In the Matter of T. A. O'DONNELL, DOING BUSINESS AS O'DONNELL'S SEA GRILL *and* CHAS. E. FORD AND T. A. O'DONNELL, TRUSTEES FOR MILDRED O'DONNELL, DOROTHY FREUND, ARLEEN O'DONNELL, AND JANICE O'DONNELL, DOING BUSINESS AS O'DONNELL'S RESTAURANT *and* UNITED CAFETERIA & RESTAURANT WORKERS, LOCAL 471, UNITED FEDERAL WORKERS OF AMERICA, CIO

Case No. 5–R–1615.—Decided October 27, 1944

Mr. Joseph F. Castiello, of Washington, D. C., for the Company.
Mr. James E. Harris, of Washington, D. C., for the Union.
Mrs. Augusta Spaulding, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Cafeteria & Restaurant Workers, Local 471, United Federal Workers of America, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of T. A. O'Donnell, doing business as O'Donnell's Sea Grill, and of Chas. E. Ford and T. A. O'Donnell, Trustees for Mildred O'Donnell, Dorothy Freund, Arleen O'Donnell, and Janice O'Donnell, doing business as O'Donnell's Restaurant, both of Washington, D. C., herein collectively called the Companies, and individually called the Grill and the Restaurant, respectively, the National Labor Relations Board provided for an appropriate hearing upon due notice before George L. Weasler, Trial Examiner. Said hearing was held at Washington, D. C., on September 20, 1944. The Companies and the Union appeared and participated.[1] All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, the Companies moved that the Board dismiss this proceeding on the ground that the unit proposed by the Union was not appropriate for bargaining. The

[1] Local 781 and Local 80 of Hotel & Restaurant Employees Alliance, A. F. of L., also served with notice, did not appear at the hearing

Trial Examiner did not rule on this motion. For reasons which appear in Section IV, below, the motion is 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 COMPANIES

A. *O'Donnell's Sea Grill*

T. A. O'Donnell, an individual, is the sole proprietor of a restaurant known as O'Donnell's Sea Grill, serving and selling food and alcoholic beverages at Washington, D. C. During the year ending September 1, 1944, O'Donnell received in gross receipts from the Grill more than $100,000. On the date named, assets at the Grill were valued in excess of $25,000, and employees numbered 371.

T. A. O'Donnell admits that he is engaged in commerce at O'Donnell's Sea Grill in the District of Columbia, within the meaning of the National Labor Relations Act.

B. *O'Donnell's Restaurant*

Chas. E. Ford and T. A. O'Donnell, trustees for Mildred O'Donnell, Arleen O'Donnell, Dorothy Freund, and Janice O'Donnell, owners, are engaged in operating a restaurant, known as O'Donnell's Restaurant, serving food and selling foods and alcoholic beverages at Washington, D. C. During the year ending September 1, 1944, the trustees received at the Restaurant in gross receipts more than $100,000. On the day named their assets were valued in excess of $25,000, and their employees numbered 156.

Chas. E. Ford and T. A. O'Donnell, trustees on behalf of the owners, admit that they are engaged in commerce at O'Donnell's Restaurant in the District of Columbia, within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

United Cafeteria & Restaurant Workers, Local 471, is a labor organization affiliated with United Federal Workers of America and with the Congress of Industrial Organizations, admitting to membership employees of the Companies.

III. THE QUESTIONS CONCERNING REPRESENTATION

On June 10, 1944, the Union advised T. A. O'Donnell in writing that it claimed to represent a majority of employees at the Grill and the Restaurant and asked for recognition as their bargaining representative. On June 16, 1944, counsel for the Companies advised the Union that the Companies, apart from their legal objections, could give no consideration to the request of the Union until the Board should have held an election and certified the Union.

