

earnings during said period;<sup>6</sup> (3) the Respondent shall, upon request, make available to the Board payroll and other records to facilitate the checking of the amount of back pay, which shall be computed in accordance with the Board's customary formula;<sup>7</sup> and (4) that the Respondent be ordered to cease and desist from in any manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed by the Act.

Having found that the Respondent violated the Act by maintaining in existence illegal union-security provisions, it will be recommended that the Respondent cease and desist from agreeing to, continuing in force, or giving effect to union-security provisions not authorized by Section 8 (a) (3) of the Act.

On the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

#### CONCLUSIONS OF LAW

1. The Respondent is engaged in commerce within the meaning of Section 2 (6) and (7) of the Act.
2. The Union is a labor organization as defined in Section 2 (5) of the Act.
3. By discharging Emmett A. Hunter the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (3) and (1) of the Act.
4. By maintaining in existence an agreement containing illegal union-security provisions the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
5. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.
7. The Respondent by maintaining in existence the above-mentioned union-security provisions did not thereby violate Section 8 (a) (3) of the Act, as alleged in the amended complaint.

[Recommendations omitted from publication.]

<sup>6</sup> *Crossett Lumber Company*, 8 NLRB 440; *Republic Steel Corporation v. N. L. R. B.*, 311 U. S. 7.

<sup>7</sup> *F. W. Woolworth Company*, 90 NLRB 289.

**Sears Roebuck and Co. and Teamsters, Chauffeurs, Warehousemen & Helpers Local Union 390, affiliate of International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Petitioner. Case No. 12-RC-36.**  
*June 21, 1957*

#### 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 Herbert N. Watterson, 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 National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Murdock and Rodgers].

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 certain employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks to represent a unit of all truckdrivers and helpers at the Employer's service building located in Miami, Florida. The Employer contends that its Miami operations constitute "one integrated department store operation" and the only appropriate unit is one comprising all of its selling and nonselling employees. The Employer further contends that there is a complete integration of the various employees within the service building, and that a unit of only truckdrivers and helpers at the service building is inappropriate. There is no history of collective bargaining at the Employer's Miami operations.

The Employer's Miami operations consists of 2 retail stores, 1 in Miami and 1 in Coral Gables, Florida, and the service building, located some 7 miles from either retail store. The service building serves as the Employer's warehouse and it also houses various service and repair functions. The entire Miami operation is under the direction of the general manager. The operations of the service building are directed by the service manager and an assistant service manager. The delivery department, to which the truckdrivers and helpers herein sought are assigned, is one of several departments located within the service building. Like most of the other departments in this building, the delivery department has its own foreman.

There are approximately 43 employees assigned to the delivery department. Some 13 of these employees are engaged in loading trucks, in packaging and preparing merchandise for shipment other than by truck, and otherwise performing the customary duties of shipping clerks or warehouse employees. The remaining employees within the department are classified as truckdrivers and helpers. The truckdrivers and helpers deliver merchandise to customers in and around the Miami area,<sup>1</sup> and two of the truckdrivers shuttle merchandise to and from the retail stores. The drivers and helpers normally spend substantially all of their time in performing their delivery functions; but if they complete their routes early, they may separate merchandise for future delivery and assist in loading and unloading trucks.<sup>2</sup>

<sup>1</sup> It appears that in making such deliveries the drivers may, on occasion, collect money from customers or solicit orders for small repair jobs.

<sup>2</sup> When deliveries are very light the drivers and helpers may be assigned to various tasks within the service building in order to prevent "a man losing a day's pay." On such occasions the drivers or helpers may be assigned to receiving, storing, or deluxing

