

available to the employees. The misstatement was first made to the employees more than 2 months before the date of the election and thus they had ample opportunity to verify or seek more information from the Petitioner regarding its alleged strike activity. Moreover, as indicated above, the Petitioner received a copy of the leaflet at a union meeting on the evening before the election, which did not begin until 1 p.m. the following day, and in our opinion with proper diligence could have answered the leaflet at this meeting or through various other legitimate means at its disposal.³

Under all the circumstances, we therefore find that the above leaflet distributed to the employees prior to the election did not impair the employees' freedom of choice and does not constitute grounds for setting aside the election. Accordingly, we overrule the Regional Director's findings as to this objection and do not adopt his recommendation that the election be set aside.

In view of the foregoing, and upon the record as a whole, we find that the Petitioner's objections do not raise substantial or material issues affecting the results of the election and they are hereby overruled. Accordingly, as the Petitioner failed to secure a majority of the valid ballots cast, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for Local No. 332, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, and the said Union is not the exclusive representative of the Employer's Clinton, North Carolina, plant in the appropriate unit.]

³ See *Comfort Slipper Corporation*, 112 NLRB 183, 184-185

Winn-Dixie Stores, Inc. and its subsidiary Winn-Dixie Greenville, Inc.¹ and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, and Retail Clerks International Association, AFL-CIO, Joint Petitioners. *Case No. 11-RC-1212. September 11, 1959*

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 Jerold B. Sindler, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

¹ The name of the Employer appears as amended at the hearing

² Both parties moved to strike the testimony of certain witnesses of the other party for refusal to answer questions which the hearing officer had ruled to be proper. The hearing officer referred these motions to the Board. This referral was an error as the Board's Rules and Regulations, Series 7, as amended, Section 102.66(d)(3), provide that such

124 NLRB No. 124.

After the close of the hearing and transfer of the proceeding to the Board, the Employer, on April 8, 1959, filed a petition for administrative investigation and determination and motion to dismiss, accompanied by affidavits in which it alleged, in substance, that supervisors, constituted two-thirds of the Joint Petitioners' "organizing committee," actively participated in the organizing meetings and other union meetings of the employees, and obtained the showing of interest supporting the instant petition. On April 16, 1959, the Petitioners filed opposition to the aforesaid petition. On July 7, 1959, the Board issued an order granting the Employer's petition and remanding the proceeding to the Regional Director for an administrative investigation into the validity of the Petitioners' showing of interest. Subsequently, on July 17, 1959, the Petitioners filed a motion to strike and expunge the Employer's petition and to rescind the aforesaid Board order, on the ground that Petitioners were not served copies of the affidavits attached to the Employer's petition. In view of our disposition of the Employer's motion to dismiss, we deem it unnecessary to pass upon this contention.

The administrative investigation conducted by the Regional Director for the Eleventh Region shows the following facts:

The organizing efforts of the Petitioners commenced on January 6, 1959, and were carried on primarily by three rank-and-file employees. On January 16, 1959, the Petitioners had obtained a sufficient number of cards out of a total of 291 employees, without counting the cards of the 36 alleged supervisors here involved, to constitute a showing of more than 30 percent of all employees of the Employer. On January 17, the Unions called a meeting at which additional employees signed union authorization cards. After the cards were signed, the so-called "organizing committee" was formed, composed of 28 rank-and-file employees and 8 of the alleged supervisors. The organizing committee met only once after all the cards supporting the instant petition had been secured. On January 27, the Employer's attorney addressed the Employer's department managers and told them that they were supervisors and could not engage in union activity or be in the bargaining unit. The following day, the "organizing committee" met and relieved all department managers from service on the committee.

