Fred Sanders *and* United Distributive Workers, Council No. 30, Petitioner. Case 7–UC–76

June 20, 1973

DECISION AND ORDER DENYING PETITION TO CLARIFY NONCERTIFIED BARGAINING UNIT

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

Upon a petition for unit clarification duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Kenneth A. Rose on April 12, 1973. All parties appeared at the hearing and were given full opportunity to participate therein. At the conclusion of the hearing, the Regional Director for Region 7 issued an order transferring the case to the National Labor Relations Board. Thereafter, the Petitioner and the Employer filed briefs.

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 rulings of the Hearing Officer made at the hearing are free from prejudicial error and are hereby affirmed. Upon the entire record in this case, the Board finds:

Fred Sanders, a Michigan corporation, manufactures, wholesales, and retails candy, baked goods, and other food products in southeastern Michigan and northern Ohio. Involved in this proceeding are the Employer's retail outlets, which operate as a chain of convenience restaurants. About 54 of these restaurants, referred to in the record as "stores," serve ice cream products, salads, sandwiches and light hot food items to customers at counters and tables. The stores also sell packaged ice cream, pastry, and candy. A few stores operate cafeterias, and two or three sell only packaged goods. Council 30, the Petitioner herein, was voluntarily recognized for a unit of store employees in 1951 with successive collective-bargaining agreements thereafter, the latest expiring on July 31, 1973.

In 1971 Fred Sanders began operating new facilities, referred to as "parlors," which had previously been discussed with Council 30, and of which there were four at the time of the hearing. The parlors have a more limited menu than the stores, particularly in respect to salads and hot food items, and more simplified operations. At a parlor customers are not served at tables but make their purchases at a counter and take their food to tables. On October 7, 1971, Council 30 and Fred Sanders entered into a collective-bargaining agreement covering the parlor employees effective retroactively from January 1, 1971, to January 31, 1973, after a mutually agreed-upon 1-year extension.

Council 30 now petitions the Board to clarify the store unit by including therein the parlor employees. In support of its petition Council 30 argues that the parlor contract was experimentally entered into since the parlors were a new and tentative operation and that the employees of both the stores and parlors form an appropriate unit. The Employer contends that the petition should be dismissed because of the separate bargaining history in each unit.

We shall dismiss Council 30's petition because we are persuaded by the record herein that parlor employees have been treated as a contractual bargaining unit separate from store employees. The facts show that the parlors, from their inception, have been treated separately from the stores by both Council 30 and Fred Sanders. The parlor unit has involved separate negotiations resulting in a separate contract. The members of each unit have separate rates of pay, employment benefits, and seniority. We do not find merit in Council 30's contention that the bargaining history should be disregarded because the parlor contract was experimental. There is no indication in the contract that it was temporary or experimental; the contract is a full bargaining agreement covering a whole range of employment relationships.

Accordingly, on the basis of the separate bargaining history discussed above, we shall dismiss Council 30's petition to clarify the store unit by including therein parlor employees.

ORDER

It is hereby ordered that the petition herein be, and it hereby is, dismissed.