

In the Matter of AMERICAN STORES COMPANY, EMPLOYER and RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 639-A, A. F. L., PETITIONER and AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, A. F. L., LOCAL UNION 555, PETITIONER

*Case Nos. 5-RC-226 and 5-RC-229.—Decided April 7, 1949*

DECISION  
AND  
DIRECTION OF ELECTION

Upon separate petitions duly filed, a hearing in the above-consolidated cases was held at Baltimore, Maryland, on January 10, 1949, before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel.\*

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. Retail Clerks International Association, Local 639-A, A. F. L., hereinafter called the Clerks, and Amalgamated Meat Cutters & Butcher Workmen of North America, A. F. L., Local Union 555, hereinafter called the Amalgamated, are labor organizations claiming to represent employees of the Employer.
3. Questions affecting commerce exist concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.
4. The Clerks and the Amalgamated seek separate units of the grocery department employees and of the meat department employees, respectively, at the Employer's Winchester, Virginia, store. The Employer does not oppose the establishment of separate units for the employees of the grocery and meat departments.<sup>1</sup> The Employer con-

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\*Reynolds, Murdock, and Gray.

<sup>1</sup> Recently the Board recognized the feasibility of separate units for such employees in other stores of the Employer. *Matter of American Stores Company*, 80 N. L. R. B. 126. See also *Matter of The Kroger Company*, 77 N. L. R. B. 370.

82 N. L. R. B., No. 103.

tends, however, that the scope of the units requested is too limited, and that the units to be appropriate should include employees in all the stores in the Employer's administrative area, which includes the Winchester store.<sup>2</sup>

The Employer operates about 2,000 retail meat and grocery stores and markets in the Middle Atlantic States and the District of Columbia. For purposes of administration, the Employer's stores are grouped into zones. The zones are in turn subdivided into areas, each of which is under the supervision of a superintendent. Each store has a manager in charge of local store operations. There are approximately 21 employees in the Winchester store.

Despite the grouping of the Employer's stores into zones and areas for purposes of administration—a necessary step in the operation of any chain retail establishment, a large degree of autonomy remains at the individual store level. Thus, although such broad personnel matters as wages and vacation plans are determined at the top management level, the local store manager, including the Winchester store manager, makes up his own pay roll, pays wages out of the store's receipts, hires and discharges store personnel subject to the later approval by the superintendent, and orders supplies for the store. With respect to the Winchester store in particular, its independent nature is emphasized by the lack of interchange of employees between the Winchester and other stores, and by the separation of the Winchester store by at least 20 miles from any of the Employer's other stores.

Because of their location in geographically separated communities, the operation of the Employer's stores has been accommodated to the economic life of these communities.<sup>3</sup> The Employer's practice of conforming the operation of its stores to the economic life of the various communities has resulted in a pattern of collective bargaining on a community basis with apparent disregard of an administrative area such as the Employer now asserts should be the basis of any unit findings herein. This pattern is notably present among certain of the Employer's Maryland stores, including four of the five Maryland stores which the Employer would include in the multi-store area units proposed herein as the appropriate units. Thus, since 1937, the Employer has engaged in collective bargaining in units which cover only the em-

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<sup>2</sup> The area which includes the Winchester store consists of nine stores; the eight other stores are located as follows: four in Hagerstown, Maryland—44 miles from Winchester; and one each in Boonsboro, Maryland—53 miles from Winchester, in Martinsburg, West Virginia—22 miles from Winchester, in Charles Town, West Virginia—20 miles from Winchester, and in Shepherdstown, West Virginia—33 miles from Winchester.

<sup>3</sup> As an example of this accommodation is the fact that the wage scale for the employees of the Winchester store is adjusted to the wage scale generally prevalent in that community.

ployees of its four Hagerstown, Maryland, stores.<sup>4</sup> The record also discloses a similar history of bargaining on a community basis for the Employer's Baltimore, Maryland, stores. Furthermore, in accordance with an agreement to which the Employer was a party, the Board recently found appropriate units limited to the employees of the Employer's Frederick, Maryland, stores.<sup>5</sup> The existence of these bargaining units which, without following any administrative line based on the organization of the Employer, have been established with the consent of the Employer, indicates that the Employer's administrative areas have been rejected as the basis of its history of collective bargaining. Such a fact obviates the necessity in this case of adherence to an administrative area in determining the units appropriate for the employees of the Winchester store.

As the Employer's history of collective bargaining is inconsistent with the adoption of the administrative area as a basis for finding appropriate units, and in view of the independence from an operations standpoint of the Employer's Winchester store together with the similarity of interests of the Winchester store employees and the community which it serves, we are of the opinion that the requested units limited to the employees of the Winchester store are appropriate.<sup>6</sup> We find the following units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

(1) In Case No. 5-RC-226—All grocery department employees of the Employer at its Winchester, Virginia, store, including grocery and produce clerks and checker cashiers, but excluding the store manager and other supervisors as defined in the Act; and

(2) In Case No. 5-RC-229—All meat department employees of the Employer at its Winchester, Virginia, store, including journeyman and apprentice meat cutters, but excluding the head meat cutter<sup>7</sup> and other supervisors as defined in the Act.

### DIRECTION OF ELECTIONS

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, separate elections by secret ballot shall be conducted as early as possible, but not later

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<sup>4</sup> In 1948, a consent union-authorization election was held under Board auspices, among the employees of the four Hagerstown, Maryland, stores. Case No. 5-UA-700.

<sup>5</sup> *Matter of American Stores Company, supra.*

<sup>6</sup> See *Matter of Koppers Stores*, 73 N. L. R. B. 504. We believe that the facts in the present case are clearly distinguishable from those present in *Matter of The Grand Union Company*, 81 N. L. R. B. 1016, where the Board (Chairman Herzog dissenting) dismissed a petition for a unit limited to the employees of a single store of a retail store chain.

<sup>7</sup> As the head meat cutter has authority effectively to recommend the hire and discharge of employees, we find that he is a supervisor and, therefore, exclude him from the unit. See *Matter of The Great Atlantic & Pacific Tea Company*, 77 N. L. R. B. 389.

than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Fifth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the units found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Elections, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not the employees in the unit found appropriate in Case No. 5-RC-226 desire to be represented by Retail Clerks International Association, Local 639-A, A. F. L., for the purposes of collective bargaining, and to determine whether or not the employees in the unit found appropriate in Case No. 5-RC-229 desire to be represented by Amalgamated Meat Cutters & Butcher Workmen of North America, A. F. L., Local Union 555, for the purposes of collective bargaining.