

In the Matter of THE GREAT ATLANTIC AND PACIFIC TEA COMPANY and
AMALGAMATED MEAT CUTTERS AND FOOD STORE EMPLOYEES (AFL)

Case No. 1-R-1553.—Decided November 3, 1943

Brickley, Sears, and Cole, by *Mr. Bartholomew A. Brickley*, of Boston, Mass., for the Company.

Messrs. Philip A. Guest, Sherwood M. Spencer, Kenneth Kelly, and *Lester E. Travers*, of Lynn, Mass., for the Meat Cutters.

Messrs. Michael J. Reardon and Robert W. Reardon, of Salem, Mass., for the Independent.

Miss Muriel J. Levor, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon amended petition duly filed by Amalgamated Meat Cutters and Food Store Employees (AFL), herein called the Meat Cutters, alleging that a question affecting commerce had arisen concerning the representation of employees of The Great Atlantic and Pacific Tea Company, Boston, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John W. Coddair, Jr., Trial Examiner. Said hearing was held at Boston, Massachusetts, on August 10, 12, 13, 17, and 18, 1943. The Company, the Meat Cutters, and Massachusetts Independent Food Store Workers Union, herein called the Independent, appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing on the issues, and to file briefs with the Board. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. On October 5, 1943, oral argument was held before the Board in Washington, D. C., in which the Company and the Meat Cutters participated.

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

53 N. L. R. B., No. 66.

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Great Atlantic and Pacific Tea Company is engaged in the purchase and sale of groceries, meats, and provisions. It is divided into 7 divisions which are not incorporated. The Company's New England division comprises the Boston, Massachusetts, Portland, Maine, Springfield, Massachusetts, Albany, New York, the Canadian, and the Lynn North Shore area, units. The Lynn North Shore area, with which this proceeding is concerned, consists of a group of 35 stores among the 245 stores in the Boston unit. The Company's sales in the Lynn North Shore area annually amount to approximately \$5,000,000. About 90 percent of the merchandise which the Company purchases for resale in that area originates outside the State of Massachusetts.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Meat Cutters and Food Store Employees is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Massachusetts Independent Food Store Workers Union is an unaffiliated labor organization, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In a letter to the Company dated July 20, 1943, the Meat Cutters requested a conference for the purposes of collective bargaining. By letter dated July 29, 1943, the Company replied that since the Independent had asserted a claim to represent a majority of the Company's employees the Company refused to recognize the Meat Cutters as bargaining representative unless and until it is certified as such by the Board.

A statement of the Acting Regional Director, introduced in evidence at the hearing, indicates that the Meat Cutters and the Independent each represents a substantial number of employees in the unit hereinafter found appropriate.¹

¹The Acting Regional Director reported that the Meat Cutters submitted 158 designations, of which 107 bearing apparently genuine original signatures, correspond with the names on the Company's pay roll of July 24, 1943, which contains 328 names.

The Acting Regional Director also reported that the Independent submitted 87 designations, of which 75, bearing apparently genuine original signatures, correspond with names on the aforesaid pay roll.

Names on 18 of the designations submitted by the Meat Cutters and on 18, by the Independent, bearing names which correspond with those on the Company's pay roll, are the same.

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 National Labor Relations Act.

IV. THE APPROPRIATE UNIT

The Meat Cutters claims as appropriate a unit composed of all retail store employees, both managers and clerks, employed in the stores of the Company's Lynn North Shore area. The Independent is in accord with this position. The Company agrees with these contentions except insofar as it claims that the managers are employed in an executive capacity, are representatives of management, and as such should be excluded from the unit.

The unit urged by both labor organizations herein is substantially the same as the unit established by contracts between the Company and Lynn North Shore Managers and Clerks Union,² which were in effect between 1937 and July 1943. The Company has also had contractual relations with various labor organizations, renewed for the period July 24 to November 1, 1943, whereby all its retail store employees, including managers, were represented, in five other areas within the New England division.

The Company operates various types of retail grocery and grocery and meat markets. The largest of these are called super markets. They are self-service stores and are staffed by a minimum of 10 employees. Super markets are departmentalized and often have, in addition to meat and produce departments, departments for dairy and baked goods, each with its own "manager." The manager of the grocery department, who is responsible for the entire market, has an assistant grocery manager under him. The Company also operates a similar type of self-service market with a lesser volume of business and a smaller number of employees which it calls "special development combination stores." These markets often dispense with the assistant manager. The Company also operates small grocery stores, called "straight grocery stores," not of the self-service type, which may employ as few as 2 employees, a manager and clerk. Some of these smaller grocery stores have meat departments, which are in charge of "meat managers." These markets are called "combination grocery stores" by the Company. The Company operates, too, one self-service small grocery store, called a "special development straight grocery store."

