

## V. THE REMEDY

Having found that Respondents have engaged in conduct violating Section 8 (b) (4) (A) and (B) of the Act, I will recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, I make the following:

## CONCLUSIONS OF LAW

1. Local 47, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, is a labor organization within the meaning of Section 2 (5) of the Act and Respondents Glenn Bailey and H. Blankenship are its agents.

2. By engaging in and directing picketing with an object thereof to force or require Bateson and McCann to cease doing business with Texas and Hall and with a further object of forcing or requiring other employers to cease doing business with Texas and Hall so as to force or require Bateson and McCann to cease doing business with Texas and Hall, Respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act.

3. By engaging in and directing picketing with an object thereof to force or require Texas and Hall to recognize or bargain with Respondent Union as the representative of their employees when Respondent Union had not been certified as the representative of such employees under the provisions of Section 9 of the Act, and with a further object of forcing or requiring other employers to cease doing business with Texas and Hall when Respondent Union had not been certified as the representative of the employees of such other employers so as to force or require Bateson and McCann to cease doing business with Texas and Hall, Respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (4) (B) of the Act.

4. By presenting a contract proposal to Bateson and McCann which provided that their subcontractors shall assume all of its terms and conditions and causing or attempting to cause the execution of same and procuring Bateson's agreement thereto, with objects thereof to force or require Bateson and McCann to cease doing business with Texas and Hall and also to force or require Texas and Hall to recognize or bargain with Respondent Union as the representative of their employees when Respondent Union had not been certified as the representative of such employees under the provisions of Section 9 of the Act, and with further objects of forcing or requiring other employers to cease doing business with Texas and Hall so as to force or require Bateson and McCann to cease doing business with Texas and Hall, and, also, of forcing or requiring other employers to cease doing business with Texas and Hall when Respondent Union had not been certified as the representative of the employees of such other employers so as to force or require Bateson and McCann to cease doing business with Texas and Hall, Respondents have engaged in unfair labor practices within the meaning of Section 8 (b) (4) (A) and (B) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

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**Ozburn-Abston and Co., Inc. and Retail Clerks International Association, Local 1529, AFL, Petitioner. Case No. 32-RC-818.**  
*May 24, 1955*

## 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 Samuel J. Weintraub, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>1</sup>

<sup>1</sup>The Employer contended at the hearing that the Petitioner had not made an adequate showing of interest. The Board has consistently held that the showing of interest is an

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 appropriate unit:

The Petitioner seeks a unit of all employees employed by the Employer at its warehouse and branch stores in Memphis, Tennessee, excluding machine shop employees, outside salesmen, cafeteria employees, service shop employees, over-the-road truckdrivers, head countermen, office clerical employees, guards, and supervisors as defined in the Act.

The Employer is a wholesale distributor of automotive parts and equipment. It has 48 branch wholesale stores located in 6 southern States. The general warehouse, 4 branch stores, and a service shop are located in Memphis, Tennessee. The Employer agrees that an overall unit for its Memphis, Tennessee, operations is appropriate but would include therein the outside salesmen, cafeteria employees, head countermen, service shop employees, and over-the-road truckdrivers.

*Outside salesmen:* Although these employees are assigned to a certain branch store and are carried on the store payrolls, they spend most of their time outside of the store soliciting business from garages, service stations, and dealers. They do not have any established working hours, furnish their own cars used in their work, and are paid on a commission basis, while the countermen are paid on an hourly basis and have fixed hours of employment. Furthermore the countermen are subject to the direction of the head countermen, while this is not true of the outside salesmen. We find that the interests and conditions of employment of the outside salesmen differ substantially from those of the other employees sought in the unit and, therefore, shall exclude them from the unit.<sup>2</sup>

*Cafeteria employees:* Two employees, a cook and a cook's helper and dishwasher, work in a lunchroom or cafeteria which is located under the same roof as the general warehouse and branch store #41. This lunchroom is wholly owned and subsidized by the Employer and is operated for the benefit of all of the Employer's employees in the city of Memphis. These two cafeteria employees are under the direct supervision of the Employer's vice president and general manager,

administrative matter not subject to challenge by the parties at the hearing. *East Texas Steel Castings Company, Inc.*, 95 NLRB 1135, at p 1135; *Valencia Service Company*, 99 NLRB 343, at p 344. Moreover, we are administratively satisfied that the Petitioner has made an adequate showing of interest.

<sup>2</sup> *American Factors, Limited*, 109 NLRB 834.

are hourly paid, and receive the same employee benefits as the other employees sought in the unit. Furthermore, no other labor organization is seeking to represent these employees separately. In these circumstances, we find that their interests are not sufficiently distinct and severable from those of the other branch stores and warehouse employees to warrant their exclusion from proposed unit. We, therefore, shall include them.<sup>3</sup>

*Head countermen:* The Employer's vice president is also the general manager of its Memphis, Tennessee, branch stores; but he visits the stores infrequently and, in his absence, the head countermen are responsible for the operation of the stores. The head countermen are more experienced than the other store employees and direct the work of those employees, excepting the outside salesmen who are supervised directly by the general manager of the stores. They are responsible for training the countermen, authenticate the time records submitted by the other store employees, and certify the accuracy of the cash at the close of operations each day. Some employees have been granted pay raises on the basis of head countermen's recommendations. Other recommended raises, however, were not granted. The head countermen are paid on a monthly salary basis whereas the other store employees, excepting outside salesmen, are paid biweekly on an hourly basis. The head countermen are the only individuals in the stores who participate in a profit sharing plan at the end of each year. A head counterman's share is based solely upon the net profit of the store where he works. His remuneration is directly related to his ability to cut expenses, increase sales, and operate the store efficiently. In these circumstances, we believe that the head countermen responsibly direct the work of the other store employees. We therefore find that the head countermen are supervisors and shall exclude them from the unit.

