S. B. Rest. of Huntington, Inc. a wholly owned subsidiary of Steak and Brew, Inc.[1] *and* Rosemary Lynch, Petitioner, and Hotel and Restaurant Employees and Bartenders International Union, AFL–CIO.[1] Case 29–UD–95

May 13, 1976

DECISION AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS FANNING AND JENKINS

Upon a petition duly filed under Section 9(e)(1) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Richard J. Roth on April 17 and 29, 1975. All parties appeared at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Union filed a brief in support of its position.

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 reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this proceeding, including the Union's brief, the Board makes the following findings:

The Employer, Steak and Brew, Inc., a subsidiary of Longchamps, Inc., is engaged in the operation of a chain of restaurants, all of which do business under the name of "Steak and Brew." The record discloses that after a showing of a card majority Local 650 of the Union was recognized as the bargaining representative for the unit employees at the Employer's restaurant, and, thereafter, a contract covering this unit was executed on April 1, 1972, effective from March 1, 1972, to February 29, 1975. Meanwhile, the International Union entered into negotiations with Steak and Brew, Inc., and executed a master agreement on March 7, 1974, effective from March 1, 1974, to March 1, 1979.

The national contract provides for a uniform policy regarding checkoff, union security, seniority, probationary periods, discharge, grievances, strikes and lockouts, and other terms and conditions of employment at virtually all of the organized locations of the Employer. In addition to giving the local unions responsibility for policing the contract, the agreement also protects the employees from any dimunition of benefits they presently enjoy under local contracts. The recognition clause in the national agreement reads as follows:

> The Employer recognizes the Union as the sole and exclusive bargaining agent for all employees, excluding managers, assistant managers, head hostesses, assistant head hostesses, managerial salaried employees, office and clerical employees, and all professional, confidential, supervisory employees, watchmen, and guards employed by the Employer in all of the Employer's establishments operated in the United States of America and/or its Territories as to which the Union has been certified by the National Labor Relations Board as the collective bargaining agent, or as to which the Union has presented to the Employer signed authorization or membership applications authorizing the Union to represent the majority of the employees each [sic] establishment. (Excluded herefrom are all units covered by Locals 1, 6, 15, 89 of New York, New York and Local 568 of Philadelphia, Pennsylvania.)
>
> The Union recognizes and agrees that the obligation of the Local Union or Unions designated by it as bargaining agents will be limited to the administration of this Agreement and that the negotiations of any changes, additions or renewals hereof will be conducted by the Union.

On March 14, 1975, the instant petition was filed seeking a deauthorization election among the Huntington employees to determine whether they wish to be bound by the union-shop provisions of the master contract.

The Employer and the Union take the position that the petition should be dismissed because it seeks an election in a unit not coextensive with the contractually defined national unit.

The instant case presents virtually the same issues raised in *S. B. Rest. of Framingham, Inc., a wholly owned subsidiary of Steak & Brew, Inc.*, 221 NLRB 506 (1975). There the Board noted that pursuant to the recognition clause of the master agreement, quoted above, some 30 locations already covered by contracts negotiated by the Employer and the Union's locals, as well as future locations where the Union was properly designated by a majority of the employees, were merged into the national unit. Testimony in the instant case clearly confirms that, upon execution, the master agreement was applied to existing organized locations, including Huntington, with the exception of the specifically named locals

[1] Name appears as corrected at the hearing.

mentioned in the recognition clause.

In view of the foregoing, we find that the Huntington employees were merged into the national unit. Accordingly, the petition seeking a deauthorization election limited to the employees at the Huntington location must be dismissed because it seeks an election in a unit not coextensive with the contractually defined national unit.

ORDER

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