

In the Matter of AIR TERMINAL SERVICES, INC. and UNITED CAFETERIA
AND RESTAURANT WORKERS, LOCAL 471, UFWA (C. I. O.)

Case No. 5-R-2144.—Decided April 23, 1946

Pierson & Ball, by Messrs *Frederic J. Ball* and *Vernon C. Kohlhaas*, of Washington, D. C., for the Company.

Arnold and Fortas, by Mr. *Milton V. Freeman*, of Washington, D. C., for the C. I. O.

Mr. *Charles E. Sands*, of Washington, D. C., and Cincinnati, Ohio, for the A. F. L.

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

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by United Cafeteria and Restaurant Workers, Local 471, UFWA, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Air Terminal Services, Inc., Alexandria, Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Earle K. Shaw, Trial Examiner. The hearing was held at Washington, D. C., on February 18, 1946. The Company, the C. I. O., and Hotel and Restaurant Employees' International Alliance and Bartenders' International League of America, A. F. L., herein called the A. F. L., 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. The motion of the Company to dismiss the petition for lack of jurisdiction is denied for the reasons set forth in Section I, *infra*. The request of the C. I. O. that the A. F. L. be excluded from the ballot is hereby granted for the reasons set forth in Section V, *infra*. 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

Air Terminal Services, Inc., a Virginia corporation having its main office in Alexandria, Virginia, is engaged exclusively in the operation of various restaurant concessions at the Washington National Airport. The airport is located on lands situated within the Commonwealth of Virginia, but owned and under the exclusive jurisdiction of the United States Government. It is the only Federally owned and operated civilian airport in the country. The Company operates its concessions under an exclusive concessionaire's contract with the Government, acting through the Administrator of Civil Aeronautics. These concessions include the operation of three employee cafeterias, a packing room, primarily set up to provide food to the airlines for "in-flight" service to passengers, and a dining room, coffee shop, soda fountain, and other related concessions,¹ all set up to provide service to patrons of the airport and the general public. In lieu of rent, the contract provides that the Company shall pay the Government a certain percentage of its gross business receipts.

Over one-third of the private employees at the airport,² among whom are air-line ticket agents and plane service personnel, depend upon the Company's services for daily sustenance. No other food facilities are convenient to the airport, the nearest restaurants being in Alexandria, Virginia, or in Washington, 2 and 5 miles away, respectively. Although the Army operates two cafeterias at the airport, the record shows that these establishments are not open to the public.

The packing room supplies "in-flight" meals to 4 of the 8 air lines using the airport. One of these four, Trans World Airlines, is engaged in overseas flight operations which are required by law to have food aboard. Out of an average of 150 flights per day, the Company furnishes food to 34 of the 50 flights on which meals are served. This service consists of preparing the food in the packing room kitchen, placing it in containers supplied by the air lines, and finally placing the containers aboard the planes, all such operations being performed by the Company's employees.

During the typical 6 months period ending December 31, 1945, foodstuffs and other related products, amounting in value to \$239,901, were purchased by the Company for use in its various concessions.

¹ Other of these concessions include a snack bar, newsstand, novelty stand, and barber shop

² These total approximately 2,500, as distinguished from some 3,500 employees of the Army Air Forces at the airport who are provided with Government cafeterias

approximately 92 percent of which was purchased outside the Commonwealth of Virginia. The gross volume of sales derived from the food concessions in this period approached \$630,000. Of this amount, revenue from the packing room covering food-service to the air lines amounted to about \$163,000. The gross income thus derived from "in-flight" meals approaches 26 percent of the total revenue for this period. In addition, the Company received approximately \$128,000 from its non-food concessions, bringing its total gross revenue for the period to \$759,226.

The record indicates that a complete shut-down of the Company's business caused by a strike of its employees would not affect the continental flight-schedules of the air lines receiving company services.³ On the other hand, the Civil Aeronautics Administration looks upon the restaurant facilities of the Company as essential to the operation of the airport, and, if the services were discontinued, would obtain another concessionaire immediately. The basic contract also reserves to the Government the right to substitute another concessionaire in the event that food or service in the employee cafeterias proves unsatisfactory.

The Company contends, not only that the Board lacks jurisdiction, but that, even if its jurisdiction can be sustained, it should not be assumed on the grounds that the policies of the National Labor Relations Act would not be effectuated by asserting jurisdiction over a retail business essentially local in nature. In support of its position it cites *Matter of Consolidated Vultee Aircraft Corporation*.⁴

It is true that we have not generally asserted jurisdiction over restaurants, on the theory that their operations are essentially local in character. However, the record of this case clearly indicates that the present situation falls outside the scope of this policy. The operations here involved form an integral part, and are essential to the proper functioning, of the Washington National Airport, the only Federally owned and operated airport in the country. By assuming the peculiar status of an exclusive concessionaire at this airport, under contract with the Government, the Company has established a unique position for itself in the restaurant business. The essential nature of its services to employees who are themselves performing an interstate function, plus the provision of "in-flight" meals to be served to air line passengers, as well as its services to the patrons of the airport, all serve to stamp the Company's operations as an important part of interstate commerce. Although a strike shutdown might not affect flight schedules, the resultant food stoppage would certainly have a

³ As to its possible effect on overseas flight schedules the record is silent

⁴ 57 N L R B. 1680.

detrimental effect upon both the efficiency of airport employees and the comfort of passengers in interstate flight.

