

White Cross Discount Centers, Inc. and Retail Clerks Union Local 770, affiliated with Retail Clerks International Association, AFL-CIO. Case 21-RC-12434

October 12, 1972

DECISION ON REVIEW AND DIRECTION OF ELECTION

BY CHAIRMAN MILLER AND MEMBERS FANNING, KENNEDY, AND PENELLO

On January 31, 1972, the Regional Director for Region 21 issued a Decision and Order in the above-entitled proceeding dismissing the petition based on his conclusion that various alternative units sought by Petitioner among 11 of the Employer's 30 southern California stores were inappropriate. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the petitioner filed a timely request for review of the Regional Director's decision on the grounds that the Regional Director's findings were erroneous; Petitioner repeats, essentially, all of its alternative unit positions to the Board. The Employer filed a statement in opposition to the request for review.

On April 19, 1972, the National Labor Relations Board granted the request for review. Thereafter, the Employer filed a brief in support of the Regional Director's decision.

The Board has considered the entire record in this case and makes the following findings:

The Employer operates a chain of 30 retail stores spread across southern California, and is engaged in the sale of health and beauty aids, nonprescription drugs, and sundry items. The central office and warehouse is located in South El Monte, California. The Employer has eight stores in downtown Los Angeles. In addition to these eight stores, the Employer has nine other stores which are within the geographic limits of Los Angeles County. Outside Los Angeles County, the Employer has 13 stores in the southern California area located as far north as Oxnard and as far south as Calexico.

As is common in retail nonprescription drug chains, there is a high degree of centralized administration in the functioning of all of the Employer's outlets. Thus, the merchandise is the same in all stores except for a few items; the price structure is uniform; and the layout of the stores is, insofar as possible, identical.

The central office, in addition to handling purchase and distribution of merchandise, determines whether the stores will have sales or other types of special promotions. All newspaper advertisements to promote business are prepared by the central office, with ads placed in the media which advertise chain-wide prices and products. The central office also handles the purchase of parts and equipment for the stores and arranges for services (e.g., janitorial services) for the various stores.

All personnel files, pay records, records of daily business, inventory records, and accounts payable and receivable are kept in the central office. The profit-sharing plan, pension plan, and employee benefits plans are handled in the central office. Paychecks are issued on the same day for all employees, are sent out from the central office, and are drawn on a single corporate account. The store managers are required to deposit daily receipts at various branch banks near their stores. The store managers generally do not write checks, make incidental purchases, or authorize repairs.

Applications for employment are sometimes taken at the central office, but hiring may also be done at the local stores. Store managers have the authority to conduct interviews, but often consult their supervisors from the central office during the process. Store managers may initiate the discharge of employees, but may take no final action without the written approval of the supervisor on the termination form. Store managers also make recommendations to the central office regarding individual wage increases, promotions, and terminations.

With respect to working conditions and benefits, it appears that regular full-time employees work the same number of hours per week although store hours vary to meet the competition. Holidays are apparently identical, and the Employer apparently maintains uniformity in its various benefit plans. The employees wear jackets or smocks and a name tag which identifies them as employees of White Cross.

The total employee complement of the chain is approximately 240. While the figures for the individual store complements are somewhat disputed, these complements range from at least 1 to as many as 12 regular and part-time employees. There is testimony of a practice of temporary and permanent transfers of employees, managers, and assistant managers among the stores.

The Employer attempts to maintain uniformity in certain aspects of its business operations in a number of ways. In addition to regular telephone communications between the central office and the stores, the

Employer has standardized guides for various positions at the local store level, has uniform moneyhandling procedures, and controls sales plans and advertisements in the central office. Although there are some standardized training procedures, the store manager has discretion to determine how such rules and regulations are carried out. The store managers also instruct new employees concerning their jobs and ordering supplies. Generally, store managers are responsible for assigning and directing work, routine discipline of employees, and sending sick or injured employees home. They also have control over the store building itself and the handling of bank accounts.