From the above, we find a sufficient showing of interest was obtained by the joint petitioners without the cards of the alleged supervisors and prior to the formation of the "joint organizing committee" and that the activities of the alleged supervisors had no significant effect

motions are directed to the discretion of the hearing officer. However, we do not consider the hearing officer's rulings prejudicial to any of the parties and shall not strike any testimony, but leave and consider the record as it was made before the hearing officer. *Father & Son Shoe Stores, Inc.*, 117 NLRB 1479, at footnote 1.

on the Petitioners' organizing campaign. We are administratively satisfied that the petition is supported by an adequate showing of interest. Accordingly, the Employer's motion to dismiss the petition on the ground of insufficient and invalid showing of interest is hereby denied. For the reasons hereafter stated, we shall direct an election to determine the question of representation raised by the filing of the petition.³

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

1. Winn-Dixie Stores, Inc., a Florida corporation, through its subsidiary and operating division Winn-Dixie Greenville, Inc., operates a chain of retail grocery stores. In 1958 the gross volume of business of the operating division was approximately \$115,000,000. During the same period, the so-called Benfield District here involved—1 of the 13 districts of the operating division—had a gross volume of business of approximately \$10,000,000. We find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.⁴

2. The labor organizations involved claim 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 Joint Petitioners seek to represent a unit of the employees of nine of the Employer's retail food stores located in the cities of Asheville, Hendersonville, Waynesville, and Brevard, North Carolina. The Employer moved to dismiss the petition on the ground that the requested unit is inappropriate. There is no history of collective bargaining.

The Employer's main offices are located in Jacksonville, Florida. In Greenville, North Carolina, the Employer maintains the offices for the Greenville division and a central warehouse from which it furnishes groceries and general inventories to the stores in the division. The Greenville office sets the general policies regarding advertising, merchandising, purchasing, and pricing. It maintains a central personnel file of all employees within the division. Utility bills are also sent to and paid by the Greenville office. A vice president and general manager is in charge of the division. Under him is a general superintendent. Operating out of the division are produce specialists, meat specialists, nonfood specialists, fancy food specialists, and auditors, who observe and improve operations on a divisionwide basis. Repair and maintenance employees also operate out of the Greenville division.

³ Compare *Pearl Packing Company*, 116 NLRB 1489.

⁴ *Carolina Supplies and Cement Co.*, 122 NLRB 88.

The Greenville division is subdivided into 13 districts each of which is headed up by a district supervisor. The nine stores here involved are located in Asheville, North Carolina, and three cities located within a radius of 30 or 40 miles therefrom. They comprise the so-called Benfield district named after the district supervisor. Benfield maintains his office in one of the stores in Asheville. Each week he makes regular visits to all the stores within his district. In addition, he conducts meeting of department managers from the nine stores under his supervision. He approves applicants for full-time jobs and supervises the training of all new employees. He hires, assigns, transfers, promotes, and grants wage increases to the employees in all nine stores. Each of the stores maintains similar departments, employs the same classifications of employees and extends the same rates of pay, working conditions, insurance plans, and vacations to all employees. There is some degree of interchange of the employees between the nine stores.

On these facts, and the record as a whole, we find that the nine stores here involved form a distinctive administrative subdivision of the Employer's operations. Therefore, and because of the geographical proximity of the stores, we further find that the districtwide unit requested by the Petitioners is appropriate for the purposes of collective bargaining and we shall direct an election in that unit.⁵

There remains the disputed unit placement of certain categories of individuals which the Employer, contrary to the Joint Petitioners, would exclude as supervisors, and of part-time employees.

Meat department managers: The meat managers serve as the store managers' assistants over meat operations. The record indicates that these individuals have the authority to grant time off, to hire and fire employees, and to effectively recommend such action. They are responsible for ordering meat products for their departments and for properly displaying the products. They spend approximately 60 percent of their time in training and directing new employees in their work. On these facts and the record as a whole we find that these individuals are supervisors and exclude them from the unit.⁶

Produce department managers: The produce managers serve as assistants to the store managers with respect to produce operations. These individuals order, receive, and display produce in their departments. They have the authority effectively to recommend the hire and discharge of other employees as well as to recommend wage increases and transfers. In some instances they have hired full and part-time employees. Approximately 60 percent of their time is spent in servicing customers and other manual work. The balance of

⁵ *The Great Atlantic & Pacific Tea Company, Inc.*, 119 NLRB 603; *Safeway Stores, Incorporated*, 96 NLRB 998.

