

In the Matter of ALLIED STORES OF OHIO, D/B/A A. POLSKY COMPANY,
EMPLOYER and SERVICE AND PRODUCTION LOCAL 463-S, AMALGAMATED CLOTHING WORKERS OF AMERICA (CIO), PETITIONER

Case No. 8-RC-701.—Decided August 14, 1950

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Charles A. Fleming, 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 this case, the Board finds:

1. Employer is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

The Petitioner requests a unit of all restaurant employees at the Employer's retail department store. The Employer takes the position that this unit is inappropriate on the ground that a store-wide unit is the only appropriate unit.

In Akron, Ohio, the Employer operates a retail department store of the usual type with about 1,000 employees, 66 of whom work in the restaurant department. With 3 exceptions, all departments of the store including the restaurant are located in the main building. The restaurant department consists of 4 separate eating places: The tea-room on the first floor mezzanine; the employees' cafeteria on the second floor; the snack bar likewise on the second floor; and the luncheonette in the basement. All 4 eating places are served by the 1 kitchen located on the first floor. All operations of the restaurant and all employees employed in the restaurant, including waitresses, bus boys, cooks and other kitchen help, and cashiers, are under the direction of a restaurant manager who is responsible to the manager of the Employer's nonselling operations.

There is no history of collective bargaining with respect to the Employer's restaurant department employees.

It is the contention of the Employer that because the conditions of employment of the restaurant employees are similar to those of the remaining store employees, the restaurant group should not be segregated for the purposes of collective bargaining. Thus the Employer introduced evidence which discloses that all store employees, both selling and nonselling, are hired under the same processing procedure, are paid comparable wages, receive the same vacation, holiday, insurance, termination, credit and discount benefits, and have use of all store facilities. In further support of the Employer's contention, the evidence also shows that all departments including the restaurant have the same degree of physical separation from each other; that all employees go through the same induction training period; and that the identical payroll system is used with respect to all employees.

On the other hand, the record discloses that the restaurant department employees receive a special on-the-job training in addition to the regular induction training; that their working schedule is dependent not upon the opening and closing hours of the store but upon the hours during which the various restaurant units are open; that although the 40-hour week is conventional in the store, a large percentage of restaurant employees average about 30 hours per week due to the curtailed restaurant operation schedule; that because of the nature of their work restaurant employees have one-half hour for lunch whereas the remaining employees have a full-hour lunch period; and that restaurant employees alone have their meals and uniforms furnished them by the Employer.

Upon the basis of the foregoing, it is clear that although the restaurant employees participate equally with other store employees in many employment benefits, they also have among themselves a mutuality of employment interests not shared by the remaining employees. The distinguishing conditions of employment which give rise to this mutuality are inherent in, and exist solely by virtue of, the type of work performed by the restaurant employees. This work requires specialized training and is singularly different from the usual retail store or industrial plant work. Because of this, those performing the work possess a skill not shared by other retail store selling or nonselling employees or by production and maintenance employees. It was the recognition of the homogeneity and distinctiveness of restaurant employees as a group which prompted the Board in the past to find that restaurant or cafeteria employees in retail department

stores¹ and in industrial plants² constitute units appropriate for the purposes of collective bargaining.

In this case, however, the Employer contends that the unit sought by the Petitioner can be found appropriate only if extent of organization is considered as the controlling factor.³ We do not agree. As pointed out above, there are a number of reasons, wholly apart from extent of organization, for establishing the restaurant employees in a separate unit. Moreover, as we have recently pointed out in finding a unit of building service employees of a retail department store appropriate, "there is nothing in the Act to preclude the Board from considering extent of organization as one of the factors to be weighed in determining the appropriateness of a unit" especially where, as here, "there is no other labor organization seeking to include the employees herein involved in a broader unit."⁴

The Employer further contends that the frequent transfer of employees to and from the restaurant further militates against the segregation of the restaurant employees in a separate unit. Although it is true that there was a total of 11 transfers of *employed* personnel (as distinguished from rehired personnel) in and out of the restaurant in both 1947 and 1948, there were only 2 such transfers in the most recent year, 1949. These 2 transfers involved a restaurant cashier being promoted to a floor manager and counter sales clerk in turn being made a restaurant cashier. Further, an examination of the transfer records of the Employer shows a steady decline of transfers in recent years. The record also shows that many of these transfers are made at the employees' request. Under these circumstances, we are not persuaded that the transfers affecting restaurant personnel so dilutes the homogeneity and distinctiveness of the group as to afford sufficient reason for denying it separate representation.

We therefore find, in the absence of a history of collective bargaining on a store-wide basis, that all restaurant employees at the Employer's Akron, Ohio, store, excluding guards, professional employees,

¹ *Marshall Field & Company*, 74 NLRB 411; *Whitney's Department Store*, 73 NLRB 1245; accord *Denver Dry Goods Company*, 74 NLRB 1167. But cf. *Maas Brothers, Inc.*, 88 NLRB 129; *Wise, Smith & Company, Inc.*, 83 NLRB 1019. In the *Marshall Field* case, in finding the unit appropriate, the Board, at p. 413, stated: "Because it appears that various categories of employees in the restaurant division have common, separate supervision, and that their training, skills, and interests differ from those of other store employees, we find that they constitute a well-defined homogeneous grouping, appropriate for the purposes of collective bargaining."

² *McInerney Spring and Wire Company*, 61 NLRB 842; *Duplex Printing Press Company*, 53 NLRB 503; see *U. S. Rubber Co.*, 78 NLRB 532; *Armour and Company*, 60 NLRB 740; accord *Hughes Tool Company*, 88 NLRB 1039; *Rockford Machine Tool Co.*, 64 NLRB 1400.

³ Section 9 (c) (5) provides: "In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling."

⁴ *Thalhimer Brothers, Incorporated*, 83 NLRB 664.

and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.⁵

5. There are about nine employees in the restaurant department who work less than 30 hours a week. The record shows that these individuals are regular part-time employees. They shall therefore be eligible to vote in the election hereinafter directed.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Region in which this case was heard, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the payroll period immediately preceding the date of this Direction of Election, including employees who did not work during said payroll period because they were ill or on vacation or temporarily laid off, 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, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by Service and Production Local 463-S, Amalgamated Clothing Workers of America (CIO).

⁵ To the extent it is inconsistent with this Decision, *Thalhimer Brothers, Incorporated*, 81 NLRB 1175, is hereby overruled.