

IN the Matter of WHITNEY'S DEPARTMENT STORE, EMPLOYER and BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 102, AFL; RETAIL CLERKS' INTERNATIONAL ASSOCIATION RETAIL DEPARTMENT AND SPECIALTY STORE CLERKS UNION, LOCAL 1222, AFL; AND HOTEL & RESTAURANT EMPLOYEES' INTERNATIONAL ALLIANCE AND BARTENDERS INTERNATIONAL LEAGUE OF AMERICA, LOCAL 402, AFL, PETITIONERS

Cases Nos. 21-R-3650, 21-R-3696, and 21-R-3702. —Decided May 22, 1947

Gray, Cary, Ames & Driscoll, by *Mr. James W. Archer*, of San Diego, Calif., and *Latham and Watkins*, by *Mr. Richard W. Lund*, of Los Angeles, Calif., for the Employer and the San Diego Retail Associates.

Mr. Robert W. Gilbert, of Los Angeles, Calif., for Locals 102, 1222, and 402.

Miss Irene Shriver, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTIONS

Upon separate petitions ¹ duly filed, hearing in this case was held at San Diego, California, on January 6, 1947, before Daniel J. Harrington, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Whitney's Department Store is a retail establishment located in San Diego, California. It is owned by Speigel, Inc., whose headquarters are in Chicago, Illinois. During the year ending December 31, 1946, the Employer purchased materials exceeding \$2,500,000 in

¹ These cases were consolidated by order of the Board on December 13, 1946.

value, of which approximately 40 percent was obtained outside the State of California. During the same period, the Employer's sales were in excess of \$3,705,000, of which less than one-half of 1 percent was to out-of-State customers.

We find, contrary to its contention, that the Employer is engaged in commerce within the meaning of the National Labor Relations Act.²

II. THE ORGANIZATIONS INVOLVED

Building Service Employees' International Union, Local 102, herein called Local 102, is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

Retail Clerks' International Association, Retail Department and Specialty Store Clerks Union, Local 1222, herein called Local 1222, is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

Hotel and Restaurant Employees' International Alliance, and Bartenders International League of America, Local 402, herein called Local 402, is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

III. THE QUESTIONS CONCERNING REPRESENTATION

The Employer refuses to recognize Local 102, Local 1222, and Local 402 as the exclusive bargaining representatives of employees of the Employer until certified by the Board in an appropriate unit.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNITS

Local 102 requests a unit composed of all the Employer's janitors, maids, guards and/or watchmen, elevator operators, and window cleaners, excluding store detectives. Local 1222 desires a unit consisting of all the Employer's retail sales personnel, including assistant buyers, floor supervisors, department heads, stockroom employees, window trimmers or display workers, cashiers, and package wrap-

² *Matter of May Department Stores Company*, 71 N. L. R. B. 1214; *Matter of J. L. Brandeis & Sons*, 50 N. L. R. B. 325, 47 N. L. R. B. 614, 53 N. L. R. B. 352, enforced 142 F. (2d) 977 (C. C. A. 8), cert. denied 323 U. S. 751; *Matter of M. E. Blatt Company*, 38 N. L. R. B. 1210, enforced 143 F. (2d) 268 (C. C. A. 3); *Matter of Loveman, Joseph & Loeb*, 56 N. L. R. B. 752, enforced 146 F. (2d) 769 (C. C. A. 5).

pers, excluding all employees in leased departments,³ clerical employees of the inner and outer offices, the display manager, and all other supervisory employees. Local 402 requests a unit of all employees of the employees' eating place on the Employer's premises. The Employer opposes the establishment of the aforesaid proposed units and contends that the only appropriate unit is one embracing the employees of all the employer-members of the San Diego Retail Associates, herein called the Associates, of which the Employer is a member. The Employer also disputes the inclusion of certain categories of employees in the proposed units. There is no conflict between the units proposed by the respective petitioners.

