los Angeles area.

The Board, by telegraphic order, dated May 20, 1971, granted the request for review as it raised substantial issues of fact bearing on the unit issue. The election was stayed pending decision on review. Thereafter the Union filed a brief on review.

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.

Having considered the entire record in this proceeding including the transcript, the request for review, and the Union's brief on review,¹ the Board is satisfied that the record supports the Regional Director's factual findings and his unit determination. Therefore, the Decision and Direction of Election issued by the Regional Director is hereby affirmed.

Accordingly, this proceeding is hereby remanded to the Regional Director for Region 31 for the purpose of holding an election pursuant to his Decision and Direction of Election, except that the payroll period for determining eligibility shall be that immediately preceding the date of this Decision on Review.²

¹ On May 25, 1971, the Employer and the Union furnished to the Board photocopies of Bd. Exhs. 1(a) through 1(e) and Emp. Exhs. 1 and 2, together with a stipulation that these photocopies were true and

accurate copies of the original exhibits. The parties moved that the record in this proceeding be reopened for the purpose of substituting the photocopies for the original exhibits. In view of the agreement of the parties, we hereby reopen the record for the sole purpose of substituting the instant photocopies for the original exhibits.

² 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 shall 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 Co.*, 394 U.S. 759. Accordingly, it is hereby directed that a corrected election eligibility list, containing the names and addresses of all eligible voters, must be filed by the Employer with the Regional Director for Region 31 within 7 days of the date of this Decision on Review. The Regional Director shall make the list available to all parties to the elections. No extensions 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 elections whenever proper objections are filed.

APPENDIX

The Employer, an operating division of W. & J. Sloane of Beverly Hills, Inc., is engaged in a full-service retail furniture operation in a chain of stores in Southern California. The main store, central administrative offices, and warehouse are located at 3650 East Olympic Boulevard, Los Angeles. Other stores are located in Chatsworth, about 35 miles northwest of the main store; in Azusa, about 25 miles east-northeast of the main store; and in Santa Ana, about 30 miles southeast of the main store. Another store, located at 1500 West Olympic Boulevard, Los Angeles, about 10 or 15 miles west of the main store, and presently operated by the Employer but identified as a Wilder's store, will be closed about mid-April and then reopened with the Employer's identification about May 1, 1971, to handle damaged merchandise from the other stores.

Petitioner seeks to represent the sales employees at the Chatsworth location only, claiming those employees constitute a separate, appropriate bargaining unit. The Employer contends that the unit sought is inappropriate and that sales personnel in the other stores in the chain should be included as well as those at Chatsworth. Including both regular full-time and regular part-time employees, there are about 30 sales employees at the main store, 20 at Chatsworth, 10 at Santa Ana, and 20 at Azusa.

The Employer has no bargaining history with respect to its sales employees. However, it does have a collective-bargaining agreement with the Teamsters which represents display and receiving personnel on a chainwide basis.

Policies of the Employer with respect to store operations are uniform throughout the chain and are centrally controlled. Thus, store hours are the same and are set by the main office; merchandise is centrally purchased, stored, priced, and advertised; and the Employer's labor policies are centrally determined. Thus, there is a chainwide, uniform minimum wage guarantee for sales employees, a

uniform sick leave plan, and a uniform vacation policy. There is also a companywide medical, health, and welfare plan available to sales employees at all the stores and a uniform 3-month probationary period for newly hired, experienced salesmen. Ninety-five percent of the sales employees terminated by the Employer are terminated because of their failure to meet their guaranteed draw within 3 months after hire. In addition, some terminations are effected by the store managers at the direction of the Employer's operations manager following an annual chainwide review of sales performance by him and the Employer's president. While it would thus appear that the store manager has little to say about most discharges, there is testimony that the store manager has authority effectively to recommend hiring and firing and that, with respect to firing, he is "definitely consulted and [his recommendation] used . . ." It may be inferred, therefore, that, under the Employer's labor policy, standards for retention or discharge are not applied mechanically but are influenced to some extent by the recommendations of individual store managers.

With respect to hiring, while the Employer's central management decides how many salesmen each store will be permitted to have, and the Employer centrally advertises for sales job applicants to apply at its main store, many applicants apply to the branch store managers and are interviewed and hired by them, with the central management simply authorizing an increase in the size of sales force at the affected store. Thus, inasmuch as the record affirmatively establishes that only about one-third of the present, permanent sales complement at the Chatsworth store was either hired at the main store or transferred to Chatsworth from other stores, it follows that about two-thirds of the present permanent sales complement at Chatsworth was hired by the local Chatsworth store manager.

With respect to the local store managers' authority over sales employees, it is noted that during special promotional sales there is some temporary transfer of employees among stores in the Employer's chain, and, in this connection, while the number of such persons to be transferred is determined by the Employer's central management, the specific persons transferred are selected by the local store manager who employs them.

