

Albertson's Inc. and Barbara J. Miller, Petitioner and Kathy M. Wright, Petitioner and United Food and Commercial Workers Union, District Local No. 1614, Chartered by United Food and Commercial Workers International Union, AFL-CIO, CLC. Cases 19-RD-1907 and 19-RD-1908

14 December 1984

**SUPPLEMENTAL DECISION AND
ORDER DENYING MOTION FOR
RECONSIDERATION AND TO REOPEN
THE RECORD**

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

On 30 April 1984 the National Labor Relations Board issued a Decision and Order in this proceeding,¹ in which the decertification petitions were reinstated and the case remanded to the Regional Director for further processing. Thereafter, on 9 May 1984 the Union filed a motion for reconsideration and to reopen the record. On 24 May Petitioners filed an answer to the motion.

The Union urges in its motion that the Board's decision was in error in referring to the absence of any evidence that the Employer and the Union agreed to continue to bargain on a multistore basis after the expiration of the recent agreement. The Union asserts that, rather, the Employer entered into a multistore contract with the Union following the Employer's withdrawal from multiemployer bargaining. This contract was allegedly executed on 14 February 1983, 2-1/2 months after the petitions were filed and a month after the hearing in this case. The Union moves to reopen the record to receive this exhibit, which the Union asserts covers the same Employer's stores covered by the multiemployer contract, including the two stores that are the subject of the decertification petitions.

The Union asserts that the record was silent as to this recent contract because under existing Board law "a unit appropriate in a decertification election must be coextensive with either the unit previously certified or the one recognized in the existing contract unit," citing *W. T. Grant Co.*, 179 NLRB 670 (1969); *Goldeen's Inc.*, 134 NLRB 770, 775 (1961). The Union states that in view of the prior multistore, multiemployer association bargaining history established on the record, and since the hearing was held prior to the expiration of the then existing contract, the most recent agreement "which had not yet been negotiated" was not presented into evidence at the hearing. Further, referring to *Goldeen's*, supra, it notes that the Board re-

fused to direct an election in a single employer unit based on a decertification petition following a dissolution of a multiemployer association, because it was unable to say that the single employer unit was the currently recognized unit. Here, the Union argues, the Board incorrectly inferred that the parties had not negotiated, let alone reached agreement on, a multistore contract. The Union contends that the existence of the current agreement covering the multistore unit should serve as a bar to the instant decertification petitions. We are not persuaded by the Union's arguments, and for the reasons set forth below, which further clarify our previous decision in this case, deny the Union's motion for reconsideration and to reopen the record.

It is undisputed that the Employer timely withdrew from multiemployer bargaining and that the decertification petitions for two of the Employer's stores were timely filed with respect to the expiring multiemployer agreement. Thus, there was no contract bar to the processing of the petitions. Further, as our initial decision finds, the Regional Director erroneously relied on the multistore bargaining history which had transpired under the multiemployer bargaining in dismissing the petitions. As we stated, once the Employer properly withdrew from that bargaining arrangement the considerations for grouping its eight represented stores together no longer existed. There was no prior Board certification of the eight-store unit, no particular geographical cohesiveness, and, in fact, the multiemployer contract had been applied to new stores of the Employer on an individual basis, upon a demonstration of union majority. In these circumstances, we found that upon the timely withdrawal from the multiemployer bargaining, and in the absence of a multistore contract or multistore recognition by the Employer shown on the record, the single-store units sought by the petitions were presumptively appropriate.

We believe that the result reached in our prior decision was correct and, contrary to the assertion of the Union, that it does not do violence to Board law regarding the scope of units in decertification elections. Although in the usual case, where only single employer bargaining has occurred, the previously certified or currently recognized unit for decertification is easily identifiable as the appropriate one, here the recognized unit and hence the proper unit for decertification is in a state of transition. We are unwilling to hold that during this period the employees are deprived of their statutory right to select, or to refrain from selecting, a bargaining representative. Thus, upon the Employer's timely withdrawal from the multiemployer association, the

¹ 270 NLRB 132 (1984)

Union has a presumption of continued majority status among the Employer's employees;² the Employer is free, as we indicated in our prior decision, to make a reassessment of the scope of the appropriate bargaining unit, particularly where, as here, the multistore grouping under the prior multiemployer agreement was not one which the Board would originally certify; and the employees should likewise be free to utilize the Board's processes, including the right to file a decertification petition in an appropriate unit to question the Union's continued representation. There is no doubt that a petition filed by another labor organization seeking certification on a single-store basis would raise a

² *Jim Kelley's Tahoe Nugget*, 227 NLRB 357 (1976) (Member Walther dissenting), see also *NLRB v Silver Spur Casino*, 623 F.2d 571 (9th Cir. 1980). Member Hunter notes that the record shows that the Union here demonstrated a majority at each location. On this basis, he agrees that a question concerning representation exists here. He therefore finds it unnecessary to reach the question of whether a presumption of majority status survives an Employer's withdrawal from multiemployer association bargaining and he does not pass on the continued validity of the above-cited cases.

question concerning representation and would have been processed. So, too, the timely filing of the decertification petitions on behalf of the employees at two separate stores, in which the Union had a continued presumption of majority status, properly raised a question concerning representation in those presumptively appropriate units.³ To hold otherwise would subordinate the rights of the employees under Section 9(c)(1) of the Act to those seeking representation.⁴

ORDER

Accordingly, the reinstatement of the petitions was proper in our view, and the Union's motion for reconsideration and to reopen the record is denied.

³ As previously noted, Member Hunter relies on the Union's having demonstrated a majority at each location as supporting a question concerning representation.

⁴ To the extent this result is inconsistent with that in *Goldeen's Inc*, supra, that case is hereby overruled.