

SCRIVNER STEVENS COMPANY, Petitioner *and* GENERAL DRIVERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION NO. 386. Case No. 16-RM-59. April 28, 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 John F. Funke, 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<sup>1</sup> finds:

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

2. The labor organization involved claims to represent certain employees of the Employer.

3. The Petitioner is a wholesale grocery company operating in Oklahoma City, Oklahoma. The Petitioner seeks a representation election within a unit composed of all warehousemen and truckdrivers employed at its Institutional Division, exclusive of office clerical employees, watchmen, and all supervisors as defined in the Act. The Union contends that a contract between it and the Petitioner which was executed on July 10, 1952, and which expires on July 10, 1953, is a bar to the proceeding. This contract by its terms covers an appropriate unit of the Petitioner's warehouse employees at its "main warehouse" in Oklahoma City.

From 1949 until November 1952 the Petitioner maintained 1 warehouse in Oklahoma City in which it operated under 2 distinct systems of grocery merchandising, 1 providing for distribution to retail grocery stores and the other providing for distribution to institutions of various types. Although these 2 systems are based upon different theories of merchandising in that under the former large quantities of groceries are sold to a small number of customers and under the latter small amounts are sold to a great number of customers, the duties of the employees under both systems are substantially similar. In November 1952, due to the overcrowded conditions in the existing warehouse and the fact that the 2 systems could not operate properly in the same warehouse, the Petitioner opened another plant in the city to handle its institutional trade exclusively. This warehouse is currently known as the Institutional Division, the employees of which are involved in this proceeding. With the exception of 1 truckdriver who was transferred directly from the Petitioner's main warehouse, the remaining 6 warehousemen and truckdrivers hired at the Institutional Division are new employees.

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<sup>1</sup>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 [Members Houston, Murdock, and Styles].

Upon the basis of the foregoing facts, we are of the opinion that that Institutional Division is tantamount to a completely new operation and that the contract between the Petitioner and the Union executed prior to the new operation is not a bar to an election among the warehousemen and truckdrivers employed at the Institutional Division.<sup>2</sup> Accordingly, we find that a question affecting commerce exists concerning the representatives of certain employees of the Employer-Petitioner within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The record reveals that the work now being performed at the Institutional Division is the same as was performed at the main warehouse before the separation of functions, and furthermore that the duties of the warehousemen and truckdrivers at the new division are substantially similar to those of the employees presently employed at the main warehouse. The evidence further reveals that a substantial portion of all groceries distributed by the Institutional Division is acquired from the main warehouse, and that all employees at the new division are on a payroll prepared at the main warehouse. The employees at the new division, however, are under the separate supervision of the manager of the division.

Upon the basis of these facts we are of the opinion that either a separate unit of the employees at the Institutional Division or a unit consisting of the employees currently represented by the Union at the Petitioner's main warehouse together with the Institutional Division employees may constitute a unit appropriate for the purposes of collective bargaining. We shall, therefore, make no determination with respect to the employees at the Institutional Division at this time, but shall first ascertain the desire of these employees as expressed in the election directed herein.<sup>3</sup>

We shall direct an election among the following employees: All warehousemen and truckdrivers employed at the Employer-Petitioner's Institutional Division warehouse in Oklahoma City, Oklahoma, excluding office clerical employees, watchmen, and all supervisors as defined in the Act.

If the majority of the employees in the above voting group cast their ballots for the Union, they will be taken to have indicated their desire to be part of the existing warehousemen and truckdrivers unit at the Employer-Petitioner's main warehouse in Oklahoma City.

**[Text of Direction of Election omitted from publication.]**

<sup>2</sup>Richard Alan Button Company, 94 NLRB 1429; see also General Electric Company, 85 NLRB 150.

<sup>3</sup>Ware Laboratories, Inc., 98 NLRB 1141.