In order to further insure standardization, the Employer's operations manager maintains contact with individual stores through its field supervisors. These field supervisors are each assigned from three to eight stores to oversee. These field supervisors visit their stores once each week, receive reports from the store managers, help with special problems, and assist in making out work schedules. For instance, the eight stores in downtown Los Angeles are supervised by two supervisors who supervise no other stores.¹ They report, along with other supervisors, to the operations manager concerning the stores within their jurisdiction.

The supervisors travel in Econoline vans provided by the Employer and often transfer merchandise from one store to another during their rounds. While in the stores, these supervisors assist the managers with special problems, arrange display materials, and handle personnel problems. These supervisors must approve firings, transfers, overtime, and vacations. They are consulted about hiring, assist in drawing up work schedules, and may transfer employees without notice to either employee or store manager. Supervisors often replace store managers in case of illness or vacation, particularly in those stores which do not have a head cashier.

The Petitioner urged the Regional Director and now urges the Board to find any of the following 4 alternative units to be appropriate: (a) 11 stores in a single unit, including the 8 downtown Los Angeles stores (numbers 1, 2, 9, 14, 16, 17, 19, and 26) plus the stores in Inglewood, Huntington Park, and San Fernando; (b) the 8 downtown stores as a single unit plus

¹ As mentioned, the Employer's usual practice is to have one supervisor supervise three to eight stores, with the stores selected on the basis of proximity. However, the eight downtown Los Angeles stores have two supervisors who share responsibility equally. These two supervisors visit the eight stores regularly, with a supervisor being in any one store 10 hours or more per week. In fact, it is not uncommon for one of these eight stores to have the two supervisors present at the same time

single-store units at Inglewood, Huntington Park, and San Fernando; (c) 11 single-store units; or (d) a single 8-store unit of the 8 downtown stores.

The Regional Director concluded that none of the alternative units sought was appropriate and therefore dismissed the petition.

For the reasons stated by the Regional Director as set forth in his Decision and Order (the pertinent parts of which are attached as an appendix), we agree that the Petitioner's alternative units (a), (b), and (c) are inappropriate. We disagree, however, with his conclusion that the eight downtown Los Angeles stores unit is likewise inappropriate.²

Where there has been no bargaining on a broader basis, the Board has found appropriate a geographic grouping of retail chain stores³ less than chainwide in scope,⁴ particularly where such grouping coincided with an administrative division within the Employer's organization.⁵ Here there is a distinct cluster of eight stores which are all situated within a radius of one-half mile and which serve the area of greatest pedestrian traffic in downtown Los Angeles. Further, these same eight stores constitute in effect an administrative division within the Employer's organization in that they are supervised collectively by two supervisors who oversee no other stores. These two supervisors visit these eight stores regularly, provide assistance and counsel to the store managers, and provide the autonomy lacked by the store managers in matters of hiring, discharge, and transfer of employees. Thus geographic proximity and concentration as well as the Employer's organizational structure compel the conclusion that the employees working in these eight stores share a community of interest separate and apart from the community of interest of other employees working in the chainwide unit.

In view of the foregoing, we find that the follow-

² Member Fanning agrees with his colleagues that the grouping of eight stores in the city center, with common supervision, sought by the Petitioner is an appropriate unit for bargaining. However, unlike his colleagues, he would also grant the three single-store units at Huntington Park, Inglewood, and San Fernando. In *Sav-On Drugs, Inc.*, 138 NLRB 1032, and again in *Haag Drug Company, Incorporated*, 169 NLRB 877—upon thorough review of the policy—the Board found that single-store units in a retail chain were presumptively appropriate bargaining units, just as in multiplant or multilocation enterprises generally. This presumption is, of course, rebuttable depending upon the factors present in each case. Based on the record here, Member Fanning is not persuaded that this presumption has been rebutted as to these three individual store units.