As previously noted, the Employer contends, in principal part, that the proposed unit of truckdrivers and helpers is inappropriate because of the integrated nature of its entire Miami operation and because the service building, itself, is an integrated operation. We find no merit in these contentions. The Board has frequently found in the retail department store industry that where, as here, the truckdrivers and helpers constitute a homogeneous identifiable group and there is no history of collective bargaining to the contrary and no union is seeking a storewide unit, they may be represented in a separate unit.<sup>3</sup> The Employer further urges that the unit sought is inappropriate as it seeks to exclude other employees who drive trucks in carrying out their job assignments. We find no merit in this contention. The record shows that there are certain departments in the service building, such as the television, air conditioning and equipment, drapery, and truck tire department, in which servicemen are employed. These servicemen are supervised by their respective department foremen and render specialized or technical service to customers. Illustrative of these servicemen is the drapery department serviceman who delivers and installs draperies at the customers' direction; another is the water pump serviceman who services and repairs this special equipment for customers throughout the area. Incidental to these services, the servicemen drive various delivery and repair trucks. It is clear that, while these servicemen drive trucks in their work, their primary tasks are to render certain services in connection with the work of their respective departments, and that the driving they perform is incidental to such services. In addition, as noted above, they are under separate supervision from the truckdrivers and helpers sought herein, and there is no evidence that the latter are interchanged with, or are qualified to take the place of, these servicemen. We find, on the basis of the foregoing, that these servicemen who drive trucks incidental to their normal work are not appropriately part of the truckdrivers' unit.<sup>4</sup>

merchandise. However, it appears that such assignments are made only on occasion and there is no evidence that the drivers and helpers regularly interchange with other employees.

<sup>3</sup> See e. g., *A. Harris & Co.*, 116 NLRB 1628, footnote 2; *May Department Stores Company*, 85 NLRB 550; *Barker Bros. Corp.*, 48 NLRB 259; and *Krauss Co., Ltd.*, 98 NLRB No. 77, *Wm. H. Black Co.*, 35-RC-1200, *F. M. Arbaugh Company*, 7-RC-1954, and *Auerbach Co.*, 20-RC-1727, which cases are not reported in the printed volumes of Board Decisions and Orders.

<sup>4</sup> *Sears Roebuck & Co.*, Case No. 16-RC-1830, decided October 24, 1956, not reported in Board's published volumes, cited by the Employer, is clearly distinguishable from the facts in this proceeding. In that case, the Board dismissed the petition because the petitioner did not seek to include certain mail, shuttle, and over-the-road drivers, who had interests and job functions substantially the same as the delivery drivers it was seeking to represent. In the instant proceeding, the Petitioner is seeking all such truckdrivers and helpers, and would exclude only the servicemen whose driving is incidental to their regular work assignments. See *May Department Stores Company*, *supra*, where an employee in the drapery department was excluded from a unit of truckdrivers because he spent a majority of his time making drapes and used his truck only when delivering drapes which required service on the customers' premises. See also *Asso-*

In view of the foregoing, and the record as a whole, 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 truckdrivers and their helpers employed at the Employer's service building in Miami, Florida, including the shuttle truckdrivers, but excluding the servicemen, all other employees, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

*ciated Dry Goods Corporation*, 117 NLRB 1069, where the Board, in finding appropriate units of warehouse employees, including truckdrivers, excluded service employees similar to those here involved.

**Plant City Welding and Tank Company and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, Petitioner.** *Case No. 12-RC-30.*  
*June 21, 1957*

#### 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 Martin Sacks, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<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 [Chairman Leedom and Members Murdock and Jenkins].

Upon the entire record in this case, the Board finds:

1. The Employer contends that it does not meet any of the Board's jurisdictional standards and that the record herein is inadequate as a basis for the assertion of jurisdiction. At the hearing, the Employer declined to produce any witnesses to testify concerning the Employer's business, and after a *subpoena duces tecum* was served upon the Employer's president and enforced in a district court proceeding, he appealed the district court order and still did not appear to testify at the hearing. Accordingly the hearing officer proceeded to receive other jurisdictional evidence in the record. Thus, a former employee of the Employer testified that the Employer is engaged in the fabrication and sale of steel beams, boxes, cyclones, storage tanks, smokestacks, ducts, and the like. A sales representative of Bethlehem Steel Company testified that he knew of his own knowledge of shipments of steel from out of State to the Employer by Bethlehem during 1956.

<sup>1</sup> For the reasons stated below, we find no merit in the Employer's motion to dismiss or remand for further hearing, and the motion is accordingly denied.