

that the Paperworkers has failed and refused to represent a substantial number of the employees included in the bargaining unit for which it was certified. It has therefore failed to discharge its obligation under the certificate and, in my opinion, has thereby forfeited its right to act as the statutory representative of the Employer's employees under the authority of the certificate. Accordingly, I would issue a notice to the Paperworkers to show cause, if any it has, why its certificate should not be revoked.

I believe that the employees listed above, including the photographic employees, who were excluded from the contract unit, are properly a part of the appropriate plantwide unit for which the Paperworkers was certified, and that therefore their exclusion was contrary to the Board's unit finding and the certification. I would therefore not treat the photographic employees or any of the other excluded employees as a historically unrepresented group entitled to a separate election under the *Zia* doctrine. Instead I would find that all lithographic production employees, of the Employer, including the offset pressmen and the photographic employees, constitute the appropriate unit and would direct an election in that unit without according the Paperworkers a place on the ballot.

A. Harris & Co. and Dallas General Drivers, Warehousemen and Helpers, Local Union No. 745, AFL-CIO,¹ Petitioner. *Cases Nos. 16-RC-1752 and 16-RC-1737 (not consolidated). November 21, 1956*

DECISION AND DIRECTION OF ELECTION

On August 18, 1955, the above-named Union duly filed a petition under Section 9 (c) of the Act for a unit of certain drivers, helpers, and delivery employees of the Employer employed at one of its warehouses. This petition was docketed on the files of the Board as Case No. 16-RC-1737. On August 31, 1955, the Union and the Employer entered into stipulation for certification upon the conduct of a consent election in a unit substantially the same as that described in the above petition. The election thus provided for in the agreement was conducted on September 9, 1955, and was won by the Union. The latter was duly certified by the Board as the collective-bargaining agent in the stipulated appropriate unit.

On September 12, 1955, the Union filed the petition bearing Case No. 16-RC-1752 on the Board's records, in which it sought the establishment of a unit of certain warehouse employees excluding those in the certified unit. After this petition was filed, the Employer moved

¹The AFL and CIO having merged since the hearing, we are amending the affiliation of the Petitioner accordingly.

to vacate the certification issued to the Union in Case No. 16-RC-1737, and requested that the Board consolidate that petition with the latter one for purposes of hearing and disposition of the respective unit requests of the Union in each case. In making this request the Employer made no claim that any changes had occurred in its operations since the stipulation was executed. It claimed only that the unit it agreed to was supported solely by "extent of organization" and was for that reason, "arbitrary." We find no merit in this claim.² Accordingly, and because all terms of the consent-election agreement have been fulfilled, we hereby deny the Employer's motion to revoke the certification in Case No. 16-RC-1737, and to consolidate that petition with the one in Case No. 16-RC-1752 for purposes of hearing and further decision.³

A hearing on the petition in Case No. 16-RC-1752, was held before William R. Renkel, Jr., hearing officer. The rulings of the hearing officer made at such hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in Case No. 16-RC-1752 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 certain employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The petition, as amended at the hearing, proposes the establishment of a unit confined to the Employer's warehouse division employees. While the unit definition is framed in terms of the job classifications held by the employees in such division,⁴ the only em-

²Precedents in effect as of the date of the consent-election agreement include several in which the Board, in contested proceedings, established a unit confined to truckdrivers and helpers of a department store, but excluding other warehousing workers. See, e.g., *Krauss Co., Ltd.*, 98 NLRB No 77 (not reported in the printed volumes of Board Decisions and Orders); *May Department Stores, Inc.*, 85 NLRB 550. They include many in other industries, in which the Board has both established separate units of similar employees, and, at the request of affiliates of the Petitioner's parent body, has approved the severance of such employees as a craft-like group. See, e.g., *Q F. Wholesalers, Inc.*, 85 NLRB 582; *Tennessee Egg Co.*; 110 NLRB 189; *Dallas Transfer & Terminal Co., Inc.*, 114 NLRB 18, and cases there cited.

³Compare *Baker and Taylor Co.*, 109 NLRB 245, 246, and *Grower's Warehouse Company, Inc.*, 114 NLRB 1568. These cases explicate more fully the very special circumstances under which the Board will review and set aside the consent-election agreements of parties, and the policy reasons for the narrow grounds of review in such cases.

⁴As defined by the Petitioner, the unit would encompass all employees classified as stockmen, warehousemen, checkers, markers, wrappers, packers, porters, maids, labelers, and monogrammers, other than those who are currently represented by the Petitioner. It would exclude the following workers employed in the warehouse locations (in addition to the workers employed in the retail stores of the Employer and those employees it currently represents): employees in the upholstery department, appliance service department, fur storage department, unit control department, mail order department, telephone order department, and in the auditing department and all or any other employees not under the warehouse division superintendent.

employees therein employed whom the Petitioner would exclude are a few warehousemen or stockmen who are presently included in the certified unit of drivers and drivers-helpers because they act as relief drivers.