³ The Board's recognition that more than one unit may be appropriate among the employees of a particular enterprise has been followed a number of times with the approval of the courts. See *Motts Shop Rite of Springfield, Inc. and Motts Shop Rite of Chicopee, Inc.*, 182 NLRB No. 19, and cases cited therein at fn 3.

⁴ *U-Tote-Em Grocery Co.*, 185 NLRB No. 6, *Drug Fair—Community Drug Co., Inc.*, 180 NLRB 525.

⁵ *State Farm Mutual Automobile Insurance Company*, 158 NLRB 925; *Metropolitan Life Insurance Company*, 156 NLRB 1408.

ing unit is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full- and regular part-time employees including clerks and cashiers employed by the Employer at stores 1, 2, 9, 14, 16, 17, 19, and 26 but excluding all other employees, guards and supervisors within the meaning of the Act.

Accordingly, we hereby remand the case to the Regional Director in order that he may conduct an election pursuant to this Decision.

[Direction of Election and *Excelsior* footnote omitted from publication.]

APPENDIX

The record discloses that the Employer's 30 stores, all of which are situated in southern California, range in location geographically from Oxnard in the north, Calexico in the south, Ridgecrest in the east, and San Clemente-Long Beach in the west. The number of nonsupervisory employees per store ranges from a low of 1 to a high of approximately 20. The central area of Los Angeles comprises the highest density of pedestrian traffic within the Employer's geographical boundaries, and thus, the eight stores which Petitioner would group together as part of its principal alternative unit are situated within a radius of one-half mile of each other. Although these eight stores represent the largest cluster of stores throughout the chain, there are smaller clusters in other areas throughout the chain and it appears that each individual store is relatively close to another store. Consequently, no store is geographically isolated.

None of the stores is independently incorporated, separately owned, nor subject to any type of license or franchise agreement, and all of them have the same general exterior appearance, interior design, and fixtures. The employee dress code and cash handling procedures are determined at the central office, and the Employer supplies employees with similar jackets for the men and smocks for the women. All employees wear similar name tags. Three of the stores use the name "Green Cross," but this is occasioned merely by historical reasons, and one of the stores located in the central Los Angeles cluster, in which Petitioner seeks an election, uses the name "Solo" because of its close proximity to one of the other White Cross stores in that area. Except for the names under which these four stores operate, everything else about them is uniform in every respect with all the other stores in the chain.

There are six area supervisors, each of whom supervises from three to eight stores. Although the same two supervisors are in charge of the eight stores in the central Los Angeles area, a different supervisor supervises the Inglewood and Huntington Park stores as well as other stores in the chain, and the San Fernando store is supervised by yet another supervisor who also supervises other stores in the chain. Area supervisors transfer employees between stores on both a temporary basis, in the event of such matters as illness, and also on a permanent basis. A 2-week sampling taken by the Employer showed that 15 to 20 percent of its employees transferred between stores on a temporary basis, and that 10 percent of those employees transferred on a permanent basis. Although these percentages may include managers, who are supervisors within the meaning of the Act, managers do move about between stores frequently, and the record discloses the existence of more than an insignificant number of transfers of nonsupervisory employees between stores and also between the stores and central office or warehouse. Seniority is companywide and is not affected by transfers between stores. Moreover, the same job classifications are used throughout the chain, and the duties and wage rates within the classifications are the same in each store.

Merchandise is freely transferred between stores as the need arises and is commonly transported by the area supervisors, all of whom drive Econolines, or a truck from the central office. The Employer's operations are highly centralized in that accounting, advertising, store planning, payroll functions, personnel policies, and training procedures for all the Employer's retail stores are performed at the central office in South El Monte. Moreover, employee vacation policy, pension plan, profit-sharing plan, and health benefits are uniform throughout the entire system and are administered centrally. As Petitioner points out in its brief, the Board has held that the degree of centralized administrative control is of little significance in determining whether or not the employees in a single location comprise an appropriate unit for bargaining, and it has also held that it is more significant whether or not the employees perform their day-to-day work in circumstances where substantial autonomy is invested in the supervisor of the facility in which an election is sought. *Haag Drug Company, Incorporated*, 169 NLRB 877. However, the record discloses that the authority of the store managers is quite limited. In this respect, the record discloses that although all the employees working in each of the Employer's 30 stores are subject to supervision by the store manager of the store in which they work, the

