

that the overall unit sought by the Advertising Workers is appropriate and that the unit sought by Bookbinders and in the Employer's petition is inappropriate.⁴ We shall therefore dismiss the petitions filed by the Bookbinders and the Employer.

There remains for consideration the Employer's contention that the secretaries to the advertising director and to the classified advertising subdepartment manager should be excluded as confidential employees. As it does not appear that the advertising director or the classified advertising subdepartment manager formulate, determine, and effectuate management policy in the field of labor relations, we find that these secretaries are not confidential employees, and we shall therefore include them in the unit.⁵

We find the following employees at the Employer's Dayton, Ohio, plant constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All regular and regular part-time office, clerical, sales, billing clerks and other employees of the billing department, and the retail, national, classified, service, and art subdepartments including the secretaries to the advertising director and classified advertising subdepartment manager, but excluding all other employees, professional employees, guards, and supervisors as defined in the Act.

[The Board dismissed the petitions in Cases Nos. 9-RC-3118 and 9-RM-150.]

[Text of Direction of Election omitted from publication.]

⁴ Cf. *The Peoria Journal Star, Inc.*, 117 NLRB 708.

⁵ *The B. F. Goodrich Company*, 115 NLRB 722, 724-725.

Maas Brothers, Inc. and Local Union No. 79, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, Petitioner.¹ *Case No. 12-RC-104. November 22, 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 Norman A. Cole, 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 Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Murdock and Jenkins].

¹ As amended at the hearing.

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 companywide unit of all truckdrivers and helpers and garage mechanics and helpers employed in connection with the Employer's retail operations in Tampa, Lakeland, Sarasota, and St. Petersburg, Florida, or any unit of truckdrivers found by the Board to be appropriate. As alternatives, the Petitioner is willing to accept a companywide unit composed of all truckdrivers and helpers, determined as a whole or on the basis of a globe election, conducted at Tampa, St. Petersburg, Lakeland, and Sarasota or a unit of all truckdrivers and helpers employed by the Company at its Tampa operation, excluding all others, or a unit of all truckdrivers and helpers employed at the Gandy Store for Homes in the Tampa area. The Employer contends that the companywide unit sought by the Union is inappropriate, both in scope and in composition and that any other unit is also inappropriate. The Employer urges that the petition be dismissed because the alternatives are so varied as to make the unit requested vague.

(a) *Scope of the unit*: The Employer is a Florida corporation which operates 6 retail stores and associated service facilities within a 55-mile radius of Tampa. In its brief to the Board, the Employer urges that the scope of any unit found appropriate be confined to the Tampa area, asserting that the determinative factors of administrative or personnel integration or interest, centralization of labor relations, or other similar factors justifying a multistore unit are lacking.

All heavy delivery equipment for the delivery of furniture, major appliances, and TV's is based in Tampa and operates out of the Gandy Store for Homes, a combined selling, storage, and service facility. Except for special deliveries, the drivers and helpers working out of that store make deliveries for all the other stores. There is an almost daily shuttle of merchandise among the Tampa and other area stores. Display materials which are commonly used by all facilities are also transported from one location to another. There is, however, a sharply drawn line of supervisory authority among locations and a Tampa area driver, given instructions to pick up or deliver at an outside Tampa area location, cannot accept orders or directions from supervisors at other locations.

Personnel administration of the three stores in the Tampa area is directly under the general personnel director who has offices in the main store. His authority with respect to the stores outside Tampa

is limited to the executive training program. All six stores are under the administrative supervision of a managing director and the Employer's policies are formulated by an overall management committee. The store managers at Lakeland, Sarasota, and St. Petersburg do their own hiring, and there is little transfer among the stores other than by executive trainees. Wage rates and fringe benefits in the outlying area stores are based upon the prevailing rates and practices in the local community and may differ from those in the Tampa area which are uniform throughout that area. However, the Employer concedes that the local managers participate in frequent periodic overall management conferences and operate and establish local policies, e. g., wage differentials only within the general scope, limitations, and requirements established by the overall management committee of which they are members.

In *Robert Hall Clothes, Inc.*, 118 NLRB 1096, the Board held that "in cases involving chains of retail stores, . . . absent unusual circumstances, the appropriate bargaining unit should embrace employees of all stores located within an employer's administrative division or geographical area." The Petitioner seeks to combine employees performing similar functions and coming into frequent contact with each other.² There is no evidence of any history of collective bargaining which precludes giving effect to the fact that through the overall management committee the Employer has effectively centralized its policy formulations with respect to labor relations.³ There are no unusual circumstances in this case. We therefore find no reason for departing from *Robert Hall Clothes, Inc.*, and conclude that the appropriate bargaining unit should be companywide.⁴

(b) *Composition of the unit*: The Petitioner seeks a unit of all truckdrivers and their helpers who regularly and primarily drive or assist the drivers in the operation of trucks which are primarily engaged in the delivery of merchandise to customers or the transportation of such merchandise between the Employer's stores or between its warehouses and stores or other points.

The drivers and helpers working in and out of the Tampa area facilities include furniture delivery, major appliance delivery, tele-

² In excluding from the unit other similarly situated employees, the Board has frequently emphasized the fact that no union seeks their inclusion. See, e. g., *Foremost Dairies, Inc.*, 118 NLRB 1424; *Harvey Lumber & Supply Co.*, 118 NLRB 737.