A statement prepared by a Board agent and introduced into evidence at the hearing indicates that the Union represents a substantial number of employees in the units hereinafter found appropriate.[2]

We find that questions affecting commerce have arisen concerning the representation of employees of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNITS

The Grill and the Restaurant occupy separate buildings on E Street in Washington, D. C., about 200 feet apart. The Union would, preferably, include employees working at the Grill and employees working at the Restaurant in a single bargaining unit, or in the alternative, in separate units. The Companies contend that employees at each eating house constitute a separate bargaining unit.

As noted in Section I, above, T. A. O'Donnell owns and operates the Grill, which is entirely under his management and control. Chas. E. Ford and O'Donnell, as trustees, jointly operate and manage the Restaurant and determine its policies. The Restaurant has been in operation for 25 years and the Grill for 5 years; and the two eating houses cater to different clientele. The Grill and the Restau-

[2] The Union submitted 260 authorization cards in support of its claim to represent the approximately 437 employees at the Grill and at the Restaurant Of these cards, 61 were undated, 123 were dated prior to January 23, 1944, 1 was dated in March 1944, and the remaining were dated subsequent thereto The authorization cards were not checked against the Company's pay rolls nor were the signatures authenticated The turn-over at the Grill and Restaurant amounts to approximately 20 percent per month The Companies contend that the showing made by the Union does not indicate that the Union has a sufficient interest among their employees to justify elections, and that the Board should, therefore, dismiss the proceeding. We do not agree We require the submission of authorization cards by a petitioning union, not to demonstrate its majority in advance of an election, but merely to prevent the abuse of the Board's administrative processes by an organization having no claim to represent employees who are the subject of its petition. *Matter of H G Hill Stores, Inc*, 39 N L R B 874 What constitutes a sufficient showing to satisfy the Board of good faith in the petitioning union is discretionary with the Board and is in all cases dependent upon the circumstances obtaining at the time when the petition is filed On March 30, 1944, in Case No 5–C–1622, the Board issued a Decision and Order, finding that, in the management of the Grill, T A. O'Donnell had committed unfair labor practices, within the meaning of Section 8 (1) and (3) of the Act. *Matter of T A O'Donnell, d/b/a O'Donnell's Sea Grill*, 55 N. L R. B. 828. Further charges of unfair labor practice are presently pending investigation.

rant maintain separate and distinct offices and managements and keep independent business and tax records. The Restaurant on occasion purchases food from the Grill at various times during the day and night, and in emergencies employees of one establishment are lent to the other. The practice of selling food and lending employees is not uncommon among other well-disposed restaurant owners in the District of Columbia. Neither of the Companies has ever bargained with a labor organization on behalf of the employees whom the Union presently seeks to represent. Bartenders employed at the Restaurant and at the Grill, excluded from the unit proposed by the Union, presently bargain with their respective employers through a labor organization which executes separate contracts for bartenders at each establishment. Since the Restaurant and the Grill are not under unified control, and since bartenders at each establishment presently bargain with their respective employers in separate units, we find that employees at the Grill and employees at the Restaurant, respectively, constitute separate bargaining units.

The Union and the Companies agree that employees classified as cooks, waiters, waitresses, bus boys, bus girls, countermen, kitchen help, porters, and maids, excluding cashiers, clerical employees, maintenance employees, checkers, bartenders, and all supervisory employees, should be included in the same bargaining unit. Since such employees constitute a clearly identifiable group with common employment interests at the Companies' respective establishments, we find, in accordance with the desires of the parties, that such employees at the Grill and at the Restaurant, respectively, may properly be included in the same bargaining units.

O'Donnell, owner of the Grill, and a general manager, who acts as his assistant, supervise all operations at the Grill, and hire and discharge employees. The head waiter in charge of waiters and waitresses, the chef in the kitchen in charge of cooks, and the kitchen steward in charge of bus boys, bus girls, kitchen help, porters, and the maid make effective recommendations to the general manager with respect to the hire and discharge of employees under their charge. We find that the general manager, the head waiter, the chef, and the kitchen steward are supervisory employees within our usual definition of that term and, as such, we shall exclude them from the bargaining unit for employees at the Grill.

