

**Brown Cigar Company and Local 805, Confectionery and Tobacco Drivers and Warehousemen's Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner.** *Case No. 22-RC-531. October 30, 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 William J. Davis, 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.

4. The petition requests a unit of all driver-salesmen at the Employer's Neptune, New Jersey, warehouse. However, at the hearing, the Petitioner asserted that it seeks to represent only three cigar driver-salesmen employed by the Employer. The Employer contends that only an overall unit of all its employees, including the cigar driver-salesmen, a cigar and drug driver-salesman, a warehouseman, and part-time and seasonal employees, is appropriate. In addition, the Employer would exclude one cigar driver-salesman, John Ryle, as a supervisor, and asks that the Board determine the unit placement of employee Linda Gold, who works in the Employer's office, performing selling duties over the telephone part of the time. There is no history of collective bargaining for any of the employees of the Employer.

The Employer, a wholesaler, receives, sells, and distributes cigars, drugs, and beach sundries in the northern New Jersey coastal resort area. Its operations consist of receiving merchandise at its warehouse, assembling orders, loading its trucks, and delivering its products to retail distributors. The salesmen employed by the Employer, consisting of three cigar driver-salesmen and one cigar and drug driver-salesman, report to the warehouse daily, load their trucks, and travel assigned routes delivering merchandise and soliciting new business. They spend approximately 2 hours each day at the warehouse

loading their trucks. In addition, on occasion, the salesmen unload trucks containing incoming merchandise. The sole difference between the cigar salesmen and the drug salesman, a category which the Petitioner would exclude from the unit, is that the latter, in addition to selling cigars, also sells drugs, and, unlike the cigar salesmen, the drug salesman receives no commissions. There is also one full-time employee, James McKeivitt, who, the year round, performs warehouse duties and delivers the Employer's products to customers. He spends a minimum of 50 percent of the time in such delivery work, and the salesmen spend about 75 percent of their time on their routes. The record shows that the part-time employees engaged by the Employer and the seasonal employees, who are employed during the busy season each summer, perform the same sales and warehouse duties performed by full-time employees; and all employees, regardless of classification or tenure of employment, sell and deliver the Employer's products, make collection of moneys due the Employer from its customers, drive trucks, fill orders at the warehouse, and enjoy the same employee benefits. Although the driver-salesmen, including the drug salesman, work on a salary basis, while the other employees are hourly paid, all employees of the Employer enjoy a community of interest. In these circumstances, we find that the overall unit requested by the Employer is appropriate.<sup>1</sup>

There remains for consideration the status of a cigar salesman, John Ryle, as a supervisor, the unit placement of the telephone sales girl, Linda Gold, and the eligibility of the part-time and seasonal employees to participate in the election hereinafter directed.

*The alleged supervisor:* The record shows that the cigar salesman, John Ryle, whom the Employer would exclude, directs the Employer's business in the absence of the president. Normally, Ryle directs the work of one employee. He has authority to make effective recommendations as to the discharge of employees. We find that he is a supervisor and shall exclude him.

*The office salesgirl:* The Employer asks that the Board determine the unit placement of Linda Gold. The record shows that she works in the Employer's office where she performs office clerical duties 50 percent of the time. The remainder of the time, she uses the telephone to solicit business for the Employer. She performs no duties in the warehouse and does not work with other employees in the unit here

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<sup>1</sup> See *Seaboard Warehouse Terminals, Inc.*, 123 NLRB 378; *Muswick Beverage and Cigar Co., Inc.*, 97 NLRB 509. Although the unit found appropriate herein is larger than that requested by the Petitioner, we shall, nevertheless, direct an election, as the Petitioner has made a sufficient showing of interest in the larger unit and it has not indicated a desire to participate in an election only in the unit sought by it. However, if it does not desire to participate in the election directed herein, the Regional Director is authorized to permit the withdrawal of the petition without prejudice upon timely application by the Petitioner. *Radio & Television Station WFLA (The Tribune Company)*, 120 NLRB 903, 905, footnote 8.

found appropriate. We find that she is an office clerical employee, and, we shall exclude her from the unit.

*Part-time employees:* Employees Harvey and Brenbos work at least 8 hours per week selling, driving trucks, or performing warehouse duties. We shall therefore include them in the unit as regular part-time employees, and allow them to vote in the election.<sup>2</sup>

The record also shows that, during the summer, the Employer hires three additional employees to augment its regular employee complement. One seasonal employee has been employed during the past eight seasons; all three seasonal employees were employed during the past season, and the record does not disclose when their employment will be terminated. All will be placed on a preferential hiring list and will be offered employment in future seasons. In these circumstances, we shall include them in the unit and allow them to vote in the election.<sup>3</sup>

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 full time, regular part-time, and seasonal employees at the Employer's Neptune, New Jersey, warehouse, including the cigar salesmen, the drug salesman, and the warehouse employees, but excluding office clerical employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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<sup>2</sup> *Krambo Food Stores, Inc.*, 119 NLRB 369, 373-374.

<sup>3</sup> *Musgrave Manufacturing Company and Mast-Foos Manufacturing Company, Inc.*, 124 NLRB 258. The seasonal employees are John Holloway, Albert Graulich, and Robert Graulich. As Robert Graulich is presently in the military service, he may, in accord with our usual practice, vote in the election if he appears in person at the polls.