*Service shop employees:* The Employer's service shop is located about a mile and a quarter from its warehouse. The Employer's warehouse services the needs of all 48 of its branch stores for automotive parts, supplies, and equipment, while the service shop services their requirements for automotive equipment parts, as distinguished from automotive parts. The service shop also repairs, services, and reconditions the automotive equipment, such as air compressors, grease guns, battery chargers, and motor tuners, sold by the Employer's 48 branch stores. As the service shop has no outside salesmen of its own, most of its repair and service work originates at these branch stores. The automotive equipment parts needed by the branch stores are delivered to the warehouse, from which they are transported to the branch stores, primarily by the Employer's over-the-road truckdrivers. These same drivers bring back defective automotive equipment, which

<sup>3</sup> *Nebel Knitting Company*, 106 NLRB 114, at p. 118; *S. H. Kress & Co.*, 92 NLRB 15, at p. 17; *Maas Brothers, Inc.*, 88 NLRB 129, at pp. 132-3

has been sold by the branch stores, for repairing at the service shop. In addition to the automotive equipment parts, the service shop carries a small stock of automotive parts. The Employer's vice president and general manager testified that the Employer plans to install a complete inventory of automotive parts, supplies, and equipment at the service shop to service its customers.

At the time of the hearing, the employee complement of the service shop consisted of 6 mechanics and a helper who primarily repair and service the automotive equipment which has been sold by the Employer, an inventory clerk who maintains a perpetual inventory record, a counterman who sells automotive parts and automotive equipment parts to local customers and writes job orders for the repair and service on automotive equipment for customers who visit the service shop, a delivery man, and a stock boy. Employees of the latter three classifications, perform duties similar to those performed by employees of those classifications at the branch stores.

The service shop employees, as well as the other employees whom the Petitioner would include in the unit, are paid biweekly on an hourly basis. They also receive the same employee benefits, i. e., holidays, vacation plans, and hospitalization plan, as the other employees.

In the aforesaid circumstances, we find that the duties, working conditions, and interests of the service shop employees are closely related to those of the branch stores and warehouse employees, and shall, therefore, include them in the unit.<sup>4</sup>

*Over-the-road truckdrivers:* The Employer's over-the-road truckdrivers are carried on the warehouse payroll and are under the immediate supervision of the warehouse foreman. Each driver usually makes three trips weekly to certain out-of-State branch stores. They ordinarily depart from the warehouse around 5 p. m., and return in about 26 hours, whereupon they leave their trucks at the warehouse, deposit their trip papers at the office, and go home. They do not ordinarily perform any work in the warehouse. The warehouse laborers load their trucks prior to departure and unload any merchandise or equipment which is returned by the drivers from the branch stores. These drivers are paid on a mileage-plus-fixed monthly expense account basis, while nearly all other warehouse employees are paid on an hourly basis. However, no other union is presently seeking to represent them in a separate unit. We believe that, despite the disagreement of the parties, the over-the-road truckdrivers may appropriately be included in a unit of production and maintenance employees. We shall, therefore, include the over-the-road truckdrivers in the unit.<sup>5</sup>

<sup>4</sup> *C. C. Anderson Stores Company*, 100 NLRB 986, at pp. 987-8; *The P. B. Magrane Store, Inc.*, 84 NLRB 345, at p. 346. See also *J. J. Moreau & Son, Inc.*, 107 NLRB 999, at p. 1001.

<sup>5</sup> See *Thomas Electronics, Inc.*, 107 NLRB 614, at p. 615.

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

All employees employed by the Employer at its warehouse, four branch stores, and service shop in Memphis, Tennessee, including cafeteria employees, and over-the-road truckdrivers, but excluding head countermen, outside salesmen, machine shop employees, office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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**Smithfield Packing Company, Incorporated and United Packing-house Workers of America, CIO, Petitioner.** *Case No. 5-RC-1597. May 24, 1955*

#### SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election dated March 3, 1955,<sup>1</sup> an election by secret ballot was conducted on March 23, 1955, under the direction and supervision of the Regional Director for the Fifth Region, among the employees in the unit found appropriate in the above-mentioned decision. Thereafter, a tally of ballots was furnished the parties, showing that out of 477 voters casting valid ballots, 289 voted for Employees Beneficial Association of the Smithfield Packing Co. (Ind.), 176 voted for Petitioner, 12 voted against the participating labor organizations, and 36 cast challenged ballots. On March 30, 1955, the Petitioner attempted to file objections to the election.

In his report on objections, issued and duly served upon the parties April 1, 1955, the Regional Director recommended that the objections be overruled and that Employees Beneficial Association of Smithfield Packing Co. (Ind.) be certified as exclusive bargaining agent for the employees in the unit found appropriate. On April 5, 1955, the Petitioner filed exceptions to the Regional Director's report and on April 6, 1955, filed a motion requesting that if the objections be considered untimely, the time for filing them be extended *nunc pro tunc*.

The Board has considered the Regional Director's report, the exceptions, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Regional Director.

As indicated in the report on objections, the Petitioner reached the Board's Regional Office after the close of its business day on March 30, 1955, and after all Board personnel had departed. March 30 was

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<sup>1</sup> Not reported in printed volumes of Board Decisions and Orders  
112 NLRB No 117.