

the Teamsters has bargained actively on behalf of these employees for the past 10 years. Although the hours provision of its contract with the Continental Company apparently was not enforced, other provisions as modified by some oral agreements have formed the functioning basis for the separate representation of the Continental salesmen.¹⁰ The Board has held that a single-employer unit is presumptively appropriate and that where, as here, there is a history of single-employer bargaining by a member of an employer association with regard to a special category of employees, the fact that other employees of these employers have engaged in multiple-employer bargaining does not overcome the presumption that the former are properly represented in separate units.¹¹ Accordingly, we find that a unit restricted to the salesmen of the Employer is appropriate.¹²

We find that all local and out-of-town bread and cake route salesmen operating out of the Employer's plant at 1223 West 7th Street in Little Rock, Arkansas, excluding all office and clerical employees, all other employees, 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.

[Text of Direction of Election omitted from publication in this volume.]

¹⁰ While the Teamsters' contract, containing a union-security clause made illegal under the amended Act, would not bar a representation proceeding, the presence of this clause in the contract does not mean that the Board will give no weight to the single-employer bargaining history existing before and after the passage of the amended Act. *Southwest Truck Body Company*, 93 NLRB 1341.

¹¹ *Rainbo Bread Co.*, 92 NLRB 181; see also, *Metro Glass Bottle Co.*, 96 NLRB 1008; cf. *Columbia Pictures Corporation, et al.*, 84 NLRB 647.

¹² The Employer contends that the Teamsters' request is based upon the extent of its organization and submitted in evidence a letter, dated December 26, 1945, from the Teamsters to the Continental Baking Company in which the former expressed a desire to continue its contract with Continental until its organization of one of the other major bakeries in Little Rock would make possible a multiemployer contract. However, in making the above unit determination we have not relied upon the extent of the Teamsters' organization among the salesmen of the Council as a controlling factor. *Teletchron, Inc.*, 90 NLRB 931.

KRAFT FOODS COMPANY and CHARLES T. ROESSLER, PETITIONER and LOCAL 264, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL. Case No. 3-RD-46. January 18, 1952.

Decision and Direction of Election

Upon a petition for decertification duly filed, a hearing was held before William Naimark, hearing officer. The hearing officer's rulings
97 NLRB No. 178.

made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Murdock and Styles].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the act.

2. The decertification Petitioner asserts that the Union, which is currently recognized by the Employer, is no longer the bargaining representative of the employees of the Employer as defined in Section 9 (a) of the Act.

3. The Union contends that the petition should be dismissed on the ground that the individual Petitioner is either a supervisor or an agent of the Employer. The record shows that the Petitioner is a driver-salesman who performs the same work as the other driver-salesmen, and has no supervisory authority. In addition, the record shows that the Petitioner had no conversation with the Employer regarding the filing of the petition herein, and was not offered any inducement by the Employer to file the instant petition. In fact, the petition was initiated following a meeting between a Board agent and several employees who were dissatisfied with their present union representative, and who sought the advice of the Board agent at the suggestion of a disinterested party whom they had consulted prior to their meeting with the Board agent. We accordingly reject the Union's contentions.

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.¹

4. The appropriate unit:

The Petitioner requests that a decertification election be held among the following employees at the Employer's Buffalo, New York, plant: All salesmen, drivers, and warehousemen, excluding all other employees, including guards, professional employees, and supervisors.

The Union contends that the unit sought is inappropriate, and that the Board should establish separate units (1) for the salesmen and (2) for the warehousemen and deliverymen.² The Petitioner and the Employer contend that the unit sought is appropriate.

¹ Although there is currently no contract between the Employer and the Union, the last contract between the parties having expired on May 1, 1951, the Employer indicated at the hearing that it still recognizes the Union as the representative of its employees. No contrary contention was made by the Union.

² The Union at the hearing made a motion to dismiss the petition on the ground that the unit sought by the Petitioner is inappropriate. In view of our findings herein, this motion is denied.

The Employer, a Delaware corporation, is engaged in the sale and distribution of food products from its Buffalo, New York, plant to customers in Buffalo, Olean, and Jamestown, New York, and Erie, Pennsylvania. In 1940 the Union was recognized by the Employer as bargaining representative for a unit composed of salesmen, deliverymen, warehousemen, and garage mechanics. Shortly thereafter, the Union was recognized as representative for the Employer's office and clerical employees. In 1947 the Union disclaimed any interest in the representation of the office and clerical employees in favor of another labor organization, and since that time the Union has not represented these employees. Commencing in 1947 the Employer and the Union have executed annual contracts covering salesmen, deliverymen, warehousemen, and garage mechanics. However, the parties have during that period executed two separate contracts—one covering the conditions of employment for the salesmen, and the other for the warehousemen, deliverymen, and garage mechanics. In 1948, pursuant to a union-shop authorization election, the Union was certified for a unit composed of salesmen, drivers, shippers, and garage employees.³ The most recent contracts between the parties expired on May 1, 1951. These contracts excluded the Employer's salesmen in Olean and Jamestown, New York, and Erie, Pennsylvania.

