In the Matter of THE J. L. HUDSON COMPANY *and* UNITED RETAIL, WHOLESALE & DEPARTMENT STORE EMPLOYEES OF AMERICA, C. I. O.

Case No. 7–R–1639.—Decided May 9, 1944

Beaumont, Smith and Harris, by *Mr. Albert E. Meder*, of Detroit, Mich., for the Company.

Messrs. Tucker P. Smith and *Frank Achterkirch*, of Detroit, Mich., for the Union.

Mr. Seymour J. Spelman, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Retail, Wholesale & Department Store Employees of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of The J. L. Hudson Company, Detroit, Michigan, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert J. Wiener, Trial Examiner. Said hearing was held at Detroit, Michigan, on March 24, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Company filed a motion to dismiss the petition on the ground that the proposed bargaining unit is inappropriate. For reasons hereinafter set forth, said 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 an 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

The J. L. Hudson Company, a Michigan corporation having its principal offices and place of business in Detroit, Michigan, is engaged

in the purchase and resale of various types of goods and commodities at a retail department store in Detroit, Michigan. During the fiscal year ending January 31, 1942, the Company purchased goods at a cost of approximately $43,000,000, more than 80 percent in value of such goods being shipped to Michigan from points outside the State. During the same period, the total sales of the Company were in excess of $71,000,000, 1.6 percent in value being shipped to customers outside the State of Michigan. During the same period, the Company's sales through its Mail Order Department were in excess of $500,000, approximately 15 percent in value being made to customers outside the State of Michigan. The Company uses several interstate commerce carriers to import and export goods from and to points outside the State of Michigan. During the same fiscal period, the Company advertised its business and merchandise through newspapers, periodicals, radio, and direct mail, at a cost in excess of $1,500,000. Several of said newspapers and periodicals are published outside the State of Michigan, and each of said radio stations has a coverage of and carries advertising to several States other than the State of Michigan. The business operations of the Company are approximately the same today as for the aforesaid fiscal period.

The Company admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of employees in the alleged appropriate unit.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter 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.

[1] The Field Examiner reported that the Union submitted 192 membership cards; that the names of 84 persons appearing on the cards were listed on the Company's pay roll of December 15, 1943, which contained the names of 150 employees in the appropriate unit; and that, except for 11 undated, the cards were dated from March 1, 1943, through January 11, 1944.

IV. THE APPROPRIATE UNIT

The Union contends that all passenger elevator operators and starters at the Company's retail department store, excluding freight elevator operators, constitute an appropriate bargaining unit. The Company maintains that only a store-wide unit is appropriate. Without waiving this position, the Company further contends that all starters are supervisory employees and should not be included in any bargaining unit.

In a recent representation case involving the parties herein, the Board considered and rejected the Company's contention that only a store-wide unit is appropriate.[2] In that case the Board stated: "It appears from the(se) facts that the Union desires eventually to organize and represent the Company's employees on a store-wide basis, but that currently, as in this case, it is seeking certification as the representative of sundry smaller groups of employees because of the limited scope of its effective organizational efforts. Since no other labor organization is attempting to bargain for the employees in a broader unit, we conclude that the Union's failure to propose the optimum store-wide unit is not, in and of itself, fatal to its present petition. In order to make collective bargaining a present possibility for employees who have evinced a desire for representation, we have frequently found appropriate units more restricted in scope than those which would be deemed appropriate at a more advanced stage of organization." There has been no material change in circumstance since our decision in the aforesaid case, and we therefore find no merit in the Company's contention.[3]

The Company employs between 95 and 100 passenger elevator operators and approximately 19 passenger elevator starters. A training period of from 5 to 7 days is required to acquaint new operators with their duties. The testimony is clear that employees other than passenger elevator operators are forbidden to operate the elevators and do not do so. On rare occasions passenger elevator operators are loaned to other departments for brief tours of duty at other work. With these rare exceptions involving few of the operators, the duties of these employees are confined to the operation of the elevators. While their hours, working conditions, and employee benefits are the same as those of the majority of other employees, there is undenied testimony that these employees do not come into contact with other employees of the Company either in their work or outside of working hours. It is evident, and we find, that the passenger elevator opera-

[2] *Matter of The J. L. Hudson Company*, 54 N. L. R. B. 695.

[3] See also *Matter of The J. L. Hudson Company*, 46 N. L. R. B. 225; *Matter of The J. L. Hudson Company*, 49 N. L. R. B. 275.

tors constitute a sufficiently homogeneous and functionally distinct group to constitute a separate unit for the purposes of collective bargaining. The duties of the passenger elevator operators are distinct from those of freight elevator operators. There is no interchange of employees between these two groups, and the Company did not oppose the Union's position that freight elevator operators should be excluded from the unit. In light of these facts, we shall exclude them from the unit.

The Company is opposed to the inclusion of starters in the unit on the ground that they are supervisory employees. The Company employs approximately 19 passenger elevator starters, including both regular and relief starters. Neither the Company nor the Union makes any distinction between the so-called regular and relief starters, and there does not appear to be any difference between their regular duties, except for the fact that the regular starters have fixed stations. All starters, as well as operators, are under the supervision of a Mr. Hall, who is assisted by a Mrs. Morris. These two supervisors are in turn under the general supervision of the assistant general superintendent of the store. Starters are paid $5 a week more than operators, but in all other respects their working conditions are alike. Two starters are assigned to a fixed station in each of the 8 "banks" of passenger elevators. Their normal station is on the main floor of the store and it is their principal duty to direct elevator traffic and to stagger the departures of elevators according to a predetermined schedule. In addition, they have the specific function of counseling the operators with respect to schedules, appearance, and contacts with the public, and the duty of reporting to the departmental supervisors any incidents in which operators deviate from the prescribed routine. Three starters testified categorically that they did not accompany their reports to the aforesaid supervisors with disciplinary recommendations and that they had no duty to do so. They further stated that neither Mr. Hall nor Mrs. Morris had ever asked them to make a recommendation nor consulted them before promoting or disciplining an operator. The Company's assistant general superintendent, William Murphy, testified, in general terms, that starters do have a right to recommend the discharge and disciplining of operators. These recommendations, Murphy stated, are made to Hall and Morris, the departmental supervisors, who have no power to act, but who in turn make disciplinary recommendations to the central employment office. He conceded that the recommendations of starters "would not be final" in that neither Hall nor Morris would make a recommendation to the employment office solely on the basis of the starter's report and without a personal investigation of the facts. He conceded further that he did not know

of any instance in which any operator was discharged on an initial recommendation to that effect by a starter. From time to time, an operator will be transferred from one "bank" of elevators to another on the advice of a starter, but this does not constitute disciplinary action. We are satisfied, by all the evidence, that the starters do not make effective recommendations regarding changes in the status of operators, and are not therefore supervisory employees within the meaning of our definition. Since they work in close association with the operators, under the same supervision and working conditions, we shall include them in the unit.

Accordingly, we find that all passenger elevator operators and starters at the Company's retail department store on Woodward Avenue, Detroit, Michigan, excluding freight elevator operators, and all supervisory employees with 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 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The J. L. Hudson Company, Detroit, Michigan, 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 Seventh 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 United Retail, Wholesale & Department Store Employees of America, C. I. O., for the purposes of collective bargaining.