

All production and maintenance employees at the Employer's Tour-napull, Georgia, plant including the chief tool grinder, stock chaser (fabrication, small parts department), production dispatcher (Tour-napull assembly), head parts room clerk and utility winders and assemblers (all in electrical production department), utility leadman (plant engineering department), and receiving clerk, head shipping clerk, head tool crib attendant, truckdrivers, receiving and claim clerk (all in material control, parts, and equipment shipping department), the assistant to the plant superintendent, and the order clerk, senior clerks, junior technicians, steel order clerk (all in production control department), and the cafeteria employees; and excluding all employees in industrial engineering department (including time-study employees), industrial relations department, executive department, housing department, purchasing department, engineering department (including the chief engineer records clerk, design draftsman, draftsman, and engineering draftsman), traffic department and the accounting department (including the cost analyst and normal cost analyst), and the stenographer in the production control department, and all other office clericals, professionals, guards and watchmen, the industrial chemist (heat treat, press and forge, laboratory department), and all supervisors as defined in the Act.¹²

[Text of Direction of Election omitted from publication.]

CHAIRMAN FARMER took no part in the consideration of the above Decision and Direction of Election.

¹² The parties stipulated to the exclusion of the employees in the following departments: Industrial engineering, industrial relations, executive, and housing. The Petitioner also sought in its petition to exclude sales employees, certain students and instructors, messengers, and busdrivers. The Employer has, however, no such employees. Neither does it possess a "standards department," the employees of which the Petitioner also sought to exclude.

Sigman Food Stores #27, Petitioner and Retail Clerks Union, Local No. 631, and Retail Clerks International Association, AFL and The Hotel, Restaurant Employees and Bartenders International, AFL, and Culinary Workers, Local No. 298.
Case No. 19-RM-161. August 15, 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 John H. Immel, Jr., 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. 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 certain employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Employer is engaged in the operation of 19 retail food stores located in the States of Washington, Oregon, and Idaho. This case concerns the store, designated as #27, at Moses Lake, Washington, which began operation on February 17, 1955.

The Employer seeks a determination of the bargaining representative of a unit of all employees at store #27, excluding the retail meat cutters and wrappers, the bakers, bakers' helpers, and bread wrappers, employees working 8 hours or less per week, the store manager, and the assistant store manager. It would also exclude the following classifications although there are no employees presently classified as such nor are there any plans to hire these classifications in the near future: Office clerical employees, janitors, and guards.

The Retail Clerks Union, Local No. 631 and the Retail Clerks International Association, AFL, herein referred to as the Retail Clerks, would change the above unit to include the bread wrapper, the assistant store manager, and the classification of clerical employees, and to exclude the snack bar employees. The Hotel, Restaurant Employees and Bartenders International, AFL, and Culinary Workers Local No. 298, herein called the Culinary Workers, seek a unit of employees engaged in the preparation and handling of food, the snack bar employees. The only employees at the store currently represented by a labor organization are the meat cutters and wrappers—the employees in the meat department.

The Employer's stores are assigned to 1 of 2 district offices which are located in Spokane, Washington. Under the general manager, there are district supervisory personnel: a district meat supervisor and a grocery supervisor for each district—1 located in Yakima and 1 in Spokane, and a single bakery supervisor for both districts, as only 8 stores have bakery production departments. Of the 19 stores operated by the Employer, 8 are similar to the Moses Lake operation in that they have the same operating units, i. e., grocery, produce, meat, bakery production, bakery sales, and a snack bar.

The store manager of store #27 is the overall supervisor of the store, with particular supervision and management of the grocery, produce, snack bar, and bakery sales. He is directly responsible to the district grocery supervisor and discusses the bakery production

problems with the district bakery supervisor, and meat department problems with the district meat supervisor.

It appears from the record that under the store manager is an assistant store manager, and the bakery production department, the meat department, and the produce department have a departmental manager. However, no contention is made that the produce manager has supervisory authority. Store #27 employs from 30 to 40 employees. All employees in produce, grocery, bakery sales, and the snack bar are paid weekly at an hourly rate, work the same hours, and enjoy the same privileges and benefits. Grocery and produce employees as well as checkers are paid a slightly higher rate than bakery sales and snack bar employees because the work is more arduous. Although the store is a self-service store, bakery sales girls take care of their own sales and their sales are not checked out as are grocery, produce, and meat.

The first unit issue to be determined is whether the snack bar employees should constitute a separate bargaining unit in accordance with the contentions of the labor organizations involved or should be a part of a larger unit as the Employer asserts. The snack bar is located at the front of the store without any physical barriers separating it from the rest of the store. It is equipped with a fountain and a steam table for preparing and serving food and drinks. The snack bar employees are under the immediate supervision of the store manager and assistant manager as are the grocery and bakery sales employees. As indicated above, they share common working conditions with the grocery, produce, and bakery sales employees. At the time of the hearing, about 2 months after store #27 opened, there had been no change in the original crew of 5 employees in the snack bar, but the Employer's general manager testified that transfer to and from the snack bar and other sections of the store are frequent at other stores of the Employer.

