

In the Matter of FIRST NATIONAL STORES, INC. (HARTFORD DIVISION)
and AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH
AMERICA, LOCAL 217 (A. F. L.)

In the Matter of FIRST NATIONAL STORES, INC. (HARTFORD DIVISION)
and UNITED FOOD WORKERS UNION

*Cases Nos. 1-R-1835 and 1-R-1854 respectively.—Decided
June 30, 1944*

Mr. Edmund J. Blake, of Boston, Mass., for the Company.

Mr. Philip J. Guest, of Boston, Mass., and *Mr. Harold Strauch*, of
Hartford, Conn., for the Amalgamated.

Mr. Edwin M. Ryan, of Hartford, Conn., and *Mr. Joseph Lombard*,
of Wethersfield, Conn., for the United.

Mrs. Catherine W. Goldman, of counsel to the Board.

DECISION

DIRECTION OF ELECTION

AND

ORDER

STATEMENT OF THE CASE

Upon petitions duly filed by Amalgamated Meat Cutters and Butcher Workmen of North America, Local 217 (A. F. L.), herein called Local 217, (Case No. 1-R-1835), and by United Food Workers Union, herein called the United, (Case No. 1-R-1854), alleging that questions affecting commerce had arisen concerning the representation of employees of First National Stores, Inc. (Hartford Division), Somerville, Massachusetts, herein called the Company, the National Labor Relations Board provided for an appropriate consolidated hearing upon due notice before Leo J. Halloran, Trial Examiner. Said hearing was held at Hartford, Connecticut, on May 9, 1944. At the hearing the Trial Examiner granted the motion of Amalgamated Meat Cutters and Butcher Workmen of North America, Local 371 (A. F. L.), herein called Local 371, to intervene in the consolidated proceeding. Local 217 was also permitted to intervene in Case No. 1-R-1854; and the United, in Case No. 1-R-1835. The Company, the United, Local 217 and Local 371, appeared and participated. All

56 N. L. R. B. No. 227.

parties 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 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

First National Stores, Inc., a Massachusetts corporation with its principal offices in Somerville, Massachusetts, is engaged in the operation of retail grocery and provision stores in Massachusetts, New Hampshire, Vermont, Maine, Rhode Island, Connecticut, and New York. It operates about 1500 retail stores, and maintains 5 warehouses and 3 bakeries, which service and supply the stores. The stores involved in this proceeding are managed and serviced from the Company's office and warehouse at East Hartford, Connecticut. The annual purchases and sales of the Company exceed \$100,000 in value. Approximately 50 percent of its goods is received from outside the State of Connecticut.

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

II. THE ORGANIZATIONS INVOLVED

Amalgamated Meat Cutters and Butcher Workmen of North America, Locals 217 and 371, affiliated with the American Federation of Labor, are labor organizations admitting to membership employees of the Company.

United Food Workers Union is an unaffiliated labor organization admitting to membership employees of the Company.

III. THE QUESTIONS CONCERNING REPRESENTATION

On April 10, 1941, the Company and Local 371 entered into an exclusive bargaining contract covering employees in the Company's retail stores in the vicinity of Hartford, Connecticut. This contract was to be effective from April 14, 1941, for a period of 2 years, and thereafter in the absence of 30 days' notice of a desire to amend or terminate the contract. An amendment, which continued the contract for a period of 1 year beginning April 13, 1943, and ending April 12, 1944, was executed on May 26, 1943.¹ On February 10, 1944, the United notified the Company by letter that its employees, who had formerly been members of Local 371, had affiliated with the United; and that the

¹ It is the position of the Amalgamated that the amendment carried with it the automatic renewal clause of the contract.

United desired to negotiate an agreement covering them. This claim of representation was again presented by the United on March 9, 1944. On the same date, Local 371 notified the Company of its desire to negotiate concerning wages and conditions of employment to be effective from April 12, 1944, embracing the same territory covered by the existing contract, less three towns for which Local 217 had been chartered.² Thereafter, on March 16, 1944, Local 217 filed its petition in Case No. 1-R-1835; and on March 28, 1944, the United filed its petition in Case No. 1-R-1854.