⁶ *The Great Atlantic and Pacific Tea Company*, 117 NLRB 554, at 555.

their time is spent in training and in assigning and directing the work of the employees under them. Accordingly, we find that they are supervisors and exclude them from the unit.⁷

Grocery department managers: These individuals serve as the store managers' assistants with respect to the grocery operations. They make local purchases and have the power to reduce the price on certain items for quick sale. They spend approximately 60 to 70 percent of their time in seeing that employees under them to their work properly. They also have authority to give wage increases to part-time employees and grant time off to employees in their department. They have the authority to reprimand employees and to effectively recommend the hire and discharge of employees in their department. In *The Eavey Company*, 115 NLRB 1779, a case with similar facts, the Board, with Member Bean dissenting, held that grocery department managers were supervisors. We shall exclude the grocery department managers as supervisors.

Head cashiers-bookkeepers: These individuals serve as the store managers' assistants in handling money, financial records, and the payroll. They work mainly in the store managers' office and have the combination to the safe. They train new employees to be checkers, assign them to a register, and see that their work is properly done. They have the authority to recommend the hire and discharge of employees under them, as well as to recommend wage increases. They call employees off the job and direct them to open up other aisles to check out customers during rush periods. On these facts and the record as a whole we find that these individuals are supervisors and exclude them from the unit.⁸

Part-time employees: The parties are in general agreement that regular part-time employees are to be included in the unit. The Employer, however, contends that high school students and employees working less than 20 hours each week should be excluded from the unit. The Petitioners reject such limitations but would exclude from the unit all part-time employees employed less than 18 weeks prior to the date of the election, so as to prevent promiscuous hiring before the election for the purpose of defeating the objectives of the Act.

The part-time employees are employed in all departments of the Employer's retail stores. They work alongside the regular full-time employees, doing substantially similar work. It is the Board's practice to include regular part-time employees regardless whether they are students or work less than 20 hours a week.⁹ The exclusion of part-time employees who will have worked less than 18 weeks at the date of the election, is also unwarranted. The reason given by the

⁷ *The Great Atlantic and Pacific Tea Company, Inc.*, supra at footnote 6.

⁸ *The Great Atlantic and Pacific Tea Company*, 123 NLRB 747.

⁹ *The Great Atlantic and Pacific Tea Company, Inc.*, 119 NLRB 603, 607; *Crown Drug Company*, 108 NLRB 1126, 1129.

Petitioners is speculative, and there is no showing of a high turnover among part-time employees which would justify their exclusion.¹⁰ Accordingly, we shall include all regular part-time employees, and will permit them to vote in the election hereinafter directed.

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 at the Employer's retail food stores in Asheville, Hendersonville, Waynesville, and Brevard, North Carolina, including all employees engaged in the processing, handling, displaying, wrapping, weighing, bagging, marking, and checking of meat, groceries, and produce, and all regular part-time employees, but excluding the district supervisor, store managers, meat department or meat market managers, produce department managers, grocery department managers, head bookkeepers or head cashiers, guards, and supervisors, as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBERS RODGERS and FANNING took no part in the consideration of the above Decision and Direction of Election.

¹⁰ *The Eavey Company*, 115 NLRB 1779, 1780; *Albers Super Markets, Inc.*, 110 NLRB 474; *The Liberal Market, Inc.*, 110 NLRB 65 and 66.

John R. Figg, Inc. and Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. *Case No. 35-RC-1681. September 11, 1959*

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 M. Liebman, 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 Bean and Fanning].

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.