

In the Matter of SAFEWAY STORES, INC. and AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, LOCAL UNION No. 229, AFL

Case No. 21-R-2497.—Decided December 13, 1944

Gibson, Dunn & Crutcher, by Mr. Frederick O. Field, of Los Angeles, Calif., for.

Mr. Max J. Osslo, of San Diego, Calif., for the Meat Cutters.

Gilbert & Zagri, by Mr. Sidney Zagri, of San Francisco, Calif., and Mr. Samuel Meyers, of San Diego, Calif., for the Retail Clerks.

Mr. A. Sumner Lawrence, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Amalgamated Meat Cutters & Butcher Workmen of North America, Local Union No. 229, AFL, herein called the Meat Cutters, alleging that a question affecting commerce had arisen concerning the representation of employees of Safeway Stores, Inc., San Diego, California, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George H. O'Brien, Trial Examiner. The Company, the Meat Cutters, and Retail Clerks International Protective Association, herein called the Retail Clerks, appeared, participated, and 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. The Retail Clerks' motion to dismiss is hereby denied for reasons hereinafter stated. 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

Safeway Stores, Inc., a Maryland corporation, is engaged in the processing, distribution, and sales of food, food products, and allied
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items. The Company owns and operates approximately 3,000 retail outlets and operates in 23 States of the United States, including the State of California, where the Company has approximately 650 stores, of which 45, located in San Diego County, are the only stores involved in the present proceedings. Of the Company's annual purchases of food products, valued in excess of \$10,000,000 and sold in its San Diego stores, approximately 30 percent are obtained from points outside the State of California. The Company owns and operates a warehouse in San Diego from which food and allied items are shipped to its retail stores in Phoenix and Yuma, Arizona.

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, Local Union No. 229, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Retail Clerks International Protective Association, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Prior to the hearing, the Meat Cutters and the Retail Clerks each requested recognition from the Company as bargaining representative for certain of the Company's employees. The Company failed to grant the Meat Cutters' request, but recognized the Retail Clerks subject to revocation in the event that the Board should deny the Company the right to bargain with the Retail Clerks as representative of such employees.

The record indicates that a long standing jurisdictional dispute exists between the Meat Cutters and the Retail Clerks concerning the employees involved in the present proceeding. The Retail Clerks contended at the hearing that the proceeding should be dismissed by reason of this jurisdictional dispute, but subsequent to the hearing, it withdrew its contention and requested that an immediate election be directed among the employees of the Company. It is apparent that since a settlement of the present jurisdictional dispute is not within the capacity of either of the two unions or their common affiliate organization, effective resolution of the existing conflict cannot be had without resort to the administrative processes of the Act.¹

¹ See *Matter of W. H. Kistler Stationery Company*, 51 N. L. R. B. 978; *Matter of Mid West Printing Co.*, 58 N. L. R. B. 673; *Matter of Southwestern Public Service Co.*, 58 N. L. R. B. 926

A statement of a Field Examiner for the Board, introduced in evidence at the hearing, indicates that the Meat Cutters and the Retail Clerks each represents a substantial number of employees in the unit claimed by each to be appropriate.²

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 Meat Cutters and the Retail Clerks agree that all food clerks in the Company's retail stores in San Diego, California, including store managers and assistant store managers, but excluding warehouse employees, butchers, butcherettes, butcher apprentices, office employees, temporary employees, and employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute an appropriate unit. The only dispute concerns the category of store or location managers whom the Company maintains should be excluded from the unit because of their alleged supervisory status. Subsequent to the hearing, the Retail Clerks filed a request that its objections to the exclusion of store managers be withdrawn. The Meat Cutters, however, has apparently not changed its position taken at the hearing, and desires to include store or location managers if permitted to do so by the Board.

The evidence discloses that a store manager has charge of an entire store, including the responsibility for the operation of the unit, the profits and maintenance of the unit, and the instruction and training of employees. Store managers have authority to select employees hired through the divisional supervisor and in emergencies may hire employees who apply in person at their locations without the approval of higher supervisory authority.³ They may transfer employees from one job to another within the stores over which they have charge and may discipline such employees for minor infractions of the rules. They may also discharge employees for definite breaches of discipline such as dishonesty and drunkenness, and may in other circumstances recommend dismissal or insist upon the transfer of individual em-

² The Field Examiner reported that the Meat Cutters had submitted 94 authorization cards dated between July 1944 and September 1944, of which 59 bore signatures which corresponded to those on the Company's pay roll of September 3, 1944, containing 220 employees within the claimed appropriate unit. The Field Examiner further reported that the Retail Clerks had submitted 188 photostatic application cards dated between July 1944 and September 1944, with 13 undated, of which 111 bore signatures which corresponded to those on the said pay roll containing 220 employees within the unit claimed appropriate by the Retail Clerks.

³ The Company's labor relations department witness testified that store managers hire many employees directly at the present time due to the present shortage of help in the cutting areas.

ployees to other stores of the Company. While store managers have been included within the coverage of certain collective bargaining agreements between the Company and the Retail Clerks in other sections of California, and have likewise been included in appropriate units wherein it appeared that they had no substantial supervisory authority,⁴ we are of the opinion that the store managers concerned in the present proceeding are supervisory employees within the meaning of our usual definition. Accordingly, we shall excluded them from the unit hereinafter found appropriate. We shall, however, include assistant store managers, since the record does not indicate that they have supervisory powers within our usual definition of supervisory employees.

We find that all food clerks employed by the Company's retail stores in San Diego County, California, including assistant store managers, but excluding warehouse employees, butchers, butcherettes, butcher apprentices, office employees, temporary employees, store or location managers, 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 payroll period immediately preceding the date of our 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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Safeway Stores, Inc., San Diego, California, 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 Twenty-first Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article

⁴ See *Matter of The Great Atlantic and Pacific Tea Company*, 53 N. L. R. B. 360.

III, Sections 10 and 11, of said Rules and Regulations, among the employees in the appropriate unit 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 & Butcher Workmen of North America, Local Union No. 229, A. F. L., or by Retail Clerks International Protective Association, A. F. L., for the purposes of collective bargaining, or by neither.