³ The Employer's reliance on *Continental Baking Company*, 99 NLRB 777, 784-785, and *American Stores Company*, 82 NLRB 882, 883 is misplaced. Both determinations gave effect to long histories of collective bargaining on a local area basis contrary to administrative areas within the Employer's organization.

⁴ The statement in *Maas Brothers, Inc.*, 116 NLRB 1886 at 1887 that the stores in Lakeland, Sarasota, and St. Petersburg "are not in the same administrative line" as the Tampa area stores is not dispositive here. In that case, the Board made no finding concerning the scope of an optimum bargaining unit.

vision delivery, package delivery, package shuttle, freight shuttle, merchandise shuttle, and mail shuttle drivers. The drivers working out of or at the Employer's facilities at Lakeland, Sarasota, and St. Petersburg consist solely of package delivery and shuttle drivers. Of these, the furniture delivery, major appliance delivery, and television delivery drivers have regularly assigned helpers. The Petitioner would also include a bakery driver and either exclude or include two garage mechanics and their helpers who service and maintain the Tampa area trucks. It would exclude other employees who drive company vehicles on the ground that their driving is merely incidental to their primary functions which are unrelated to transportation. Thus, it would exclude porters who transport company fixtures, such as display props, and the trash driver on the ground that their functions are primarily custodial; the servicemen-drapery installers, carpet installers, installation service mechanics, and furniture repairmen on the ground that their driving is incidental to the performance of their primary function of service or installation; the credit department collectors, who take repossession of such items as television sets, on the ground that they are primarily collectors.

The furniture delivery drivers, major appliance drivers, and television drivers and their helpers complete the delivery of their items to the customer. They assemble beds, affix mirrors to dressers, affix voltage pigtails to kitchen ranges, and hook up TV aerials as the situation and the customer demand. The package shuttle, freight shuttle drivers, and the bakery driver have no customer contacts. Package delivery drivers work directly from the stores or from a warehouse. Even at Gandy Store For Homes warehouse, various drivers report to different supervisors.

The Employer acknowledges that the unit is, if the garage mechanics and helpers are excluded, based on the Board's recent decision involving a Miami, Florida, Sears Roebuck and Co. store (118 NLRB 277). In that case, the Board found appropriate a unit of truckdrivers and helpers, from which it excluded those employees who drove trucks incidental to their normal work. The Employer would distinguish that case from this on the grounds that the drivers involved herein (1) lack common supervision; (2) do not constitute a distinct departmental group; and (3) perform disparate functions depending upon whether they have direct contact with customers, and are required to perform other tasks.

It further urges that weight be given to the Board's previous holdings that its operations are too integrated and interrelated to permit the establishment of separate units of employee groups unless

they constitute a craft group, professional employees, or departments having a craft nucleus or composed of employees performing distinctive functions.⁵ The Employer further argues that the Petitioner's request for alternative units render any unit request uncertain and demonstrates the correctness of its position that the only basis for any request is extent of organization.⁶

We find no merit to these contentions. Here, as in *Sears Roebuck and Co.*, the truckdrivers and helpers constitute an identifiable group; there is no history of collective bargaining to the contrary;⁷ and no union is seeking a storewide unit. The fact that the truckdrivers and helpers lack common supervision—the sole ground on which the *Sears Roebuck and Co.* case can on its facts be distinguished—is not determinative. It is a common factor to most multi-plant determinations, and clearly irrelevant to a finding based on homogeneity through common functions.⁸ We find that those servicemen and other employees who drive trucks incidental to their normal work are not appropriately part of the truckdrivers' unit.⁹ Because the garage mechanics and their helpers have the primary duty of maintaining and servicing the trucks of the Employer, their functions are different from those of the drivers and we shall exclude them from the unit.¹⁰

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 truckdrivers and their helpers employed by the Employer, including the bakery driver, at its Tampa area, Lakeland, Sarasota, and St. Petersburg, Florida, facilities, excluding 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.]

⁵ The Board's prior determination that a broader unit was appropriate (*Maas Brothers, Inc.*, 88 NLRB 129) is not controlling. Unlike units covering employees engaged in various unrelated functions (*New York Shipping Association, Inc.*, 116 NLRB 1183, 1186) or some portion thereof, truckdrivers engaged in transportation functions do constitute a homogeneous group of the sort that the Board has traditionally held to constitute an appropriate unit. See cases cited at footnote 3 of *Sears Roebuck and Co.*, 118 NLRB 277.

⁶ For the reason given in footnote 5, we need not at this time consider, as the Employer urges us to do, whether the initial determinations that truckdriver units were appropriate were based solely on extent of organization. *Barker Bros. Corporation*, 48 NLRB 259, 261, does not control this decision.

⁷ There is some history supporting an exclusion of a unit of truckdrivers from a unit of all selling and nonselling employees. See *Maas Brothers, Inc.*, 88 NLRB 129, at footnote 3.

⁸ See *Robert Hall Clothes, Inc.*, *supra*; *Helms Motor Express, Inc.*, 107 NLRB 132, 134.

⁹ Including the porters, trash driver, and credit department collectors.

¹⁰ *Helms Motor Express, Inc.*, *supra*, at 134.