

In the Matter of AMERICAN STORES COMPANY and JERSEY
WAREHOUSEMEN AND HAULERS UNION

Case No. 2-R-4161.—Decided January 21, 1944

Mr. Cyril W. O'Gorman, for the Board.

Mr. Fred W. Johnson, of Philadelphia, Pa., and *Mr. Paul J. Cupp*, of South Orange, N. J., for the Company.

Mr. William E. Kennedy, of Orange, N. J., for the Independent.

Messrs. Harold Krieger and *Walter J. Gibney*, of Jersey City, N. J., for the A. F. of L.

Miss Melvern R. Krelow, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Jersey Warehousemen and Haulers Union, herein called the Independent, alleging that a question affecting commerce had arisen concerning the representation of employees of American Stores Company, Kearny, New Jersey, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Samuel H. Jaffee, Trial Examiner. Said hearing was held at Newark, New Jersey, on November 22, 1943. The Company, the Independent, and Merchandise Drivers Union, Local 641, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, A. F. of L., herein called the A. F. of L., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing, the A. F. of L. moved to dismiss the petition. The Trial Examiner reserved ruling to the Board. The motion is hereby denied. 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.

Subsequent to the hearing, the A. F. of L. filed a motion to reopen the record for the purpose of taking testimony to show that none of

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the employees involved herein are members of the Independent, and that no such organization as the Independent is now in existence. For reasons hereinafter set forth, the motion is hereby denied.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

American Stores Company, a Delaware corporation, operates over 2,000 retail stores, and 9 warehouses in the States of Pennsylvania, New York, New Jersey, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia. This proceeding involves only the Kearny, New Jersey, warehouse. During the year immediately prior to November 1, 1943, the Company received for distribution to its retail stores located in the northern part of the State of New Jersey, staple and perishable food products, valued in excess of \$100,000, of which 50 percent was received at the Kearny warehouse from points outside the State of New Jersey. The Company sold these food products to the retail stores owned and operated by it in the northern part of the State of New Jersey. The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Jersey Warehousemen and Haulers Union is an unaffiliated labor organization, admitting to membership employees of the Company.

Merchandise Drivers Union, Local 641, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On September 15, 1941, the A. F. of L. and the Company entered into a collective bargaining contract, covering all warehouse employees except supervisory and office employees, and providing by its terms that it was to remain in full force and effect until March 14, 1943, and thereafter from year to year unless either party gave notice by February 14 of any year of a desire for change or termination, and that pending negotiations "neither party shall change the conditions existing under this contract." Notice having been given by the A. F. of L. to the Company, on February 2, 1943, a supplementary agreement was executed on March 24, 1943. This agreement provided for an increase in wages of 5 cents an hour, subject to the approval of

the War Labor Board,¹ but in all other respects "renewed in its entirety" the contract which expired March 14, 1943. The supplementary agreement, effective March 15, 1943, was to remain in full force and effect until March 18, 1944.

On July 21, 1943, the Independent notified the Company that it represented a majority of the Company's employees, and requested recognition, which the Company refused, on the ground that it was under contract with the A. F. of L.

Since the current contract may be terminated upon appropriate notice in less than 1 month from now, we find that the contract is not a bar to a present determination of representatives. However, any certification of representatives which we may issue as a result of the election herein provided for shall be for the purpose of designating a representative to negotiate a new contract to succeed the contract expiring March 18, 1944, now in effect.²

A statement of the Regional Director introduced into evidence at the hearing indicates that the Independent represents a substantial number of employees in the unit hereinafter found appropriate.³

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 Independent and the A. F. of L. are in general agreement that all employees of the Company in the Kearny warehouse, including watchmen, engineers, and working foremen, but excluding supervisory and clerical employees constitute an appropriate unit. The Company

¹ No approval or disapproval at the date of the hearing had been received from the War Labor Board

² See *Matter of Chrysler Motors Parts Corporation*, 38 N. L. R. B. 1379; *Matter of Houde Engineering Corporation*, 36 N. L. R. B. 587

³ The Regional Director reported that the Independent presented 97 authorization cards, of which 68, 52 dated between June and October 1943, 16 undated, bear apparently genuine signatures of persons whose names appear on the Company's pay roll dated July 31, 1943. Said pay roll contains the names of 137 employees in the unit.

The Regional Director further reported that the A. F. of L. submitted 196 application cards, of which 27 bear the names of persons whose names appear on the Company's pay roll. Of the 27 application cards, 2 dated in September and 1 in October 1941, 24 undated, 26 bear apparently genuine signatures and 1 is printed. The Secretary-Treasurer of the A. F. of L. stated that the undated application cards were secured in 1941 and 1942. The A. F. of L. also furnished a list of 32 members making dues payments in May 1943. Of the 32, 18 appear on the Company's pay roll.

As heretofore stated, the A. F. of L. filed a motion to reopen the record, which motion was accompanied by an affidavit and a document entitled "Withdrawal of Petition for Election" allegedly signed by a majority of the employees involved herein. The A. F. of L. contends, in view of this signed document, that the Independent no longer represents any employees, is no longer in existence, and that, therefore, no question concerning representation exists. Since the Independent controverts the contentions of the A. F. of L., and since no formal request for withdrawal of the petition has been filed by the Independent, the petitioner, we believe that the determination of the representation issue thus raised can best be resolved by the election which we shall hereinafter direct.

took no position with respect to the unit. The only dispute which has arisen concerns truck drivers, whom the Independent desires excluded from the unit, and the A. F. of L. desires included.

The Company employs approximately four drivers who operate Company-owned trucks, are on the Company's pay roll, and are paid by the week.⁴ The Company is also under contract with certain individuals who own trucks and either drive themselves, or supply drivers, herein called contract drivers, to pick up and deliver merchandise for the Company. These drivers are not on the Company's pay roll, but are paid pursuant to the contract between the Company and the "contract carrier" in accordance with the "tariff" provided therein. In view of the foregoing, we are of the opinion that the contract drivers should be excluded from the unit. We shall, therefore, exclude them from the unit. We shall, however, include the drivers, listed on the pay roll of the Company.

We find that all employees of the Company in the Kearny, New Jersey, warehouse, including truck drivers on the pay roll of the Company, watchmen, engineers, and working foremen,⁵ but excluding contract drivers, clerical employees, and all supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, 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 payroll 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with American Stores Company, Kearny, New Jersey, an election by secret ballot shall be

⁴ These drivers were employed by the Company about 4 to 6 weeks prior to the hearing in order to supplement a shortage of contract drivers.

⁵ The record discloses that these employees, of whom there are four, do not have the authority to hire, discharge, or to recommend such action, nor do they have the authority to otherwise effect changes in the status of employees with whom they work.

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 Second 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 they desire to be represented by Jersey Warehousemen and Haulers Union, or by Merchandise Drivers Union, Local 641, International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America, for the purposes of collective bargaining, or by neither.