

Columbia Music & Electronics, Inc. and Department Store Employees Union, Local 1100, Retail Clerks International Association, AFL-CIO, Petitioner.
Case 20-RM-1444

April 17, 1972

DECISION ON REVIEW

BY MEMBERS FANNING, JENKINS, AND KENNEDY

On December 14, 1971, the Regional Director for Region 20 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate the Petitioner's requested unit of all full-time and regular part-time selling and nonselling employees at the Employer's San Francisco, California, retail store, excluding therefrom six individuals whose unit placement was in dispute. Thereafter, the Employer filed a timely request for review of the Regional Director's decision on the grounds that in resolving the unit placement issues he made findings of fact which are clearly erroneous and departed from established policy.

On January 13, 1972, by telegraphic order, the request for review was granted and the election stayed pending decision on review. Thereafter, the Petitioner 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 authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review, including the Employer's contentions in its request for review and the Petitioner's brief on review, and makes the following findings:

The Employer is engaged in the retail sale of musical instruments, sheet music, books, records, prerecorded tapes, hi-fidelity equipment, and other musical supplies at its San Francisco store. Edward Regan, manager of the hi-fidelity department, owns 35 percent of the Employer; Sid Heller, manager of the musical instruments and books department, owns 30 percent; and Charles Heller, manager of the records and tapes department, owns 28 percent. Under the owner-managers, there are 12 employees, including the 6 whose exclusion from the unit by the Regional Director is under review.

Dolores Blood, under the direction of the three owner-managers, performs various secretarial and clerical functions, such as handling correspondence, accounts receivable, bank deposits, billings, and payroll. Despite the absence of any history of collective bargaining with respect to any employees of the Employer, the Regional Director concluded that she is a confi-

dential employee, reasoning that because she is one of the two secretaries who work for all three of the owner-managers, her duties would include assisting them in all of their labor relations responsibilities. The Employer argues that Blood's role in the event of future negotiations with the Petitioner is wholly speculative. We agree. In the circumstances herein, we shall include her in the unit.

Nell Sperling is a part-time employee working 3 days a week. She is a bookkeeper and performs certain secretarial and clerical duties for the owner-managers. She is also a shareholder, owning approximately 5.5 percent, or 50 shares, of the Employer's stock, valued at approximately \$6,000. She receives vacations and holidays despite the Employer's policy of not providing such benefits for part-time employees. Because she shares secretarial functions with Dolores Blood, albeit on a part-time basis, the Regional Director concluded that she, as well as Blood, is a confidential employee. Although for the reasons expressed concerning Blood we do not agree that Sperling is a confidential employee, we believe, because of her stock interest and the special treatment accorded her with respect to vacations and holidays, that her interests are closely allied with management. We shall therefore exclude her from the unit.

As to *Al Heller*, a brother to two of the owner-managers, and *John Regan*, brother to the other owner-manager, the Regional Director found, *inter alia*, that they were employed only sporadically. The Employer in its request for review asserted that both men work 1 day a week or more on a part-time basis. The Petitioner filed no opposition to the request for review but contends in its brief on review that the record fully substantiates the Regional Director's findings that they work only sporadically. Upon our review of the record, we are satisfied that Al Heller and John Regan are irregular part-time employees and, for this reason, we exclude them from the unit.¹

Susan Eckberg and *Terry Preziosi* were hired on October 15, 1971, to do part-time cashier work. Eckberg, who was pregnant when hired, was scheduled to work 2 days a week. However, at the time of the hearing, she was expecting to give birth in about a month and a half. Preziosi, a high school student, was scheduled to work on Saturdays, except during her Christmas vacation when she was to work 3 to 4 days each week. The Regional Director concluded that in view of their short employment history, coupled with the Employer's past practice of hiring full-time employees, and the present business conditions, they are

¹ Al Heller testified that he had worked for the Employer for only 2 days and 2 hours since January 1971. John Regan is on call and the record indicates that he has in fact been employed only sporadically.

casual and temporary employees. The Employer disputes these findings. As to Preziosi, contrary to the Regional Director, we find that she is a regular part-time cashier hired to work as such for an indefinite period.² We therefore include her. As to Eckberg, in view of her pregnancy at the time of hire and her insubstantial period of employment on a part-time

basis, we believe the record is insufficient to enable us to determine her status at this time. She will therefore be permitted to cast a challenged ballot in the election.

Accordingly, we shall remand the case to the Regional Director in order that he may conduct an election pursuant to his Decision and Direction of Election, as modified herein, except that the eligibility payroll period therefor shall be that immediately preceding the date below.

² *Kachco Corporation d/b/a Hickory Farms of Ohio*, 180 NLRB 755.