

In the Matter of ALBERS SUPER MARKETS, INC. and RETAIL GROCERY CLERKS, LOCAL 1109 OF THE RETAIL CLERKS INTERNATIONAL PROTECTIVE ASSOCIATION, A. F. L.

*Case No. 9-R-1721.—Decided May 10, 1945*

*Mr. John C. Dempsey*, of Cincinnati, Ohio, for the Company.

*Mr. Ellsworth C. Bundy*, of Cincinnati, Ohio, for the Union.

*Mr. Jack Mantel*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a first amended petition duly filed by Retail Grocery Clerks, Local 1109 of the Retail Clerks International Protective Association, A. F. L., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Albers Super Markets, Inc., Cincinnati, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Robert Silagi, Trial Examiner. Said hearing was held at Cincinnati, Ohio, on March 23 and 26, 1945. 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

Albers Super Markets, Inc., is an Ohio corporation having its principal office and place of business in Cincinnati, Ohio, where it is engaged in the retail merchandising, warehousing, and processing of groceries and related products. The Company owns and operates a warehouse

and bakery in Cincinnati. It also owns and operates 23 retail stores in the Greater Cincinnati area, both in Ohio, and in Newport, Covington, Latonia, and Fort Thomas, Kentucky. During the year 1944, the Company's total purchases of meats and groceries exceeded \$15,000,000, approximately 90 percent of which was shipped to the Company's Cincinnati warehouse from points outside the State of Ohio. During the same period, the total sales of the Company's retail stores exceeded \$22,000,000. The Company's merchandise was delivered from its warehouse to its various retail outlets by motor truck, and approximately 25 percent of the merchandise was delivered from the warehouse in Cincinnati to the retail stores in the Commonwealth of Kentucky.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

Retail Grocery Clerks, Local 1109 of the 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

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees until the Union has been certified by the Board in an appropriate unit.

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.<sup>1</sup>

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 Union contends that all grocery employees of the Company's retail stores in greater Cincinnati, Ohio, and Newport, Covington, Latonia, and Fort Thomas, Kentucky, including working store managers, working assistant store managers, and produce managers, but excluding all meat department employees,<sup>2</sup> and supervisory employees,

<sup>1</sup> The Board agent reported that the Union submitted 278 authorization cards, and that the names of 142 persons appearing on the cards were listed on the Company's pay roll of February 24, 1945, which contained the names of 424 employees in the unit alleged by the Union to be appropriate.

<sup>2</sup> Meat department employees are currently represented under contract by another labor organization in a separate bargaining unit.

constitute an appropriate unit. The Company agrees with the scope of the unit sought by the Union, but would exclude therefrom all store managers, assistant store managers, and produce managers, as supervisory employees. Within the geographical area covered by the petition, the Company operates 23 super markets. The number of employees in each store varies from 20 to 50, the average being about 25.

*Store managers:* In each of its 23 stores the Company has a manager who is in charge of operations. He is responsible for the proper receipt, safekeeping, display, and pricing of all merchandise within the store, and is in complete charge of all personnel therein. Although the Company maintains a central personnel department, most of the hiring is done directly at the stores, and the record is clear that the store managers have authority to hire and discharge. We find that they are supervisory employees, and shall exclude them from the unit.<sup>3</sup>

*Assistant store managers:* Due to the manpower shortage, the Company has in its employ only 14 assistant store managers in its larger stores. The assistant store manager has full charge of a store during the absence of the store manager. Such substitutions occur daily during the lunch hour, at least twice a week when the manager attends Company meetings or leaves early, and during vacation periods. In addition to the overall responsibility of the assistant store manager, he is also directly in charge of one or two departments within the store. Thus, he may be assigned to the grocery department, in which case he is responsible for the activities of from 6 to 30 employees, depending upon the size of the store. Should the assistant store manager be placed in charge of the cashiers, he supervises the activities of from 6 to 12 employees, and is responsible for the checking of the cash receipts of each cashier. As part of his general responsibilities the assistant store manager has a key to the store, the safe combination, authority to cash customers' checks, and is bonded. Where he is directly responsible for a group, the assistant manager acts as timekeeper for all of the employees in the group. While the testimony of Company witnesses was to the effect that assistant store managers have authority to hire, and discharge without securing prior approval of the store manager, the record shows that such authority has been exercised mainly in the latter's absence.<sup>4</sup> There is no dispute

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<sup>3</sup> *Matter of Safeway Stores, Inc.*, 59 N. L. R. B. 936; *Matter of Piggy Wiggly of San Diego, Inc.*, 60 N. L. R. B. 47.

