

In the Matter of ALBERS SUPER MARKETS, INC. and WAREHOUSEMEN'S UNION, LOCAL No. 661, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L.

Case No. 9-R-1952.—Decided April 4, 1946

Messrs. John C. Dempsey, A. J. Long, Jr., and M. W. Griesbaum, of Cincinnati, Ohio, for the Company.

Messrs. J. W. Brown and Jack L. McCain, of Cincinnati, Ohio, for the Union.

Mr. Conrad A. Wickham, Jr., of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

STATEMENT OF THE CASE

Upon a petition duly filed by Warehousemen's Union, Local No. 661, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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 Allen Sinsheimer, Trial Examiner. The hearing was held at Cincinnati, Ohio, on January 25, 1946. 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 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

The Company is an Ohio corporation with its principal office and place of business in Cincinnati, Ohio. It is engaged in the retail merchandising, warehousing, and processing of groceries and related products. These proceedings are concerned with the receiving, warehousing and food processing operations of the Company in Cincinnati,

from which merchandise is distributed to 23 of the Company's retail stores in the greater Cincinnati area, both in Ohio and Kentucky. During the past year the Company's total purchases of meats and groceries exceeded \$15,000,000, approximately 90 percent of which was shipped to the Cincinnati warehouse from outside the State of Ohio. During the same period the total sales of the Company's retail stores exceeded \$22,000,000, such merchandise being delivered from its Cincinnati warehouse to its various retail stores, approximately 25 percent thereof being delivered to 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

Warehousemen's Union, Local No. 661, is a labor organization, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., 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 the Company's 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 the employees whom it seeks to represent in this proceeding.¹

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 DETERMINATION OF REPRESENTATIVES

The operations involved in the present proceeding are the Company's warehouse, its repack or manufacturing department, and part of its accounting department. All operations are located in three buildings in Cincinnati which constitute the entire warehouse and repacking group and house the controller's and other offices. The warehouse and repack departments are under separate superintendents, while the accounting department, which exercises supervision over the Company's receivers, is under the controller. Because the refrigeration equipment is located in the warehouse, the egg candling department, which is really a part of the repack department, is located in the warehouse and under its superintendent. A bakery lo-

¹ The Field Examiner reported that the Union submitted 12 authorization cards, all of which bear the names of employees appearing on a list submitted by the Company, and that there were 37 employees in the unit requested in the petition.

cated in the repack department, though concededly not a part thereof, is under the supervision of the repack superintendent.

The Union is already the bargaining representative of the Company's approximately 90 warehouse employees by virtue of an existing contract, and has acted in this capacity since 1937.² It now seeks to add to the existing unit a group consisting of all the employees in the repack department, plus the Company's receivers (listed on the Company's records as "receiving audit clerks"), but excluding supervisory and clerical employees. The Company agrees that the employees of the repack department would constitute a proper addition to the warehousemen's unit, but opposes the inclusion of the receivers, since they come under the cognizance and supervision of the accounting department rather than the warehouse.

The functions of the repack department include the repacking of certain foodstuffs and roasting coffee. Its employees include stockmen, packers, a coffee roaster and a bag-machine operator. The parties agree that employees engaged in egg candling are functionally part of this department, but that the bakery employees should not be included in any voting group set up in this proceeding because they are represented by a separate union. Accordingly, they agree that the employees enumerated, exclusive of those in the bakery, should properly be included in the bargaining unit, but that the repack superintendent and the repack forelady should be excluded as supervisors. We find, in accordance with the agreement of the parties, that these employees may be added to the existing unit if they so desire, and we shall direct an election for the purpose of determining their desires in the matter.

The only contested employees are the six receivers in the Company's accounting department. These employees work out of small offices on the docks checking incoming shipments as to quantity, condition of the seals, and condition of the actual merchandise if it is of a perishable nature. Inspection of perishables is performed either by the chief receiver, who the parties agree should be excluded as a supervisor, or by a receiver who is also known as a "produce inspector" and who has authority to reject perishable merchandise which he considers unsuitable. The receivers work alongside the unloaders, who are in the existing warehouse unit, listing and totaling the items of the incoming shipments. Their lists are subsequently submitted to the main office to be checked against the invoice by an invoice audit clerk. Although they may occasionally perform manual work, this is infrequent. They perform their duties solely under orders from the accounting department and are paid on a weekly salary basis.

² Under this contract the Union represents "All employees of the employer engaged in the handling, loading or unloading of freight or merchandise on docks or warehouses of the employer, excepting supervisory employees, and further excepting office employees or other employees not properly under the jurisdiction of the Union."

There was considerable dispute at the hearing as to whether or not receivers were intended to be covered by the existing contract. It appears that they came under the supervision of the warehouse superintendent until a few years ago, at which time they were transferred to the controller's office, with alleged changes in their duties. Nevertheless, their duties appear to be quite similar to those of checkers, who are under the warehouse superintendent and are part of the present bargaining unit. Checkers compare orders which have been filled by order-runners with the order-lists submitted by the Company's stores to insure proper delivery. They make no check as to the condition of perishables. They may occasionally perform manual work in a slightly greater degree than receivers. Receivers are paid slightly more than checkers, and checkers slightly more than order-runners, the latter two classifications being paid on an hourly basis. It appears that, in some instances, order-runners may be promoted to checkers, and thence to receivers, or even directly to receivers. Three of the present six receivers were promoted directly from order-runners to their present positions, while the other three were secured from outside sources. There was also some question as to whether or not receivers were ever required to be members of the Union. The evidence indicates that some were and some were not.

The Company contends that the receivers cannot properly be included in the bargaining unit inasmuch as their duties essentially constitute the auditing of the vendor for the accounting department, to which department they are solely responsible; that the warehouse has no control over their activities; and that there is no regular channel of promotion from the warehouse to receiver, but that receivers are procured from any source which provides men with the peculiar knowledge of merchandise required to perform receivers' work.

Conceding that the Company's arguments carry some weight, it nevertheless appears that the duties of receivers are so similar in nature to those of checkers, and are so closely associated with the work of other warehouse workers, that there is a definite community of interest among all these employees. For this reason, although we do not regard them as part of the repack-employee class, we think that the receivers may, as a group, be added to the existing warehouse unit for purposes of collective bargaining if such is their desire. We will, therefore, provide for a separate election in which they too may indicate their desires in this regard.

We shall therefore direct that the question concerning representation which has arisen be resolved by separate elections by secret ballot among the Company's employees, excluding, in addition to those specifically noted below, all office clerical employees, supervisors, assistant supervisors, and any other supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes

in the status of employees, or effectively recommend such action, as constituted in the following two voting groups:

- (1) All the employees of the Company's repack department at Cincinnati, Ohio, including the stockmen, packers, egg candlers, coffee roaster and bag-machine operator, but excluding the superintendent and the forelady of the said department;
- (2) All the receiving audit clerks employed in the Company's accounting department at Cincinnati, Ohio, excluding the chief receiving audit clerk of the department.

The employees in the above groups eligible to vote in these elections will be those who were employed during the pay-roll period immediately preceding the date of the Direction of Elections herein, subject to the limitations and additions set forth in the Direction. In the event that the employees in either, or both, of the above groups select the Union as their collective bargaining representative, that organization may bargain for them together with, and as an integral part of, the unit of warehouse employees for which the Union is presently the bargaining representative.

DIRECTION OF ELECTIONS

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, elections 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 employees in each of the two voting groups as set forth 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 those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections, to determine whether or not they desire to be represented by Warehousemen's Union, Local No. 661, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. L., for the purposes of collective bargaining.