The Employer opposes the request. It contends primarily that its operations are so integrated as to preclude establishment of any unit other than one extending, in scope, to all the employees in its Dallas operations. It further argues that, in any event, the requested unit is framed on arbitrary lines predicated solely on the extent of organization. It points, in the latter connection, to the fact that, in terms of physical location, the lines of the unit would not include all employees located in the warehouses, and in terms of classification, it would not include employees at the retail stores having job classifications similar to those the Petitioner here seeks to represent.

The Employer is engaged in retail department store operations in the city of Dallas, Texas. It conducts its business in several separate buildings, including a main retail store, a branch retail store, and three warehouses identified, respectively, as the Federal Street warehouse, the Griffin Street warehouse, and the Camp Street warehouse. It employs a total of approximately 1,200 people in conjunction with such operations, about 900 of whom are employed at the main retail store, 170 at a branch retail store, and about 150 at the 3 warehouses servicing the main and branch retail stores. It recruits all employees through one central recruiting office, establishes wage rates, job classifications, and fringe-benefit policies on an employerwide basis, and services all personnel grievances and transfer matters through one central personnel office. However, for purposes of its ordinary day-to-day operations, the Employer is internally organized into 3 or 4 major semiautonomous administrative divisions framed, broadly, on functional lines. These are the warehouse division, headed by the warehouse superintendent (one Blackburn by name), the merchandising division, headed by the merchandising manager, the comptroller's division, headed by the comptroller, and the city delivery department or division, headed by the city delivery manager (one Hendricks by name). Within each of these divisions are a number of departments each headed by subordinate supervisors responsible to their respective division heads. So far as supervision is concerned, the lines of authority extending between the division heads and the various employees allocated to each division are clear and well-defined and do not overlap.

In terms of physical location, most of the merchandising division and comptroller division employees are housed in the retail store. A few, however, are temporarily housed in the Federal Street warehouse as a result of crowded conditions at the retail store,⁵ and the few mer-

⁵ The merchandising division employees presently working at the Federal Street warehouse are employed in the mail order, telephone order, unit-control, auditing, and fur

merchandising division employees engaged in customer service and repair functions are housed in the Griffin Street warehouse.⁶ All of the employees comprising the city delivery division work out of the Camp Street warehouse. The employees comprising the warehouse division are housed in, or work out of,⁷ all three warehouses.

Employees in the warehouse division do not regularly interchange with, or work together with, employees in the merchandising division or in the comptroller division in the performance of their duties. Over a yearly period of time, there are a few occasions, such as inventory-taking or "special sales" occasions, when a few warehouse division markers and stockmen are assigned, on a temporary day-to-day basis, to assist retail store employees with the marking and sorting of merchandise. On such occasions employees report to the warehouse division supervisor initially, and return to the warehouse at the end of the day to check out. There is no evidence that employees normally working at the retail store have been similarly assigned—even on the same incidental basis—to work with warehouse division employees at the warehouse. A few selling employees, however, sometimes visit the warehouses to inquire about availability of merchandise or to assemble ordered merchandise under special circumstances.⁷ Furthermore, although there is some duplication of job classifications in jobs held by employees in the warehouse division, e. g., wrapping, checking, and marking classifications, and those held by nonselling employees employed at the store in the merchandising division, it is to be noted that the store employees are separately supervised from the warehouse employees and that there is no interlacing of supervision along administrative or functional lines.

There is no conclusive history of collective bargaining involving the Employer. The Petitioner currently represents certain of the employees in city delivery and the warehouse division (under the certification the Employer has moved to revoke) and it seeks, through its present petition, to represent all unrepresented employees coming under the supervision of the warehouse superintendent. No other labor organization seeks to represent employees of the Employer.

Recognizing that a community of interests exists among all the employees in department stores, the Board frequently has approved

storage departments. All of these, with the possible exception of the fur storage department, were recently moved to the Federal Street warehouse from the retail store. It is not clear from the record whether the "return goods" department, also located in the Federal Street warehouse, is a part of the merchandising, rather than the warehouse, division.

⁶ The appliance service repair and upholstery departments of the merchandising division are located in the Griffin Street warehouse.

⁷ The record also shows that all employees are free to transfer from one department or division to another to any jobs for which they are qualified, and that, in the past 3 years, approximately 50 such transfers have occurred. However, all transfers clear through the personnel office in the same manner as initial applications, and are effected as permanent transfers.

storewide units in this industry.⁸ However, where the employer's warehousing operation is (1) geographically separated from its retail store operations; (2) there is separate supervision of the employees engaged in warehousing functions; and (3) there is no substantial integration among the warehousing employees and those engaged in other store functions, the Board also has found the more limited warehousing units to be appropriate.⁹

We turn now to the instant petition. We are satisfied, upon the facts set forth above, that the Petitioner's unit request meets the requirement we have heretofore established as the condition under which "warehouse" petitions will be granted. Thus, the Petitioner seeks to represent the employees forming a distinct and identifiable administrative segment of the Employer's operations devoted essentially to warehousing functions,¹⁰ in circumstances disclosing that such employees: (a) are under supervision separate from other store employees; (b) perform substantially all of their work tasks in buildings geographically separated from those in which the bulk of the remaining employees of the Employer work; and (c) are not integrated, to any substantial degree, with employees in other divisions in the performance of their ordinary duties.

