

Elizabeth Powell	Charlotte Droneburg
Carl Ridgley	Austin G. Fisher
Hilda Shank	Gertrude Glass
Blanche Tracey	Barbara Hane
Jacob D. Weatherholt	Paul Hildebrand
Jean M. Yeager	Melton Holt
Estelle M. Baker	Edward B. Jones, Jr.
Mary K. Burrier	William J. Koontz
George Franklin Freed	James E. May
Charles H. Hahn	Martha O'Brien
George W. Harris	Dorothy Owens
Barbara S. Koontz	Melvin Riddle
Mehrl L. Murphy	Joyce Rippeon
Martin L. Wachter, Jr.	Ruth Stupp
Emma Aumen	Thomas B. Wainwright
Vernon Baer	Carrie White
Robert T. Baumgardner	Irene Zimmerman
Chester Blank	Frances C. Blinkenstaff
Mehrl Bopst	Ellen E. Freed
Betty Brunner	Edward L. Gray
Betty Butler	Frances C. Hardman
Lee Cline	Oscar P. Johnson
Pauline Cole	Pauline F. Kreh
Ruth Boone	Mary A. Staley
Morris Damuth	

and thereafter prepare and cause to be served upon the parties a supplemental tally of ballots, including therein the count of the challenged ballots.

MEMBER HOUSTON took no part in the consideration of the above Second Supplemental Decision and Direction.

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STINWAY DRUG CO., INC., ET AL.,<sup>1</sup> PETITIONER *and* DRUG STORE, SODA FOUNTAIN AND LUNCHEONETTE EMPLOYEES UNION, LOCAL 658, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL. *Case No. 13-RM-146. February 24, 1953*

### 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 Herman J. DeKoven,

<sup>1</sup> The following companies and individuals are also named as petitioners: Frieden Drug Co.; A. Z. Drug Co.; Grand Drug Co.; Thaddeus Skarr; Congress-Michigan Pharmacy; Bernard G. Goldsmith; Cyrus M. Spanuth; David Brody; Martin H. Barnes Pharmacy, Inc.; Dubow Drug Co.; David L. Posner & Stewart Mesirov; Sol Mansky; Harold D. Erickson; Day Drug Co.; and Robert E. Martin Drug Co.

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 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 sole issue raised by the parties is whether the bargaining unit should be limited in scope to 20 drug stores and a cafeteria and commissary directly owned and operated by Stineway Drug Co., Inc., herein called "Stineway," or also include 15 individually owned drug stores known as Stineway Drugs System Stores, herein called "System stores." Unlike Stineway and the individual owners of the System stores, the Union would exclude all System stores. However, the Union is willing to go to election in whatever unit the Board finds appropriate.

All of the stores, except for one of the System stores,<sup>2</sup> are located in Chicago, Illinois. One System store is located in the Chicago downtown area known as the "Loop," while the other 14 System stores are situated in various outlying areas. Many of the Stineway stores are in the "Loop," but some are also in outlying areas. Fourteen of the System stores were formerly Stineway stores; all of the individual owners are former managers of Stineway stores. To assist its former managers to become store owners, Stineway loaned them the necessary funds to purchase the equipment, and took back chattel mortgages.

In addition to this chattel mortgage arrangement, each System store owner has a contract with Stineway making him a licensee of Stineway, with the right to use the style, "Stineway Drugs System Store," and the term "licensee" after his name. The contract also provides that all merchandise must be purchased from Stineway or from a supplier designated by Stineway, and that all prices and store hours will be fixed by Stineway. Moreover, the owners must operate the

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<sup>2</sup> The Union stated at the hearing that it does not have jurisdiction in Oak Park, Illinois, a Chicago suburb where the only System store outside of Chicago is located, and that it could not in any event accept members from this store. As a union's jurisdictional limitation on membership is not a valid reason for excluding employees from a bargaining unit, we shall not give special consideration to the Union's position with respect to this store. *F. B. Silverwood, a corporation d/b/a Silverwood's*, 92 NLRB 1114.

stores in accordance with Stineway practice and policy down to minute details, including the arrangement of the counters, departments, and showcases. The owner himself is required to work at least 40 hours per week. Stineway reserves the right regularly to inspect the premises and the books of the store, and to make inventories at the expense of the licensee.