With respect to employee interchange, the record reveals 17 instances of permanent transfer of nonsupervisory sales employees in the chainwide operation in a 3-year period, ten of these transfers were to or from the Chatsworth store.

In addition to permanent transfers, there are, as noted above, some temporary transfers. Most of these are short term transfers to cover vacationing

employees or to provide manning requirements at special sales. Thus, the record establishes a record of sales as follows: a 3-day, post-Christmas sale at the main store apparently in 1969; a 10-day, parking lot sale at the main store approximately July 4, 1970; a 10-day, parking lot sale at the Azusa store in late July-early August 1970; and a 3-day, parking lot sale at Chatsworth in mid-August 1970. In addition, during 1970 there were three 1-day sales at various times at Azusa, three at Santa Ana, three at Chatsworth, four at the main store, and one at the Wilder's store. There is testimony that, during the parking lot sale at the main store in July 1970, only 3 sales employees remained at the Chatsworth store out of usual complement of 17 such employees; all the rest were temporarily assigned to the main store. The record also reveals that there were a total of 42 sales employees employed at the Chatsworth store, albeit at differing times, in the 7-month period ending August 31, 1970, and that, of these, 11 employees each had sales averaging almost \$10,000 at the main store. Further, of these 11, 3 employees also had sales of approximately \$2,000 at the Azusa store.

As urged by the Employer, the Board finds a single store in a retail chain presumptively appropriate unless countervailing factors are present. *Star Market Co. d/b/a Dan's Star Market*, 172 NLRB No. 130. However, I disagree with the Employer that such factors overcome the presumption here.

True, there is substantial evidence here of considerable centralized, administrative control of the Employer's operation, but the Board has stated and held that such control is "characteristic of the retail chain business and is not in itself sufficient to rebut the presumptive appropriateness of a single store unit." *Davison-Paxon Company*, 185 NLRB No. 5; *The Grand Union Company*, 176 NLRB No. 28. Such factors as centralized bookkeeping, payroll records, purchasing, merchandising, advertising, and inventory control are held to be of little or no significance in determining the appropriate unit, while factors such as local supervisory autonomy and relative substantiality of employee interchange are accorded considerable weight. *Davison-Paxon Company, supra*; *Höschchild, Kohn & Co., Incorporated*, 184 NLRB No. 76; *The Grand Union Company, supra*; *Motts Shop Rite of Springfield, Inc.*, and *Motts Shop Rite of Chicopee, Inc.*, 182 NLRB No. 19.

Here, as in *The Grand Union Company, supra*, "it is clear that the individual store [manager represents] the highest level of supervisory authority present in the store for a substantial majority of time." Moreover, it is clear that the store manager can and does hire sales employees, can affect their sales records, and hence their income and tenure, by

temporarily assigning them to sales promotions at other stores or refraining from doing so, and can effectively recommend their discharge or retention. Although there is evidence that the president, the operations manager, the merchandise manager, and two buyers visit each branch store once a week or so, there is no evidence that they spend any considerable amount of time in the Chatsworth store or that they concern themselves intimately with day-to-day problems of the sales employees when they do visit the store. Rather, it appears that the employees perform their day-to-day work under the immediate supervision of the store manager who is involved in rating their performance and dealing with the daily matters which make up their grievance and routine problems.

Further, although there is some permanent transfer of sales employees from one store to another, its amount appears to be insubstantial when considered over a 3-year period. Thus, the rate of interchange, both chainwide and with respect to the Chatsworth store, is 0.33 percent or less, a figure lower than that involving the two Massachusetts stores which the Board held together constituted an appropriate unit in the *Motts Shop Rite* case, *supra*. Moreover, the amount of temporary interchange also appears insufficient to destroy the homogeneity of the single-

store unit. See *The Grand Union Company, supra*. In this connection, I note that, although 11 employees out of a total of 42 employed at one time or another at the Chatsworth store in the 7-month period ending August 31, 1970, had substantial sales at the main store, these sales were made in a maximum of 12 days. It thus follows that more than 90 percent of their working time was spent at the Chatsworth store. Inasmuch as the other 31 employees had no sales of any consequence at any store other than Chatsworth, it is clear that almost 100 percent of their working time was spent at Chatsworth.

In reviewing the entire record, I am convinced that the Employer has not overcome the presumptive appropriateness of the single-store unit. Thus, there is ample evidence that the Chatsworth store functions as a separate entity on a day-to-day basis and that substantial autonomy is exercised at the single-store level. In these circumstances, and in the absence of any bargaining history, the Board's unit determinations are made so as to accord employees the fullest freedom in exercising those rights guaranteed by the Act. Accordingly, on the entire record, I conclude and find that the single-store unit is appropriate and shall direct an election therein.