The management of the Company's business appears to be highly centralized. Detailed stencils of "instructions and suggestions," which cover price changes, the manner of handling Government reg-

² It appears that this organization is now defunct.

ulations, promotion campaigns, and such minutiae as how to ring up returned bottles on the cash register, are sent to the stores almost daily. In addition supervisors pay frequent and often daily visits to the markets. Although the managers are invariable "responsible" for their stores, stock, and cash, make out orders, have the authority to suspend clerks for dishonesty and to hire part-time help, their area of authority is extremely circumscribed. The arrangement of the market is prescribed by the Company, as are the working hours. The store receives a budget for labor expenses. Full-time employees are selected only by the personnel department. They appear to be recruited by the supervisor, either through promotion from the ranks of part-time help or from other stores. The ratio to the turn-over in which stock is maintained must be approved by the supervisor. It is the Company's custom at times to ship to its various stores merchandise which has not been ordered, in order to relieve its warehouses. Supervisors give instructions to clerks themselves, in addition to having the managers transmit them. The managers are never consulted as to the formulation of company policy; one manager testified that he had not been informed of the profit figures for his store in several years. In those instances where the Company advertises, there appears to be no consultation with the manager of the store concerned. All employees, including managers, are required to record the time of their entrance upon duty and their departure, and vacations are the same both for clerks and managers. Finally, the manager is expected to consult his supervisor over every decision requiring the exercise of discretion.

The managers of the small grocery stores and combination stores occupy most of their working time in the same manner as clerks, *viz*, waiting on customers and arranging stock, although these duties are supplemented by taking care of the books, making bank deposits, and ringing up the cash register. After reading the mail, the manager passes it on to his clerks who are conversant with their duties and seldom need direction. The meat manager is a working butcher having the power to hire part-time help, who makes out orders and is responsible for his department. His pay is less than that of the grocery manager but his authority is little less. Only the large self-service stores have produce managers, who hire part-time help and make out orders as to which the super market manager has final authority. The assistant manager usually handles one portion of the super market, rings up one of the cash registers, and is in charge on the manager's day off, although the manager makes out the orders for that day in advance. It thus appears that the discretion of these different types of "managers" is limited to the routine running of their various stores and departments and their "responsibility" for cash resembles that of such types of clerical employees as bookkeepers.

At oral argument the Company conceded in substance that the managers of small grocery and combination stores have little real authority; it also appears that the Company does not oppose the inclusion of department managers and assistant managers within the unit. Under these circumstances, we are of the opinion that the managers of the small straight and combination grocery stores, department managers, and assistant managers, do not exercise substantial supervisory authority and in view of the Company's bargaining history in its New England division and the bargaining history of other companies in that region as disclosed by the record,³ we shall include them in the unit.⁴ Since the small size of the special development straight grocery stores limits the extent of its manager's authority, he will also be included in the unit. On the other hand, owing to the greater size of the enterprises they head, the larger personnel, and the consequent necessity of more supervision, the managers of super market and special development combination stores exercise greater actual authority. Accordingly, we are of the opinion, and find, that the duties and powers of the managers of super market and special development combination stores are sufficiently supervisory in nature to warrant distinguishing them from the other managers.⁵ Accordingly, we shall exclude them from the unit.

We find, therefore, that all retail store employees of the Company, including managers and part-time and full-time clerks, employed in the Lynn North Shore area of the Boston, Massachusetts, unit of the New England Division of The Great Atlantic and Pacific Tea Company, but excluding grocery managers of super markets and special development combination stores, 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 our Direction of Election herein, subject to the limitations and additions set forth in said Direction.

³ Contracts between the Meat Cutters and First National Stores, Inc., and with Economy Stores in the New England area have been admitted in evidence.

⁴ *Matter of First National Stores, Inc., Providence Division*, 26 N. L. R. B. 1275.

⁵ *Matter of Santa Fe Trails Transportation Company*, 52 N. L. R. B. 895; *Matter of The Western Union Telegraph Company*, 41 N. L. R. B. 1051; and *Matter of The Western Union Telegraph Company*, 43 N. L. R. B. 931.

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 The Great Atlantic and Pacific Tea Company, Boston, Massachusetts, 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 any 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 they desire to be represented by Amalgamated Meat Cutters and Food Store Employees (AFL) or by Massachusetts Independent Food Store Workers Union, for the purposes of collective bargaining, or by neither.