The Associates is a group of 26 merchants located in San Diego who together do about 75 or 80 percent of all the mercantile business in that area. The membership of the Associates includes department stores, clothing stores, music stores, and a furniture store. The Associates was incorporated in 1938, and one of its purposes, as outlined in its Articles of Incorporation, is to negotiate with labor organizations on behalf of its members. Its board of directors is empowered under its bylaws to handle the labor disputes of its members and to negotiate collective bargaining agreements on their behalf. The record shows, however, that in the 9 years of its existence, the Associates has had no significant history of collective bargaining. While it undertook to handle about 4 labor disputes for its members, it has not executed any collective bargaining agreements. In addition, no claim is made, nor does it appear, that any of the labor organizations herein has organized the employees of all members of the Associates. Under all the circumstances, including the absence of a collective bargaining history on a multiple-employer basis, we find that a unit of all the employees of the members of the Associates is inappropriate at this time. We further find that bargaining units confined to the employees of the Employer are appropriate and will effectuate the rights of these employees to bargain collectively through representatives of their own choosing.⁴

The Employer would exclude the following categories of employees from the proposed units.

Guards and/or watchmen: The record shows that Gus Wahl is the only employee who falls within this classification. He is an armed and deputized police officer whose primary duty is to protect the Employer's property. He works at night when the store is closed and

³ These departments are leased to the Wohl Shoe Company of St. Louis, the Millinery Stores Company, Baranov's, Stanley Andrews, and the Balboa Paint Company. The optometry department is also a leased department.

⁴ *Matter of Hale Brothers Stores, Inc.*, 62 N. L. R. B. 367.

spends his time making the rounds, punching clocks at various intervals, and, in general, performing the duties usually associated with an employee in this capacity. Wahl makes his reports to the store manager. We perceive no reason why Wahl, who performs no monitoring duties in relation to other employees, should be excluded.⁵ Accordingly, we shall include Wahl.

The assistant buyers: There are seven assistant buyers employed by the Employer, all of whom are under the supervision of the buyers. In addition to their buying functions, the assistant buyers are responsible for the supervision of their departments. They have authority effectively to recommend the transfer and discharge of employees. We find that the assistant buyers are supervisory employees within the meaning of our customary definition and, accordingly, we shall exclude them.

Floor supervisors: These employees, of whom there are five, work under the assistant buyers. They handle the customer relations of several departments and are responsible for the efficiency of the personnel in those departments. They have authority to recommend the hire, discharge, and promotion of employees. We shall, therefore, exclude them.

*Department heads:*⁶ There are approximately 36 employees in this category. While the major portion of their time is spent in sales work, it is also their function to see that the stock in their departments is properly displayed, that the department is neat and clean, and that its personnel is efficient and productive. They fill out employee rating charts which are relied upon by the buyer in determining whether employees shall be transferred to other departments or discharged. The department heads, moreover, have authority to recommend the transfer, promotion, or discharge of employees to the floor supervisors. We find that the department heads are supervisory employees within the meaning of our usual definition. We shall, therefore, exclude them.

Window trimmers or display workers: These employees trim windows and are supervised by the display manager. Although their work differs from that of the sales employees, they perform necessary functions in retail sales establishments. We are of the opinion that the window trimmers, except for the display manager, have a substantial community of interest with the sales employees to warrant their inclusion in the unit.

We find that the following groups of the Employer's employees, excluding all employees in leased departments and all supervisory em-

⁵ *Matter of Morden Frog & Crossing Works*, 62 N. L. R. B. 1270; *Matter of Gunitite Foundries Corporation*, 65 N. L. R. B. 43

⁶ These employees may also be classified as heads of stock.

ployees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

1. All janitors, maids, elevator operators, window cleaners, including the guard or watchman, but excluding store detectives.

2. All retail sales personnel including stockroom employees, window trimmers or display workers, cashiers, and package wrappers, but excluding buyers, assistant buyers, floor supervisors, department heads or heads of stock, and the display manager.

3. All the employees of the employees' eating place on the Employer's premises.

DIRECTION OF ELECTIONS

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Whitney's Department Store, San Diego, California, 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 Twenty-first Region, acting in this matter as agent for the National Labor Relations Board, and subject to Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, among the employees in the units 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 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, for the purposes of collective bargaining,

(1) The employees in Group 1 desire to be represented by Building Service Employees' International Union, Local 102, AFL;

(2) The Employees in Group 2 desire to be represented by Retail Clerks' International Association, Retail Department and Specialty Store Clerks Union, Local 1222, AFL;

(3) The employees in Group 3 desire to be represented by Hotel & Restaurant Employees' International Alliance, and Bartenders International League of America, Local 402, AFL.

MR. JAMES J. REYNOLDS, JR. took no part in the consideration of the above Decision and Direction of Elections.