

In the Matter of SERVICE STORES CORPORATION and DISTRICT 50, UNITED  
MINE WORKERS OF AMERICA

*Case No. 6-R-1106.—Decided July 6, 1945*

*Mr. Gerald J. Reully*, of Bethlehem, Pa., for the Company.  
*Mr. Pat Mingarelle*, of Fairmont, W. Va., for the Union.  
*Mr. Isadore Engle*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by District 50, United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Service Stores Corporation, Fairmont, West Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before W. G. Stuart Sherman, Trial Examiner. Said hearing was held at Fairmont, West Virginia, on April 20, 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. At the hearing the Company moved to dismiss the proceeding on the grounds that (1) the Board lacked jurisdiction because of the intrastate nature of its business and (2) the unit sought was inappropriate. Ruling on these motions was reserved for the Board. For reasons hereinafter stated, the motions are denied. 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

Service Stores Corporation, an almost totally owned subsidiary of Bethlehem Steel Corporation, is a Michigan corporation which operates, in all,  
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four retail stores in the State of West Virginia. The stores are centrally located within the mining camps at Barrackville, Carolina, Idamay, and Richard, respectively, and serve primarily the miners and their families residing in these mining camps. Adjacent to the mining camps are the coal mines of Industrial Collieries Corporation, which is also an almost totally owned subsidiary of Bethlehem Steel Corporation, and which supplies 80 percent of its mined coal for war production use at the plants of Bethlehem Steel Company in Pennsylvania. At all four stores with which we are here concerned, the Company sells, at retail, such articles as smoked and fresh meats, produce, groceries, canned goods, hardware, furniture, clothing, dry goods, notions, miners' supplies, gasoline, and oil. In the conduct of its business, the Company purchases a considerable amount of goods for sale through a centralized purchasing agency serving the Company and the similarly named Service Stores Corporation, a Pennsylvania corporation, operating retail stores in the vicinity of the Bethlehem Steel Corporation mines in Pennsylvania. As part of the purchasing arrangement, goods are, at times, transferred between the Company's stores in West Virginia and the stores of the Pennsylvania corporation. Both the Company and the similarly named Pennsylvania corporation have the same general manager who attends to the centralized purchasing, and the same president, who is also vice president in charge of mining operations at Bethlehem Steel Company. In addition, some of the officers of Bethlehem Steel Company serve on the Board of Directors of the Company, and all the cashiers and assistant cashiers of the four stores involved herein are the employees of the accounting division of Bethlehem Steel Company and not of the Company.

During the year 1944, the approximate value of purchases made by the afore-mentioned stores of the Company was \$600,000, over 50 percent of which was received from points outside the State of West Virginia. During the same year, the approximate amount of the total sales at these stores was \$780,000. Although all sales are made in West Virginia, some of the sales are made to miners who live at nearby points in Pennsylvania and commute daily to and from work at the Industrial Collieries Corporation mines in West Virginia.

The Company contends that the Service Stores Corporation is not engaged in interstate commerce and, therefore, is not subject to the jurisdiction of the Board. We do not agree. The record shows that a large amount of the Company's purchases is shipped to it from points outside the State and that, at times, the Company ships some of its goods across State lines. Although it is apparent that all of the Company's retail sales are local in character, the courts have held that "the application of the Act does not depend upon the magnitude of the business nor the comparative amount of interstate sales," but upon "whether the stoppage of business by reason

of labor strife would tend substantially to affect commerce."<sup>1</sup> Applying that test, we find that the Company's business and operations affect commerce within the meaning of the National Labor Relations Act.<sup>2</sup>

## II. THE ORGANIZATION INVOLVED

District 50, United Mine Workers of America, 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.

A statement of a Field Examiner, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.<sup>3</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 seeks a unit of all clerks, butchers, truck drivers, and all other employees engaged in and about the Company's four stores, excluding cashiers, assistant cashiers, two clerks who work almost exclusively in United States Post Offices,<sup>4</sup> and all managers and other supervisors. The Company contends that the unit is inappropriate in that it seeks to include salaried and hourly rated employees in the same unit. Subject to its motion to dismiss the Union's petition on this ground, the Company agrees, in general, with the unit sought except that it would also include in the unit the two clerks who act as secretaries to the store managers.

