

In the Matter of WISE, SMITH & COMPANY, INC., EMPLOYER *and*  
AMALGAMATED CLOTHING WORKERS OF AMERICA, CIO, PETITIONER

*Case No. 1-RC-897.—Decided June 2, 1949*

DECISION  
AND  
DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before Robert E. Greene, hearing officer of the National Labor Relations Board. The hearing officer's ruling rejecting evidence relating to the volume of purchases made for the Employer by one Harry Gold, whose status was in issue, is reversed. The hearing officer's other 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-member panel [Chairman Herzog and Members Houston and Reynolds].

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. The Petitioner is a labor organization claiming to represent employees of the Employer.

3. A question affecting commerce exists 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 Employer is engaged in department-store merchandising in Hartford, Connecticut, with a total of 560 employees. Its facilities, located in separate buildings, include a retail store with 75 departments, a warehouse, and offices. Certain retail store departments, such as the fur department, the book department, and the luncheonette, are leased to concessionaires. Others are operated wholly by the Employer. Labor relations for all departments, however, are handled by the Employer's personnel office, and the parties agree, and we find,

that leased department employees may properly be included in a unit with other employees of the Employer.<sup>1</sup>

The Employer and the Petitioner generally agree that employees at the Employer's offices, warehouse, and retail store constitute a single appropriate unit. The parties further agree that office and clerical employees, demonstrators, matrons, linoleum department employees, and restaurant employees should be included in the unit; and that nurses, pharmacists, employees hired for periods of less than 30 days or working less than 20 hours a week, confidential employees,<sup>2</sup> executives, assistant executives, buyers, department managers, guards, the chief telephone operator,<sup>3</sup> the chief cashier in the tube room, and other supervisors should be excluded from the unit. The parties disagree as to the unit placement of luncheonette employees and as to the status of certain individual persons, who are discussed *seriatim* below.

*Luncheonette employees.* In its retail store the Employer operates a restaurant which provides noontime meals and, through a concessionaire, a luncheonette which serves food at all times during regular store hours. The 25 employees in the restaurant are regular store employees. They spend 20 or more hours per week working in the restaurant, and their remaining working hours in various store departments. The 23 luncheonette employees have full-time employment in the luncheonette. The parties agree to include the restaurant employees in the unit; however, the Employer would include, and the Petitioner would exclude, the luncheonette employees.

The luncheonette and restaurant employees perform the same kind of work with respect to the service of food. Luncheonette, restaurant, and retail store employees receive the same rates of pay, have the same general conditions of employment, and are subject to the jurisdiction of the Employer's personnel office in matters of hiring and discharge, wages, and grievances. We find no basis for the Petitioner's contention that the interests of luncheonette employees are too remote from those of other store employees to justify their inclusion in the store unit. In the absence of special factors warranting their separate placement, we shall include luncheonette employees in the unit.<sup>4</sup>

<sup>1</sup> *Denton's Inc., t/a The Robinson-Schwenn Store*, 83 N. L. R. B. 35.

<sup>2</sup> The parties agree that Irene Dolin, the secretary to the Employer's president; Helen Reduger, a personnel clerk; and Helen Kingsland, Margaret Le Page, and Eva Sylvester, pay-roll clerks, are confidential employees.

<sup>3</sup> At the hearing the Employer sought to include the chief telephone operator in the unit. The Employer's change of position with regard to this employee is expressed in its brief.

<sup>4</sup> *Matter of Standard Romper Company*, 77 N. L. R. B. 421, and cases cited; *Matter of S. S. Pierce Co.*, 82 N. L. R. B. 1260.

*The restaurant chief chef.* The Employer would include, and the Petitioner would exclude, the restaurant chief chef.

The restaurant chief chef is charged with preparing food items listed on the menus provided by the restaurant manager, other than salads and sandwiches. He has from one to three assistant chefs, whose work he directs and whose unsatisfactory work he reports to the restaurant manager. We shall therefore exclude him from the unit as a supervisor.<sup>5</sup>

*Assistant buyers.* The Petitioner would include, and the Employer would exclude, assistant buyers.