central office determines the number and classifications of employees to be employed in each store. The store managers are guided closely by the area supervisor in implementing company personnel policies and merchandising practices at the store level. Managers take applications for employment but often consult with the area supervisor before hiring new employees, and although managers have the power to reprimand employees, they must obtain the approval of the area supervisor before discharging employees. While managers may recommend wage increases, the central office must approve all such increases after reviewing the circumstances in each case with the area supervisor, and in some cases the employees make requests for wage increases directly to the central office. Managers may not authorize overtime without first obtaining the approval of the area supervisor and are subject to discipline if they do not do so. Area supervisors spend 1 full day per week in each store working jointly with the store manager on such projects as setting up merchandise displays and establishing weekly employee work schedules, one copy of which is posted on the store bulletin board and another copy of which is sent to the central office. Managers see to it that the stores are opened and closed at times which have been set by the central office and do not have authority to alter the number of hours worked by employees within their stores.

Store managers have no discretion in deciding which product items will be carried in their stores, and each store carries the same lines of items with only minor variations based on the popularity of certain items within a particular area. Any variation from the line of items normally carried must be approved by the central office. Managers must order all product items through the central office from catalogs supplied by that office, and all orders must be placed in maximum and minimum amounts which have been established by the central office. Managers are directed by the central office as to the location and methods of displaying specially featured or sale merchandise. Similarly, managers have no authority in establishing or altering the prices of product items, and 80 percent of all items are priced the same throughout the chain, with such prices having been determined by the central office.

Each manager is required to call the central office daily to report the volume of business for the prior day, and managers converse weekly by telephone with

the operations manager, who in turn visits each store at least once a month. Managers make deposits through branch banks to the one central bank account used for the entire chain and are not authorized to write checks. Managers play no part in providing for the regular janitorial and maintenance services and may not authorize emergency repairs without first receiving permission from the central office.

On the basis of the facts as set forth above, it appears that the central office and area supervisors play a significant role in the day-to-day operations of each individual store, resulting in a high degree of functional integration among the individual stores as well as with the central office. Consequently, so far as the record discloses, the managers have virtually no discretion with respect to the operations of the stores and are vested with only minimal discretion with respect to labor relations matters. *Twenty-First Century Restaurant of Nostrand Avenue Corp.*, 192 NLRB No. 103 at 4-5.

While a single-store unit is presumptively appropriate, *Haag Drug Company, Incorporated, supra*, that presumption may be overcome where it is shown that there is functional integration of a sufficient degree among the facilities to negate the separate identity of a single-facility unit. *Gordon Mills, Inc.*, 195 NLRB 771, 773; *Haag Drug Company, Incorporated, supra*. In the instant case, the employees at all stores possess similar skills and work in parallel classifications, and all stores are subject to standardized policies and procedures. Operations at all stores are subject to close centralized control of both methods of operations and labor relations matters, and the store managers exercise only minimal discretion with respect to both labor relations matters and methods of operation. Although the chain covers a rather wide geographic area, the record discloses a significant degree of employee interchange between stores, both on a temporary and permanent basis, as well as frequent exchange of merchandise between stores. Thus, although there is no showing that employees in the units petitioned for share a community of interest separate and distinct from that of employees in the other stores, there is substantial evidence that the community of interest of employees at each of the stores is merged with and is inseparable from that of the employees at the other stores in the chain. Accordingly, I find, based upon the record in its entirety, that the units in which Petitioner seeks elections are not ap-

propriate units. *Twenty-First Century Restaurant of Nostrand Avenue Corp., supra.* Inasmuch as Petitioner has stated that it does not desire to participate in an

election in any other unit found appropriate, I shall dismiss the petition.