

In the Matter of SEARS ROEBUCK & Co. and LOCAL 282, UNITED RETAIL,
WHOLESALE AND DEPARTMENT STORE EMPLOYEES OF AMERICA, CIO

Case No. 1-R-1467.—Decided October 23, 1943

Mr. Louis Jackson, of Boston, Mass., for the Company.

Mr. Martin Janow of New Haven, Conn., for the Union.

Miss Olive N. Barton, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Local 282, United Retail, Wholesale and Department Store Employees of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Sears Roebuck & Co., Waterbury, Connecticut, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas H. Ramsey, Trial Examiner. Said hearing was held at Waterbury, Connecticut, on September 3, 1943. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded opportunity to file briefs with the Board.

Upon the entire record in the case, the Board makes the following :

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Sears Roebuck & Co., is a New York corporation with its principal office in Chicago, Illinois. It is principally engaged in the purchase and manufacture of general merchandise and its sale and distribution through 10 mail order houses and 600 retail stores; it also operates 10 factories. This proceeding is solely concerned with the employees

of the Company at its retail store at Waterbury, Connecticut, which during the past fiscal year purchased in excess of \$250,000 in value of merchandise, more than 50 percent of which was shipped to the store from points outside the State of Connecticut. During the same period, this store made sales of merchandise amounting in value to more than \$250,000, within the State of Connecticut, 9 percent of which was made by mail orders placed at the mail order counter in the store and filled at the Company's mail order plants in Philadelphia, Boston, or New York, either by shipment direct to the purchaser or to be picked up by the customer at the store. The Company concedes that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Local 282, United Retail, Wholesale and Department Store Employees of America, is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about May 13, 1943, the Union, claiming to represent the Company's employees, requested recognition as the exclusive collective bargaining representative of such employees. The Company refused to grant the request until the Union was certified by the Board.

A statement of the Regional Director introduced in evidence at the hearing indicates that the Union represents a substantial number of employees within the unit herein found appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union contends that all full-time sales and office employees, excluding the manager, assistant manager, and part-time employees, constitute an appropriate unit. The Company seeks to exclude contingent employees, department or division heads, and confidential office employees.

By the Company's rules any person who has not completed 30 hours a week in 24 weeks of consecutive work, or a total of 720 hours in the Company's store, is classed by the Company as a contingent employee;

¹The Regional Director reported that the Union submitted 18 membership cards, 13 of which bore apparently genuine original signatures of persons whose names appear on the Company's pay roll of May 22, 1943, which contains the names of 19 persons in the alleged appropriate unit.

after completing this period, he automatically becomes a regular employee and receives a weekly salary instead of an hourly rate. Upon becoming a regular employee he is eligible, after a year's service, to become a member of the Company's profit sharing and pension fund plan, to have an employee's credit account, to receive sick leave and vacation allowances, to get an emergency loan from the Company, to receive regular pay for legal holidays, and to pay for absences on account of certain family emergencies. After 24 weeks of consecutive service, the employee is also eligible for membership in the Company's group insurance. There are at present about three such employees in the store. The Union suggests that the probationary period should be limited to 4 to 6 weeks; it would include the present contingent employees. We are of the opinion and find that the contingent employees have interests sufficiently allied to those of the regular employees. We shall therefore include them in the unit.²

The Company at its Waterbury store employs 7 departmental, or division heads, who are in charge of from 1 to 3 departments each. Their duties include the selection of the merchandise to be sold in the department, with the approval of the store manager. The head spends about 50 percent of his time in actual selling. Some department heads have one or two salesmen working under them; others have none. Fourteen departments are covered by 7 division heads; 4 departments are under the supervision of the assistant manager of the store. There are a total of 4 regular employees assigned to departments in the entire store. The heads do not have authority to hire or discharge, but are, according to the Company, vested with authority to recommend such action to the store manager or assistant manager. In practice it appears that their authority in this respect is confined to asking for more help. The department head, who has a sales person in his department, is authorized to correct a sales person for bad treatment of a customer, but he has no authority to discipline him. The division head receives in addition to his salary a small commission based on the total amount of business done in the departments of which he is head. The Union contends that these employees are simply sales persons and not in fact supervisors. We note that were these employees to be regarded as supervisory, there would be more supervisory than nonsupervisory employees. We find that the department or division heads do not exercise substantial supervisory authority, and we shall therefore include them in the unit.

² See *Matter of Sears, Roebuck and Company*, 44 N. L. R. B. 507, where a similar decision was reached. Cf. *Matter of Sears, Roebuck and Company*, 45 N. L. R. B. 526, where contingent employees were excluded pursuant to the agreement of the parties.

The Company employs Alma Seabourne and Alice Kaczynski in its office, whose duties, the Company contends, are of a confidential nature. They have access to a confidential manual on the Company's policies and to all the correspondence between the store and the Company's main office at Chicago concerning the disciplining of employees, employee grievances, personnel matters in general, and labor relations. In accordance with our usual policy in relation to such confidential employees, we shall exclude them from the unit.

We find, accordingly, that all full-time sales and office employees, including contingent employees and departmental, or division heads, but excluding confidential employees, part-time or extra employees, the manager, and the assistant manager, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Sears, Roebuck & Co., Waterbury, Connecticut, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the First Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but

excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by Local 282, United Retail, Wholesale and Department Store Employees of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.