There are 25 buyers, each in charge of one or more of the Employer's departments. Buyers leave their departments on trips of approximately 3 days' duration, in the course of which they purchase merchandise for the Employer. They are also absent for brief intervals during the course of a day on local purchasing errands. They are salaried employees and are listed on the Employer's executive pay roll. The parties are agreed that buyers are excluded from the unit.<sup>6</sup>

Approximately 20 assistant buyers assist the buyers in the operation of their respective departments. Assistant buyers spend most of their time marking, displaying, and selling merchandise, and keeping records. While they sometimes accompany the buyers on local trips, they do no purchasing in the usual course of their employment. Assistant buyers approve employee discounts and refunds; the record indicates that they do not, however, approve customer refunds, as do the buyers. During the absence of buyers, assistant buyers are in charge of their respective departments and direct the work of the other employees therein, numbering 1 to 15 persons. Assistant buyers are hourly paid, receiving wages the same as, or up to 50 percent more than, those paid to other department employees. The average wage differential is 15 to 20 percent. The record indicates that assistant buyers perform the functions of administrative assistants with routine and intermittent powers of direction. We find that assistant buyers are neither managerial nor supervisory employees, and shall include them in the unit.<sup>7</sup>

*The fur factory manager.* The Petitioner would include, and the Employer would exclude, the fur factory manager.

<sup>5</sup> Cf. *Matter of Todd Shipyards Corporation*, 80 N. L. R. B. 382.

<sup>6</sup> The parties agree to the exclusion of buyers on the ground that they are managerial employees. We find it unnecessary to discuss the merits of the Petitioner's contention that as Harry Gold, listed on the Employers' executive pay roll as a buyer, is not a supervisor, he should be included in the unit. The record discloses that this employee makes substantial purchases for the Employer. We therefore exclude him as a managerial employee, along with the other buyers.

<sup>7</sup> *Matter of Providence Public Market Company*, 79 N. L. R. B., No. 206.

The Employer's fur department includes a fur factory and a fur salesroom, both under the management of one Larkin, who the parties agree should be excluded from the unit. The fur department manager interviews customers bringing fur garments for repairs and alterations, and whenever necessary, performs some of the fur repair work himself. He receives a salary 150 percent higher than the compensation of his assistants, who are hourly paid employees, and whose hire and discharge he effectively recommends. We find that the manager of the fur factory is a supervisor, and shall exclude him as such from the unit.

*The book department manager.* The Petitioner would include, and the Employer would exclude, the book department manager.

The book department employs from 2 to 6 persons, of whom only the manager is a full-time employee. Her duties include the operation of the rental library; sales work; and the arranging, marking, and displaying of books. She also keeps records of sales and buyer demand, for the use of the book department concessionaire. She instructs new employees. She is paid at an hourly rate almost identical with that paid to her assistants. While the Employer contends that she has the power effectively to recommend hiring and discharge, the record indicates that such recommendations are made only during the Christmas rush season respecting temporary employees. We find that the manager of the book department is not a supervisor within the meaning of the Act, and we shall include her in the unit.

*Confidential employees.* The Petitioner would include in the unit the personal secretaries to the Employer's assistant treasurer and controller and to its credit manager and the executive pay-roll clerks. The Employer would exclude them as confidential employees.

At the time of the hearing in this proceeding, one Sullivan was the Employer's assistant treasurer and controller, while one Wharton was credit manager. The Employer informs us in its brief that since the hearing, both Sullivan and his personal secretary have left the Employer's employ, and that their respective positions have been consolidated under Wharton and his personal secretary. While the record shows that Sullivan handled grievances arising within his staff and that both he and Wharton conducted intradepartmental employment interviews, it nowhere appears that either of them were empowered to determine the Employer's labor policies, nor does it appear that their personal secretaries had access to confidential information pertaining thereto.

Two executive pay-roll clerks, responsible for the preparation of the Employer's executive pay roll and cash book, also maintain "store shopping records" dealing with the efficiency of sales personnel, based

on reports by the Employer's own shoppers. Neither of them has access to information relating to the Employer's labor policies.

We find that the personal secretary to the assistant treasurer and controller, personal secretary to the credit manager, and the executive pay-roll clerks are not confidential employees, and shall include them in the unit.<sup>8</sup>

We find that all employees at the Employer's offices, warehouse, and retail store in Hartford, Connecticut, including office and clerical employees, demonstrators, matrons, linoleum department employees, luncheonette and restaurant employees, assistant buyers, the book department manager, the personal secretaries to the assistant treasurer and controller and the credit manager, and executive pay-roll clerks, but excluding the restaurant chief chef, nurses, pharmacists, employees hired for periods of less than 30 days or working less than 20 hours a week, confidential employees, executives, assistant executives, buyers, department managers, guards, the chief telephone operator, the chief cashier in the tube room, the fur factory manager, and other supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

#### DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, 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 unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, 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 they desire to be represented, for purposes of collective bargaining, by Amalgamated Clothing Workers of America, CIO.

<sup>8</sup> *Matter of Inter-Mountain Telephone Company*, 79 N. L. R. B. 715, and cases cited.