The Board has in some circumstances found that restaurant or cafeteria employees constitute a separate appropriate unit¹ and in different circumstances has found that such employees are properly included in an overall unit.² The facts of this case, in the Board's opinion, do not warrant a finding that the snack bar employees constitute a homogeneous grouping appropriate for separate bargaining upon a departmental, or other basis. On the other hand, the facts show a close relationship between the interest of snack bar employees and other employees in the proposed overall unit. Accordingly, the Board will include the snack bar employees in the larger unit hereafter found appropriate.

¹ See *Allied Stores of Ohio*, 90 NLRB 1868 and cases cited therein.

² See *Sunnyland Packing Company*, 113 NLRB 162; *F. W. Woolworth Co.*, 107 NLRB 752; *Walgreen Co.*, 97 NLRB 1101; *S. H. Kress & Co.*, 92 NLRB 15, *Maas Bros., Inc.*, 88 NLRB 129; *Wise, Smith & Company, Inc.*, 83 NLRB 1019.

There remains for consideration the status of the assistant store manager and the unit placement of the bread wrapper. Each of the Employer's stores is under the immediate supervision of a store manager, who has complete responsibility for the operation of the store under his charge with the authority to hire and discharge. In store #27, the Moses Lake store, the Employer has also designated an assistant store manager who, in the store manager's absence, assumes all the store manager's responsibility and authority. The store hours are from 9 a. m. to 9 p. m. 6 days a week, and the store manager and assistant store manager divide the shift each day so that either one or both are present at all times. The store manager receives a salary plus a commission which equals about 25 percent over the earnings of the assistant store manager who is on a salary which is approximately 15 percent above the amount paid grocery department employees. All employees, except the store manager and the assistant store manager are paid a salary based on an hourly rate. The general manager testified that he had personally told the assistant manager that he was in charge of the store and responsible for the direction of the employees when the manager was absent. As the assistant store manager daily substitutes for the manager and has the authority to discharge employees and to effect changes in their status, we find that he is a supervisor as defined in the Act. Accordingly, we shall exclude him from the unit.³

The Employer within a week of the hearing date, installed a mechanical bakery wrapping machine. This machine has been placed at the front of the bakery production department, and at the present time is operated by one employee exclusively. A self-service rack has been installed which has changed the Employer's method of wrapping, and extra equipment has been installed to prepackage this self-service bakery merchandise. As this service is unavailable in other stores of the Employer and has been in use so short a period at this store, no evidence was available as to the time that will be consumed performing the wrapping operation. Presumably, any spare time the wrapper has will be spent in bakery selling. As the duties of the bread wrapper are uncertain at this time, we shall refrain from determining whether that classification should be excluded as a part of the bakery production group or included in the present unit herein found appropriate, and shall permit the bread wrapper to vote subject to challenge.

The Employer and the Retail Clerks agree to exclude all employees working 8 hours or less per week. Accordingly, we exclude such employees and find them ineligible to vote in the election directed herein.

The parties disagree as to whether a determination should be made at this time as to the unit placement of office clerical employees. There

³ *Walgreen Co., supra.*

are no office clerical employees nor does the Employer contemplate the employment of this classification of employees in the near future. We shall make no unit determination with respect to them.⁴

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

All employees at Employer's store #27, at Moses Lake, Washington, including the grocery, produce, bakery sales, and snack bar employees, but excluding employees working 8 hours or less per week, the store manager, the assistant store manager, the retail meat cutters and wrappers, bakery production employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁴ *American Smelting & Refining Company*, 102 NLRB 1489.

Taylor Forge and Pipe Works and Forge and Machine Workers Industrial Union. Case No. 13-CA-1727. August 16, 1955

DECISION AND ORDER

On March 15, 1955, Trial Examiner Louis Libbin issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report with a supporting brief.¹

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions and brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications.

In adopting the findings and conclusions of the Trial Examiner that the Respondent, by refusing the requested information, thereby violated Section 8 (a) (5) of the Act, we do not mean to establish, as claimed by our dissenting colleagues, that "an employer is required to furnish every fact, occurrence and thought which can even remotely be said to relate to wages."² In the present instance, however,

¹ The Respondent also requested oral argument. In our opinion, the record, including the exceptions and brief, fully presents the issues and the positions of the parties. Accordingly, the request for oral argument is denied.

² The Board has recognized that there are limits to the type of information an employer is obligated to furnish the Union. See *McLean-Arkansas Lumber Company, Inc.*, 109-