The contract further provides that the licensee shall maintain the necessary and efficient staff required for operation of the store, that all individuals employed shall be subject to Stineway's approval, and that Stineway may require the licensee to discharge any employee on request. The record shows, however, that in practice a System store almost never hires a new employee without first calling Stineway's personnel office, which acts as an employment agency for both System and Stineway stores. In case of emergency or when Stineway's personnel office is unable to fill a vacancy, both System stores and Stineway stores do their own hiring, subject to subsequent approval by the Stineway office. Names of such new employees not recruited through the personnel office are reported by System stores for approval. The Stineway personnel office makes up the payroll for all Stineway store employees, but the payrolls for System store employees are made up at each store. Approximately one-half of the present System store employees were engaged by Stineway.

During the past year, there were about 300 temporary (1 day) transfers of employees between Stineway and System stores, and 10 or 15 permanent transfers. In the same period, Stineway's personnel office arranged about 24 transfers from one System store to another. Of these transfers, nearly one-half were permanent. Furthermore, twice in the past year, when a store owner was ill, Stineway insured continued operation of the store by installing one of its salaried managers at the expense of the System store.

Rates of pay and hours of work for System store employees generally follow those of Stineway store employees. Although Stineway's personnel chief agreed at the hearing that the System stores are not bound by the contract to conform to Stineway store practice as to wages and hours, he cited instances where he had objected to wages of System store employees as being "out of line," and added that the System stores usually followed his suggestions in these matters or appealed to higher authority in the Stineway managerial hierarchy. He mentioned, however, a recent instance when he was overruled by a System store owner who paid an "out of line" wage to a fountain girl because the store could get no one else. The practice of giving bonuses at Christmas and on other occasions is identical in both Stineway and System stores. However, System store employees do not share in the pension plan and free life insurance provided for Stineway store employees.

Past collective bargaining among both groups of employees has been limited to two contracts now in existence. The Stineway stores have a collective-bargaining agreement with another union for all employees classified as porters, a category specifically excluded from the unit involved in this proceeding. On the other hand, the Union has a collective-bargaining agreement with one of the System stores covering the categories of employees involved here. This last contract was negotiated by counsel employed by Stineway without charge to the System store thus represented, and it was approved by the president of Stineway before the System store owner signed the agreement.

On these facts we are satisfied that a unit limited to the employees of the Stineway stores would be inappropriate for collective-bargaining purposes. Notwithstanding the separate legal ownership of the two groups of stores, the employees of both are joined by a substantial community of interests in their conditions of employment. Thus, they are required to look to the Stineway management for establishment of their rates of pay, hours of work, tenure of employment, and general working conditions. The very considerable transfer of employees between Stineway and System stores emphasizes their common interests. We do not agree with the Union's contention that the existing contracts, limited to units smaller in scope but voluntarily established by the parties, preclude a present determination as to the all-inclusive bargaining unit shown appropriate by the facts in the record. Because of the highly centralized control over the general conditions of employment affecting all the employees here involved, we view Stineway and the various individual owners of the System stores as a single employer for purposes of collective bargaining with the employees.<sup>3</sup>

Accordingly we find that all employees of the Stineway Drug Co., Inc., and of the Stineway Drugs System Stores, employed in Chicago, Illinois, and suburbs, in drug stores, cafeterias and commissaries, soda fountains, luncheonettes or kitchens, including cashiers who handle food cash receipts only, but excluding drivers, warehousemen, bakers, hosts and hostesses, general office and clerical employees, pharmacists, pharmacists' assistants, porters who perform exclusively porter or a combination of porter and deliveryman functions, guards, professional employees, managers, assistant managers, and all supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.<sup>4</sup>

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

<sup>3</sup> *The Taubman Corporation*, 77 NLRB 846.

<sup>4</sup> The composition of the unit was stipulated by the parties.