In making such findings, we have rejected so much of the Employer's argument in opposition to the petition as is based upon assignments of warehouse department markers to the retail store, and the transfers of employees from warehouse to store jobs. The record facts, detailed above, establish the sporadic and incidental nature of the warehouse employees' assignments to the store in relation to their principal and regular duties, the permanent nature of the job transfers to which the Employer refers us,¹¹ and the small proportion of the total warehouse division complement affected in either case.¹² Because of

⁸ See, for example, *Sears Roebuck & Co.*, 76 NLRB 167; *Namm's, Inc.*, 81 NLRB 1019; *P. B. Magrane Store, Inc.*, 84 NLRB 345; *Spiegel Fashion Shops*, 85 NLRB 347; *John W. Thomas & Co.*, 104 NLRB 868; *Sears Roebuck & Company*, 106 NLRB 242.

⁹ *Morris Kirschman & Co., Inc.*, 111 NLRB 776; and *Montgomery Ward & Co., Incorporated*, 89 NLRB 528, 89 NLRB 1370. Cf. *Montgomery Ward & Co.*, 113 NLRB 798; *Sears, Roebuck & Company*, 106 NLRB 242, 101 NLRB 665, and *Marshall Field & Company*, 90 NLRB 1.

¹⁰ As indicated above, the proposed unit definition contained in the instant petition, as amended, excludes a few warehousemen or stockmen falling under the supervision of the warehouse superintendent. This exclusion does not stem from any unwillingness of the Petitioner to represent such employees. It stems solely from the fact that such employees are included within the driver-unit established by the consent-election agreement, and are thus already represented by the Petitioner as part of such unit.

¹¹ The Board has not ordinarily regarded permanent interdepartmental transfers of employees from one job to another as constituting evidence destructive of the functional identity of a departmental or divisional unit. This is particularly so where transfers have affected a very small proportion of the employer's total complement. See, e. g., *Silverwood's*, 92 NLRB 1114, 1117; *Cohn-Hall-Marx Company*, 86 NLRB 101.

¹² Cf. *Stercha Bros Stores, Inc.*, 100 NLRB 70; *Silverwood's, supra*; *Morris Kirschman & Co., Inc.*, 111 NLRB 776; *Montgomery Ward & Co.*, 113 NLRB 798, 799; see also *Krauss Company Ltd.*, 98 NLRB No. 77 (not reported in printed volumes of Board Decisions and Orders).

Compare by analogy the fact that the coverage granted under the FLSA, as amended, in 1949, to "warehouse" employees of certain retail establishments, is not affected by

all the foregoing, we reject the Employer's contentions that (1) its operations are so integrated as to preclude the establishment of any unit of lesser than storewide scope and (2) that the requested warehouse unit is based solely upon the extent of Petitioner's organization.¹³

As noted above, the Petitioner's proposed unit description excludes employees located in the warehouse but employed in the upholstery, appliance service, fur storage, unit control, mail order, the phone order, and auditing departments. We shall exclude these employees from the unit herein found appropriate not only because they are not under the supervision of the warehouse superintendent but also for the further reason that in general they are not engaged in performing typically warehouse functions.

There remains for consideration the resolution of a special unit problem occasioned by the earlier consent-election agreement. Limitation of the unit in the instant case to the unrepresented warehouse division employees will result in a situation in which the city delivery division wrappers and checkers, who work with the warehousing employees, will be the sole employees who will be denied the right of representation, notwithstanding the fact that they have a close community of interests with the latter. We believe this obvious inequity can best be remedied, in these exceptional circumstances, by including them within the unit hereafter found appropriate.

In light of the foregoing, and the record as a whole, we find that 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 the Employer's Dallas, Texas, warehouses (respectively located at Federal Street, Camp Street, and Griffin Street), who are under the supervision of either the warehouse superintendent¹⁴ or of the city delivery division manager, including stockmen, warehousemen, checkers, markers, wrappers, packers, porters, maids, labelers, and monogrammers, but excluding all employees currently represented by the Petitioner, all employees in the upholstery department, appliance service department, fur storage department, unit control department, mail order department, telephone order department, and the auditing department, and excluding, also, guards and supervisors within the meaning of the Act.

[Text of Direction of Election omitted from publication.]

the fact that such employees may be called upon on "sporadic" occasions to work in a retail store establishment *exempted* from the provisions of the FLSA. See 15 WHM 375-376

¹³ *Montgomery Ward & Co, Inc*, 89 NLRB 1370, *Morris Karschman & Co, Inc*, 111 NLRB 776

¹⁴ It is not clear from the record whether the "return goods" department employees, working at the Federal Street warehouse are under the supervision of the warehouse superintendent or whether, like other excluded groupings, in the various departments described above, they are in a separate department falling within the merchandising division. If these "return goods" employees are under the warehouse superintendent's supervision they shall be deemed included. Otherwise they are excluded.