We therefore reject the Company's contention. We find that its business is not essentially local in nature, but that it is actually a part of, and substantially affects, interstate commerce, and that it therefore is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

United Cafeteria and Restaurant Workers, Local 471, UFWA, is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

Hotel and Restaurant Employees' International Alliance and Bartenders' International League of America, is a labor organization, affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the C. I. O. as the exclusive bargaining representative of its food-handling and related employees on the grounds that its operations do not come within the purview of the National Labor Relations Act. This issue has hereinbefore been decided in Section I, *supra*.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.⁵

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 Company employs a total of 274 employees in its operations, of which approximately 190 compose the unit requested by the C. I. O. as appropriate. There has been no previous bargaining history concerning these employees. The Company and the C. I. O. both agree that, if an election is directed, all personnel employed in the various concessions of the Company who are engaged in the preparation, handling, and serving of food, including cooks, bakers, chefs, butchers, dish

⁵ The Field Examiner reported that the C. I. O. had submitted 164 authorization cards, presumably bearing the names of employees of the Company. At the time of his investigation the Company had declined to submit information regarding its employees, therefore preventing a check against its pay roll. The Field Examiner was of the opinion, however, that the cards were signed by employees of the Company.

There are approximately 200 employees in the appropriate unit

and pot washers, salad and sandwich employees, bus employees, counter help, cleaners, waitresses, loaders, packers and porters, but excluding carpenters, office employees, barbers, barber-shop bootblacks, photographers and managers, constitute an appropriate unit. There is dispute, however, with respect to cashiers and checkers, lounge maids, 2 bootblacks, and "supervisors," the Company desiring their inclusion and the C. I. O. their exclusion. The status of the "supervisors" depends upon whether or not their duties bring them within the meaning of the term "supervisory employee" as construed under the Act. As to employees in the other enumerated categories, the C. I. O. contends that their duties are not directly connected with the preparation and handling of food, and should therefore be excluded, while the Company argues that it would be impractical to exclude them.

Supervisors: The Company employs a total of 15 employees which it classifies as "supervisors." Two of these are employed as hostesses, 3 as fountain supervisors, 3 as newsstand supervisors and 7 as packing room supervisors. The Company has testified that their title is a misnomer; that in reality they have no supervisory authority, but are "more or less assistant managers in the operations." The number of employees under their supervision ranges from 2, under the supervision of the newsstand supervisor, to 43, under the supervision of the hostesses. All of these "supervisors" have the right to make recommendations with respect to hiring and discharging, and their recommendations are usually given weight by the management. Although packing room supervisors spend more time working with their subordinates than the others, it is clear that the Company looks to them for the proper conduct of operations and maintenance of discipline. While they have no power to mete out discipline, they may recommend disciplinary action to the assistant manager of the packing room. The supervisors of the Company's other departments have substantially the same authority. It is clear that these employees possess supervisory authority within the meaning of our customary definition. We shall, therefore, exclude them from the unit.

Cashiers and checkers: The Company employs a total of 31 cashiers and checkers in its various concessions. Their duties are primarily to check the food and take in cash. Although they may, in emergencies, fill in as waiters or waitresses, they generally perform the same functions as cashiers and checkers in other restaurants. We have previously held that such duties are largely clerical and are not directly connected with the preparation and handling of food.⁶ We shall also exclude them from the unit.

⁶ See *Matter of Bethlehem-Fairfield Shipyard, Inc. and M. & M. Restaurant Operating Company, Inc.*, 53 N. L. R. B. 1428; *Matter of Welfare Association*, 45 N. L. R. B. 285; *Matter of S & W Cafeteria of Washington, Inc.*, 30 N. L. R. B. 1236, and 20 N. L. R. B. 259.

Lounge Maids: The Company employs two lounge maids whose work consists primarily of cleaning the rest rooms. Since their work is not connected with the preparation and serving of food, we shall exclude them.

Bootblacks: The Company employs three bootblacks. Though it agrees to the exclusion of the barber-shop bootblack, it contends that the other two should be included in the unit because, on occasion, they do general porter work in connection with the Company's restaurant facilities. Conceding this to be true, the greater portion of their time is spent performing the functions of a bootblack, which are not related to the preparation and serving of food. We shall, therefore, exclude them from the unit.

We find that all employees of Air Terminal Services, Inc., employed in the various concessions operated by the Company at the Washington National Airport, who are engaged in the preparation, handling, and serving of food, including cooks, bakers, chefs, butchers, dish and pot washers, salad and sandwich employees, bus employees, counter help, cleaners, waitresses, loaders, packers and porters, but excluding all cashiers and checkers, lounge maids, bootblacks, carpenters, office employees, barbers, photographers, supervisors, managers and all 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 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.

In accordance with the agreement of the parties we find, and direct, that all regular part-time employees who fall within the classifications set forth in the appropriate unit shall be eligible to vote at this election.

It appears from a statement of the Board's Field Examiner that although the A. F. L. on November 19, 1945, was requested in writing to submit representation evidence, it failed to do so. The record also shows that the Trial Examiner gave the A. F. L. adequate opportunity to present such evidence at the hearing, explaining the Board requirements in this regard, but that it again failed to do so. Since it has failed to substantiate its claims to membership among the employees of the Company, we hereby find, and direct, that the A. F. L. has no

rightful status as an intervenor in this case, and that its name shall not appear on the ballot in the election hereinafter directed.

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 Air Terminal Services, Inc., Alexandria, 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 Fifth 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 the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including regular part-time employees, and 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 election, to determine whether or not they desire to be represented by United Cafeteria and Restaurant Workers, Local 471, UFWA (C. I. O.), for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.