

In the Matter of PIGGLY WIGGLY OF SAN DIEGO, INC. and AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, A. F. L.

Case No. 21-R-2493.—Decided January 15, 1945

Messrs. Jefferson K. Stickney and Carroll A. Stilson, of San Diego, Calif., for the Company.

Mr. Max Osslo, of San Diego, Calif., for the Amalgamated.

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

Mr. Thomas A. Ricci, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Amalgamated Meat Cutters & Butcher Workmen of North America, A. F. L., herein called the Amalgamated, alleging that a question affecting commerce had arisen concerning the representation of employees of Piggly Wiggly of San Diego, Inc., San Diego, California, herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before George H. O'Brien, Trial Examiner. Said hearing was held at San Diego, California, on October 20 and 21, 1944. The Company, the Amalgamated, and Retail Clerks International Protective Association, Local 1222, A. F. L., herein called the Retail Clerks, 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.

At the hearing, the Retail Clerks moved to dismiss the petition. The Trial Examiner referred the motion to the Board for determination. For reasons hereinafter appearing, the motion is denied.² The

¹ From the record it appears that the Company's name reads as set forth above.

² The following contentions were made in support of the motion: (1) that the Company is not engaged in commerce within the meaning of the National Labor Relations Act; (2) that the Trial Examiner erred during the hearing in refusing to accept from the Retail Clerks a "complaint" charging the Company with violations of Section 8 (1) of the Act;

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

Piggly Wiggly of San Diego, Inc., is a California corporation having its principal office and place of business in San Diego, California. It owns and operates a warehouse and 26 retail stores in San Diego, California, where it is engaged in the purchase and retail sale of groceries, fresh fruits, vegetables, and allied products. Its total purchases for the fiscal year ending August 31, 1944, amounted to \$3,868,728, and more than 5 percent of its purchases originated outside the State of California. Its sales for the same period totaled \$4,455,672. Of the Company's total sales during that fiscal period, 75 percent was to defense workers and the families of persons in the military services.

While the Retail Clerks contends that the Company is not subject to the jurisdiction of the Board, the Company admits, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Amalgamated Meat Cutters & Butcher Workmen of North America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Retail Clerks' International Protective Association, Local 1222, affiliated with the American Federation of Labor, 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 Amalgamated as the exclusive bargaining representative of certain of its employees until the Amalgamated has been certified by the Board in an appropriate unit.

(3) that the instant proceeding involves a jurisdictional dispute between two A. F. L. unions; and (4) that the Amalgamated obtained its authorization cards by false representations.

We reject the first contention in Section I, *infra*. We hereby sustain the Trial Examiner's ruling with respect to the "complaint" offered at the hearing. Subsequent to the hearing, the Retail Clerks, sent to the Board on December 6, 1944, a telegram which is hereby made a part of the record herein, withdrawing its third and fourth contentions, both of which relate to the alleged jurisdictional dispute.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Amalgamated represents a substantial number of employees in the unit hereinafter found appropriate.³

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

At the hearing the Amalgamated and the Retail Clerks were in agreement that all food clerks in the Company's retail stores, including store managers and assistant store managers, but excluding butchers, butcherettes, apprentice butchers,⁴ warehouse employees, office employees, temporary and/or part-time employees who work less than 24 hours per week, and all supervisory personnel, constitute an appropriate unit. Except for store managers and assistant store managers, whom it would exclude as supervisory employees, the Company agrees to the unit as requested.

In each of the Company's 26 stores there is an average of 6 employees, including a store manager and, in some stores, an assistant store manager. The store managers have charge of the stores, assign duties to the clerks and are responsible for the stock and physical properties of the Company. They devote more than 20 percent of their time to preparing reports, instructing new employees, and managing the stores. They purchase certain types of merchandise, such as produce and eggs, and establish prices on some foods. Although the Company maintains a central employment office, the managers may, and sometimes do, hire full-time employees needed in their respective stores. Without prior reference to the central office, they may reject applicants for employment who respond to window advertisements. The store managers also have authority to discharge clerks for dishonesty, intoxication, or misconduct. In view of their functions, we are of the opinion that store managers are supervisory employees within the meaning of our customary definition. Consequently, we shall exclude them from the unit.

Assistant store managers are distinguished from ordinary food handlers only in the sense that the Company seeks to prepare them to become managers. They substitute for managers only in emer-

³ A Board attorney reported that the Amalgamated submitted 62 authorization cards; and that the names of 45 persons appearing on these cards were listed on the Company's pay roll of September 23, 1944, which contained the names of 142 employees in the unit hereinafter found appropriate. The Board attorney further reported that the Retail Clerks submitted 64 authorization cards and that the names of 49 persons appearing on the cards were contained in the aforesaid pay roll.

⁴ The Company does not employ butchers, butcherettes, or apprentice butchers. The meat department in the Company's stores is operated by another firm.

gencies. Their work is exactly like that of regular clerks and the record does not indicate that any of their time is devoted to any supervisory functions. One, Stewart, who believed himself to be a clerk, but whom the Company designates as an assistant manager, testified, "I have always worked along with my manager as a clerk . . ." Assistant store managers, we find, clearly are not supervisory employees, and we shall include them in the unit.

We find, in accordance with the agreement of the parties, and in accordance with our foregoing determinations, that all food clerks employed in the Company's retail stores, including assistant store managers, but excluding warehouse employees, office employees, temporary and/or part-time employees who work less than 24 hours per week, store managers 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.⁵

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 Piggly Wiggly of San Diego, 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 III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Sec-

⁵ The Retail Clerks urged that any election directed by the Board be postponed until the Company fully complies with an agreement in adjustment of Case No 21-C-2463, in which the Retail Clerks filed a charge of unfair labor practices. It appears that the Company has fully complied with the requirements of that agreement.

tion 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 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 and Butcher Workmen of North America, A. F. L., or by Retail Clerks' International Protective Association, Local 1222, A. F. L., for the purposes of collective bargaining, or by neither.