

In the Matter of BROWN COMPANY and UNITED MINE WORKERS OF
AMERICA, DISTRICT 50

Case No. 1-R-2046.—Decided December 21, 1944

Mr. Alfred Watt, of Berlin, N. H., for the Company.

Messrs. Cecil Crawford and Philip Smith, of Berlin, N. H., for the
Union.

Mr. Julius Kirle, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon an amended petition duly filed by United Mine Workers of America, District 50, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Brown Company, Berlin, New Hampshire, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John J. Coddair, Jr., Trial Examiner. Said hearing was held at Berlin, New Hampshire, on November 21, 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 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

Brown Company is a Maine corporation with its principal office and plants at Berlin, New Hampshire, where it is engaged in the manufacture and sale of pulp, paper, paper towels, Onco (a material used in the making of shoes), tubular products, and chemicals. In addition to one pulp and two paper mills, the Onco plant, and the tubular products plant, the Company owns and operates a research laboratory

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and experimental paper mill, a hydroelectric and steam-generating plant, a plant facility railroad, and a retail store. In its manufacturing processes, the Company uses pulp wood, sulphur, limestone, alum, resin, salt, a substitute for latex, pitch, and other materials. During the period from December 1, 1943, to November 21, 1944, approximately 77 percent of the materials used was transported to the Berlin plant from points outside the State of New Hampshire. The total value of these raw materials was approximately \$6,000,000. During the same period, the Company's sales amounted to \$19,000,000, of which approximately 96 percent represented sales of goods transported to points outside the State of New Hampshire.

We are concerned here with its retail store located on the Company's property at Berlin, New Hampshire, which is engaged in the sale of meats, groceries, hardware, and furniture. While the store accepts trade from the general public it is operated primarily in the interest of and caters to employees of the Company. During the year 1943, the Company purchased for sale at its retail store merchandise valued at approximately \$190,000, all of which came from sources outside the State of New Hampshire. During the same period, the Company sold at its retail store merchandise valued at approximately \$230,000, all of which were sold to customers within the State of New Hampshire with the exception of approximately 2 percent of its hardware sales which was made and shipped to the Company's lumber camps outside the State.

The Company admits that insofar as its over-all operations are concerned it is engaged in interstate commerce within the meaning of the National Labor Relations Act, but expresses doubt as to whether or not it is engaged in interstate commerce in the operation of its retail store. We find, upon the basis of the facts above set forth, that in the operation of its retail store the Company is also engaged in commerce within the meaning of the National Labor Relations Act.¹

II. THE ORGANIZATION INVOLVED

United Mine Workers of America, District 50, 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 certain of the Company's employees until the Union has been certified by the Board in an appropriate unit.

¹ See *Matter of West Virginia Coal and Coke Corporation, Junior Mercantile Stores Division*, 58 N. L. R. B. 1; *Matter of J. L. Brandeis and Sons*, 53 N. L. R. B. 352.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found 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 parties are in general agreement that the appropriate unit should comprise all employees of the Company's retail store, excluding the office help³ and the manager. The Company, however, would exclude the departmental supervisors; the Union would include them.

Departmental Supervisors. The Company employs in its retail store two departmental supervisors, one of whom is in charge of the meat and grocery department, the other, the hardware and furniture department. Both are under the supervision of the store manager who possesses recommendatory powers affecting the status of the store employees; the Company does all of its hiring through a central personnel department. The supervisors do the purchasing and spend approximately 95 percent of their time selling and arranging stock, have no authority to extend credit, and are not responsible for collections and receipts. One supervisor has six employees working under his direction, the other has three. They have been in the Company's employ for more than 20 years and receive an average of \$12 per week more than the other store employees.⁴ Although the supervisors may make recommendations which are considered by the store manager, it appears that such recommendations are largely confined to asking for needed help. We find that the departmental supervisors do not exercise supervisory authority within our customary definition, and we shall, therefore, include them in the unit.⁵

We find that all the employees of the Company's retail store, including departmental supervisors, but excluding the office help, the manager, 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.

² The Field Examiner reported that the Union submitted 10 cards, all of which were dated in August 1944; and that there are 14 employees in the claimed appropriate unit.

³ Grace Bouchard and Aurel Roberge.

⁴ The supervisor of the furniture department who, due to lack of business in that department, now works part time in the furniture department and part time in the hardware department, also receives an average of about \$12 per week more than the other store employees.

⁵ See *Matter of Sears Roebuck and Co.*, 53 N. L. R. B. 5.

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Brown Company, Berlin, New Hampshire, 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 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 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 Mine Workers of America, District 50, for the purposes of collective bargaining.

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