At its Buffalo plant the Employer employs driver-salesmen, one advance salesman, deliverymen, and warehousemen. The driver-salesmen drive trucks containing products of the Employer, solicit orders from its customers, and as they are obtained, fill them from the trucks. The advance salesman solicits orders from the customers, and the products are later delivered by deliverymen. In addition, the deliverymen drive trucks loaded with products to Olean, Jamestown, and Erie, where their loads are transferred to other deliverymen of the Employer stationed permanently in those towns. The latter complete the deliveries to individual customers.⁴

The Employer's warehousemen at the Buffalo plant accept incoming shipments, pack outgoing shipments, and load the trucks of the deliverymen. The warehousemen and deliverymen work under the supervision of the warehouse superintendent. The driver-salesmen and the advance salesman work under the supervision of the assistant branch manager. Separate seniority systems are maintained for the warehousemen, deliverymen, and salesmen. The driver-salesmen have little contact with the warehousemen or the deliverymen, as the driver-salesmen load their own trucks and deliver the products themselves.

³ 3-UA-585. The unit was stipulated by the parties.

⁴ Orders from these customers are obtained by advance salesmen stationed in those towns.

When deliverymen are not occupied in delivery work, they work in the warehouse, and warehousemen on occasion drive trucks.

The fact that, departing from their prior practice, the parties since 1947 have executed two separate contracts, as set forth above, rather than single contracts for all the employees represented by the Union, is not conclusive evidence of a history of bargaining for each of the groups covered by the later contracts on the basis of recognizing each as a separate unit. The contracts do not set forth separate units, but merely separately cover the wages, hours, and working conditions of each group respectively. Under the foregoing circumstances, and upon the entire record, we find that, while separate units might be appropriate, the over-all unit for which the Union is currently recognized, is also appropriate.

The Union seeks to exclude, as a supervisor, Fred Wrona, a warehouseman. The Petitioner and the Employer would include him. Wrona has been employed by the Employer about 20 years as a warehouseman. Although Wrona is instructed by the warehouse superintendent, under whose supervision he and the other warehousemen work, to "see that things were going right" in his absence, he does not on such infrequent occasions, or any other occasions, have the authority to hire, discharge, discipline, or reward other employees or effectively to recommend such action. Accordingly, we find that Wrona is not a supervisor, and we shall include him in the unit.⁵

The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All driver-salesmen, including the advance salesman, deliverymen, and warehousemen at the Employer's Buffalo, New York, plant, but excluding guards, watchmen, professional employees, and supervisors as defined in the Act.⁶

5. The parties are in dispute concerning the voting eligibility of five deliverymen and a garage mechanic,⁷ who were laid off by the Employer. While the Petitioner and the Employer contend that these employees have been indefinitely laid off, and are therefore ineligible

⁵ *S. Slater & Son*, 96 NLRB 1026

⁶ The Employer would include in the unit the deliverymen stationed in Olean, Jamestown, and Erie. These employees were hired subsequent to the expiration of the most recent contracts. The Union would exclude them. The petition does not request their inclusion. As these deliverymen are not currently represented by the Union, nor covered by any of the contracts, their inclusion in the decertification unit would not be appropriate. *Mountain States Telephone and Telegraph Company*, 83 NLRB 773. They will accordingly, be excluded.

⁷ We do not include the garage mechanic in the unit found appropriate because there are none presently employed or likely to be employed. See paragraph numbered 5 of text. Moreover, no request was made for inclusion of garage mechanics, except insofar as such request may be inferred from the Union's contention that the garage mechanic recently laid off should be eligible to vote.

to vote in the election, the Union contends that they are only temporarily laid off and should be permitted to vote.

As a result of a change in the Employer's method of operation five deliverymen and a garage mechanic were laid off in May 1951. Their reemployment is not contemplated within the foreseeable future. Accordingly, we find that they are not eligible to vote.³

[Text of Direction of Election omitted from publication in this volume.]

³ *F. B. Rogers Silver Company*, 95 NLRB 1430. The garage mechanic would not, in any event, be eligible to vote, as he has not been included in the unit found appropriate. See footnote 6, *supra*.

WALGREEN CO. OF NEW YORK, INC. *and* CHAIN SERVICE RESTAURANT, LUNCH & SODA FOUNTAIN EMPLOYEES UNION, LOCAL NO. 11, AFFILIATED WITH HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A. F. L., PETITIONER. *Case No. 2-RC-3748. January 18, 1952*

Decision and Direction of Elections

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Lloyd S. Greenidge, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Houston and Murdock].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim 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.¹

4. The principal issue presented in this proceeding concerns the appropriateness of joining, for collective bargaining purposes, both the soda fountain employees and the great majority of all other employees (called the drug departments) in the Employer's 15 drug

¹ The Employer asserts that the petition is not supported by an adequate showing of interest and apparently contends that the petition should therefore be dismissed. We find no merit in this contention because the showing of interest in a representation proceeding is not subject to collateral attack. *O. D. Jennings & Co*, 68 NLRB 516; *The Visking Corporation*, 90 NLRB 1006.