The Amalgamated contends in its brief that the contract between the Company and Local 371 has been automatically renewed for a period of 1 year, subject to amendments to be developed by negotiations in accordance with the letter of March 9, 1944, and that the contract constitutes a bar to this proceeding. We are of the opinion, however, that the presentation, prior to the automatic renewal date, of the United's claim of representation on February 10, 1944, and again on March 9, 1944, as well as the letter of Local 371 on March 9, 1944, effectively precluded the automatic renewal of the contract. Accordingly, we find that the contract does not bar a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the United represents a substantial number of employees in the unit hereinafter found appropriate in Case No. 1-R-1854.³

We find that questions affecting commerce have 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

In Case No. 1-R-1854, the United requests a unit covering all employees in the Company's Connecticut stores at Berlin, Bristol, Cheshire, Collinsville, Cromwell, East Hartford, Elmwood, Farmington, Forestville, Glastonbury, Hartford, Kensington, Manchester, Meriden, Middletown, New Britain, Newington, Plainsville, Poquonock, Portland, Rockville, Rocky Hill, Simsbury, Suffield, Thompsonville, Unionville, Wallingford, West Hartford, Wethersfield, Windsor, and

² Local 217 was chartered by the Amalgamated for the towns of Cheshire, Meriden, and Wallingford, Connecticut, in November 1943.

³ The Field Examiner reported that the United submitted 397 application cards; that the names of 310 persons appearing on the cards were listed on the Company's pay roll of March 25, 1944; that there are 812 employees in the unit requested by the United; and that the cards were dated as follows: 323 in February 1944, 73 in March 1944, and 1 undated.

The Field Examiner also reported that Local 217 submitted 48 application cards in the unit of 86 employees which it contends is appropriate; that the names of 43 persons appearing on the cards were listed on the Company's pay roll of March 25, 1944; and that the cards were dated as follows: 1 in January 1944, 41 in February 1944, and 6 undated. Local 371 relies upon its contract to establish its interest in the proceeding.

Windsor Locks. In Case No. 1-R-1835, Local 217 requests a unit confined to the employees in the Company's stores at Cheshire, Meriden, and Wallingford. Local 371 requests a unit corresponding to that requested by the United less the employees in the unit requested by Local 217. The labor organizations are agreed that part-time employees should be included, and supervisors, superintendents, order boys, and bakery department employees, should be excluded from the unit found appropriate. The Company takes no position as to the scope of the unit.

The towns requested by the United comprise a substantial part of the State of Connecticut. They are located in the Company's Hartford Division and represent all the stores that have been organized in that division. The entire bargaining history in the Hartford Division has been upon the basis of the larger unit sought by the United, and, as indicated above, contracts between the Company and Local 371, covering such a unit, have been in existence since 1941. The stores in the three towns requested by Local 217 are not located in any definable geographic area; nor does the record reveal any other persuasive reason for their separation from the unit in which they have been included under past bargaining contracts. In view of the foregoing, we are of the opinion that a unit limited to the employees of the Company's stores at Cheshire, Meriden, and Wallingford, is inappropriate. Accordingly, we shall dismiss the petition of Local 217 in Case 1-R-1835.

We find, in Case No. 1-R-1854, that all employees in the Company's Connecticut stores at Berlin, Bristol, Cheshire, Collinsville, Cromwell, East Hartford, Elmwood, Farmington, Forestville, Glastonbury, Hartford, Kensington, Manchester, Meriden, Middletown, New Britain, Newington, Plainville, Poquonock, Portland, Rockville, Rocky Hill, Simsbury, Suffield, Thompsonville, Unionville, Wallingford, West Hartford, Wethersfield, Windsor, and Windsor Locks, including part-time workers, but excluding order boys, bakery department employees, supervisors, superintendents, and all other 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 payroll period immediately preceding the date of the Direction of Election herein, subject to the limitations and additions set forth in the Direction.

The Amalgamated has requested that, in the event the Board should find inappropriate the units requested by Locals 217 and 371, and should direct an election in the larger unit requested by the United, the Amalgamated be accorded a place on the ballot without local number designations. The request is hereby granted.

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 First National Stores, Inc. (Hartford Division), Somerville, 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 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 United Food Workers Union, or by Amalgamated Meat Cutters and Butcher Workmen of North America, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

ORDER

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of First National Stores, Inc. (Hartford Division), Somerville, Massachusetts, filed by Amalgamated Meat Cutters and Butcher Workmen of North America, Local 217 (A. F. L.), Case No. 1-R-1835, be, and it hereby, is dismissed.

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