<sup>4</sup> An assistant store manager, a Union witness, testified that during the absence of the store manager, he had discharged an employee who was performing unsatisfactory work and that this employee was subsequently rehired by the store manager. However, the Union did not deny that the employment of the person involved was effectively terminated by the assistant store manager who acted independently at the time of the discharge.

relating to the authority of the assistant store manager to make recommendations concerning promotions, or to the fact that they are consulted on proposed wage increases for employees under their supervision. Although the assistant store manager checks and unloads trucks, puts prices on stock, and places goods on the shelves, it appears that only a minor portion of his time is spent in performing such manual duties. In view of the foregoing, we are of the opinion that the duties of the assistant store managers are supervisory in nature; we shall therefore exclude them.<sup>5</sup>

*Perishable foods manager:* The Company employed 13 perishable foods managers as of the date of the hearing. The number of clerks in the produce department in each store varies from 5 to 12, the average being 6 or 7. The manager of this department works along with his clerks trimming and culling produce, placing goods on display stands, and waiting upon customers, but these duties do not consume a major portion of his time. He places orders for produce through the Company's warehouse, and is authorized to use his discretion in purchasing produce directly from farmers. He supervises the pricing of the merchandise and is authorized to cut the price of certain items, whenever he determines that such items are about to deteriorate. The initial responsibility for showing a gross profit in his department is placed upon the perishable foods manager. The record shows that they make effective recommendations concerning transfers and promotions of their subordinate employees. Two perishable foods managers testified, without contradiction, that they had independently hired and discharged employees as recently as 1 week prior to the date of the hearing. Although the extent of their authority and discretion varies in some degree in the different stores, it is apparent that all perishable foods managers have sufficient authority to bring them within the Board's customary definition of supervisory employees. Accordingly, we shall exclude the perishable foods managers from the appropriate unit.

We find that all grocery employees employed in the Company's retail stores in Greater Cincinnati, Ohio, and Newport, Covington, Latonia, and Fort Thomas, Kentucky, excluding all meat department employees, store managers, assistant store managers, perishable foods 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.

<sup>5</sup> Cf. *Matter of Piggly Wiggly of San Diego, Inc.*, footnote 3, *supra*

## 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.

Approximately 60 percent of the Company's employees within the appropriate unit are part-time clerks and cashiers, some of whom are students, who perform the same duties as the regular full-time employees, and regularly work from 6 to 40 hours per week. The parties agree, and we find, that those regular part-time employees who have been employed by the Company for 60 days or more prior to the date of the Decision and Direction of Election herein, shall be eligible to vote.

The Union desired a central polling place where all of the employees in the 23 stores may cast their ballots. The Company urges that each store be voted separately. However, the parties agreed that the use of a mail ballot would be acceptable. Since the Regional Director is authorized to conduct elections in such manner as he deems advisable and expedient under the circumstances presented, we shall leave the determination of the methods to be employed in the conduct of the instant election to the Regional Director's discretion.

## 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 Albers Super Markets, Inc., Cincinnati, Ohio, 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 Ninth 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 the regular part-time employees who have been employed for 60 days or more prior to the date of this Direction, and 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 Retail Clerks Union, A. F. L.,<sup>6</sup> for the purposes of collective bargaining.

Mr. JOHN M. HOUSTON took no part in the consideration of the above Decision and Direction of Election.

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<sup>6</sup> The Union requested that its name appear on the ballot as set forth above. This request is hereby granted