O'Donnell and Ford, as trustees operating the Restaurant, hire and discharge employees. They delegate this authority to the managers on the several employment shifts who assist in operating the Restaurant from 16 to 20 hours per day. The head waiter in charge of waiters and waitresses makes effective recommendations concerning their status. The managers and the head waiter clearly fall within

our definition of supervisory employees and, as such, we exclude them from the bargaining unit for employees at the Restaurant.

In addition to full-time employees, the Companies employ on a part-time basis kitchen help, bus girls, bus boys, waiters, and waitresses who work during rush hours at meal times. Many of these part-time employees have full-time employment in Government departments or elsewhere during the regular work day. These part-time employees work at the Grill and at the Restaurant, respectively, on the average of 4 hours per day and average 24 hours of employment per week. The Companies would exclude from the bargaining unit all part-time employees. The Union would include part-time employees who regularly work 24 hours per week. Since part-time employees at the Grill and at the Restaurant average approximately 24 hours of employment per week, it clearly appears that they have a substantial interest in conditions where they are thus employed, and we shall include part-time employees in each of the bargaining units which we find appropriate.

We find that all cooks, waiters, waitresses, bus boys, bus girls, kitchen help, porters, maids, and countermen employed by T. A. O'Donnell at O'Donnell's Sea Grill, Washington, D. C., including full-time and part-time employees, but excluding bartenders, cashiers, checkers, maintenance and clerical employees, 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.

We further find that all cooks, waiters, waitresses, bus boys, bus girls, kitchen help, porters, maids, and countermen employed by T. A. O'Donnell and Chas. E. Ford, trustees, at O'Donnell's Restaurant, Washington, D. C., including full-time and part-time employees, but excluding bartenders, cashiers, checkers, maintenance and clerical employees, 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 find that the questions which have arisen concerning the representation of employees of the Companies can best be resolved by separate elections by secret ballot.

The Companies employ, as unskilled kitchen help, some transient persons who work for a few days until paid, and then leave their em-

ployment. These employees are known to the trade as "floaters" employees. Any employees, hired in the first instance, who indicate a desire for regular employment are placed upon the regular pay roll. If new employees fail to report for work at the appointed time after their first pay day, and their absence is unexplained, their names are dropped from the pay roll. If they subsequently return to work, they are rehired as new employees. Neither the Companies nor the Union contends that transient employees should be entitled to vote. Since employees identified as transient work only a few days or intermittently, we shall exclude them from participation in the elections.

The Union contends that the Board should follow its usual eligibility policy in selecting for such purposes the pay-roll period immediately preceding the date of the Board's Decision and Direction of Elections. The Companies contend that eligibility should be determined by employment during the pay-roll period immediately preceding the date of the elections, on the ground that a 20 percent turn-over of employees requires the later date to prevent loss of the voting privilege to new employees. Since it is most desirable that eligibility be known with certainty well in advance of the elections, we reject the contentions of the Companies and shall follow our usual rule in determining the eligibility of voters in the elections. The petitioner requests that its name appear on the ballot as "The United Cafeteria and Restaurant Workers, Local 471, United Federal Workers of America, C. I. O." We shall grant the request.

Those eligible to vote in the separate elections which we shall now direct shall be employees in the respective units found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Decision and Direction of Elections, subject to the limitations and additions set forth in the Direction.

DIRECTION OF ELECTIONS

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with T. A. O'Donnell, doing business as O'Donnell's Sea Grill, Washington, D. C., and with Chas. E. Ford and T. A. O'Donnell, trustees for Mildred O'Donnell, Dorothy Freund, Arleen O'Donnell, and Janice O'Donnell, doing business as O'Donnell's Restaurant, Washington, D. C., separate elections 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 Fifth 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 respective units 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 the 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 transient employees and those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, to determine whether or not they desire to be represented by The United Cafeteria and Restaurant Workers, Local 471, United Federal Workers of America, C. I. O., for the purposes of collective bargaining.