There are a total of approximately 65 employees at the Company's four stores in West Virginia. Of these employees, about 35 percent are on a salary basis while the rest are hourly rated. The record shows that there is very little ground for distinguishing between hourly rated and salaried employees. Employees are hired on the hourly rate and are changed to the

<sup>1</sup> See *J L Brandeis & Sons v. N. L. R. B.*, 142 F. (2d) 977 (C. C. A. 8), en'f'g 53 N. L. R. B. 352, 323 U. S. 751, cert. denied.

<sup>2</sup> See *Matter of Santa Rita Store Company*, 62 N. L. R. B. 804, *Matter of Whiting-Mead Company*, 45 N. L. R. B. 987, *Matter of The May Department Stores Company d/b/a The May Company*, 39 N. L. R. B. 471.

<sup>3</sup> The Field Examiner reported that the Union submitted 49 application for membership cards, that the names of 38 persons appearing on the cards were listed on the Company's pay roll of March 1, 1945, which contained the names of 58 employees in the appropriate unit; and that, of these cards, 46 were dated in January 1945, 2 in February 1945, and 1 was undated.

<sup>4</sup> The petition was amended at the hearing to exclude from the unit cashiers, assistant cashiers, and these two clerks, described as above set forth. It would appear that the two clerks spend very little time in the actual employ of the Company.

salary mode of payment on the basis of merit and length of service. The terms and conditions of employment are quite similar throughout all four stores, the only substantial difference being that salaried employees receive a somewhat longer vacation period than the hourly rated employees, and also receive sick leave annually which is not available to the hourly rated employees.

We have previously considered similar contentions to the one made by the Company opposing the inclusion of salaried employees in the same unit with hourly paid employees and have found them to be without merit. It is well established that, in determining the appropriateness of a unit, the Board will refuse to distinguish between employees solely on the ground of difference in mode of payment, but will look to their general interests, duties, nature of work, and working conditions.<sup>5</sup> Accordingly, since the salaried and hourly paid employees in the unit sought by the Union have substantially the same general interests, duties, and working conditions, we find no merit in the Company's contention. Moreover, since the unit sought is, in general, a functionally coherent one consisting of all the rank and file employees of the Company devoted to the retail merchandising operations and is the one normally found appropriate in such a retail business, we are of the opinion that the employees therein may function together for the purposes of collective bargaining.

There remains for consideration the dispute between the parties as to the inclusion of the two clerks who act as secretaries to the store managers. The Union would include these employees, while the Company would exclude them as confidential secretaries. One of them, Lorena Lowther, works at the Barrackville store, and the other, Emma Horvath, works at the Carolina store. Most of their work consists of keeping records and invoices, taking orders over the phone, preparing rationing records, maintaining the files of the store in the manager's office, and tabulating time records. In connection with this work, they have access to files relating to labor relations and also prepare letters and memoranda pertaining to such confidential labor relations matters as the hiring, disciplining, and discharging of employees. We shall, accordingly, exclude them from the unit as confidential employees.

We find that all clerks, butchers, truck drivers, and all other employees in and around the stores, but excluding cashiers, assistant cashiers,<sup>6</sup> the clerks who work almost exclusively in United States Post Offices,<sup>7</sup> the clerks who act as confidential secretaries to the store managers, and all

<sup>5</sup> See *Matter of Jones and Laughlin Steel Corporation, Pittsburgh Works*, 57 N. L. R. B. 357, *Matter of Edgewater Steel Company*, 56 N. L. R. B. 1778.

<sup>6</sup> As already noted, all cashiers and assistant cashiers of the four stores involved herein are the employees of the accounting division of Bethlehem Steel Company and not of the Company. The parties have agreed to exclude them.

<sup>7</sup> Adelle Alkire at the Carolina store and William F. Reger at the Idamay store are the employees involved. The parties are in agreement as to the propriety of their exclusion.

managers or any 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 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 Service Stores Corporation, Fairmont, West Virginia, 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 Sixth 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 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 or not they desire to be represented by District 50, United Mine Workers of America, for the purposes of collective bargaining.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.