

cated their desire to be a part of the multistore unit, and the Union may bargain for the employees in voting groups (a) and/or (c) as part of its existing unit.

(3) If a majority of the professional employees in voting groups (b) and/or (d) do not vote for inclusion in the unit with nonprofessional employees but vote to be represented by the Union, the Regional Director conducting the elections is instructed to issue separate certifications of representatives to the Union as the representative of all pharmacists at the Employer's El Cajon, California (or College Grove, California, as the case may be), retail drugstore, excluding all other employees and supervisors as defined in the Act, units which the Board, in such circumstances, finds to be appropriate for the purposes of collective bargaining.

(4) In all other circumstances, the employees at the Employer's El Cajon and/or College Grove drugstores, professional and nonprofessional, shall remain unrepresented.

[Text of Direction of Elections omitted from publication.]

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**Tyree's Inc. and Teamsters Local Union No. 79, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Petitioner. Case No. 12-RC-1038. January 31, 1961**

#### 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 Alan D. Greene, 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 Rodgers and Jenkins].

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.<sup>1</sup>

<sup>1</sup>The Employer moved to dismiss the petition on the ground that the Petitioner had made no demand for recognition as bargaining representative of the employees involved. We deny this motion. The Board has held that the filing of a petition in itself constitutes

#### 4. The appropriate unit:

The Petitioner seeks a unit composed of all employees of the Employer, excluding certain classifications, at its warehouse at 5400 South Westshore Boulevard, Tampa, Florida, and left to the Board the question of the inclusion of the employees at the Employer's Lakeland, Florida, warehouse. The Employer contends that the only appropriate unit is a companywide unit encompassing its operations at Sarasota, Orlando, Jacksonville, and Lakeland, Florida, as well as at Tampa. The Employer is engaged in the buying, selling, storing, and servicing of television and other major appliances. The retail sales of these appliances are conducted by separate corporations in each of the aforementioned areas. The sole shareholder of the Employer is also the sole shareholder of each such retail sales operation. All the warehouses, except the one at Lakeland, which is 30 miles distant, are from 50 to 200 miles from Tampa, the location of the headquarters and general office. Each operation has its own manager, who, in turn, is under the immediate supervision of a general manager, actually employed by the appropriate retail sales corporation within that area.

There are factors which tend to support the appropriateness of the companywide unit urged by the Employer. The record shows, in this connection, that the general office controls all policy matters, labor relations, wages, hours, and other working conditions; the job classifications and duties of the employees at all locations are similar; and the headquarters office must give its approval to the filling of vacancies in the field staffs.

On the other hand, with the exception of the Lakeland warehouse, it appears that each local manager has considerable autonomy in controlling the respective operations, has the authority to hire and fire, and there is little interchange between warehouses. In view of these factors, the fact that the Sarasota, Orlando, and Jacksonville warehouses are 50, 90, and 200 miles from Tampa, the absence of any bargaining history, and the fact that no labor organization is seeking to represent the employerwide unit, we find that a unit of less than all of the Employer's warehouses may be appropriate. However, because the hiring and discharging of Lakeland personnel is done through the Tampa office, and there is regular and frequent interchange between these relatively proximate locations, we find that a unit limited to the Tampa warehouse only is inappropriate. We find

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a sufficient demand to support a representation petition *Mirro Aluminum Company*, 126 NLRB 934; and *F. C. Russell Company*, 116 NLRB 1015

After the close of the hearing the Employer filed a motion for an administrative determination of the Petitioner's sufficiency of interest and a motion to incorporate the former motion into the record. As we are administratively satisfied that the Petitioner's showing of interest is adequate, we deny the Employer's motions.

that a unit of the employees at the Tampa and Lakeland warehouses is appropriate.<sup>2</sup>

Contrary to the Employer, the Petitioner contends that the service dispatchers, the inventory control clerks, and the delivery order processors should be excluded. The service dispatchers are hourly paid and receive the same benefits as the other employees. Their duties include filling out work orders for the truckdrivers, accepting collections from the servicemen, keeping timecards, and working on inventory. As they work in an office in the service building apart from the office clericals, and are engaged in work that is closely related to that of the warehouse employees, we find that they are plant clericals and include them.<sup>3</sup> The delivery order processors and the inventory control clerks work in separate offices adjacent to the warehouse, are hourly paid, and enjoy the same benefits as the warehouse employees. They spend approximately 25 percent of their time in the warehouse assisting the dispatcher or checking inventory. Employees in both classifications prepare reports concerning the warehouse operations. In addition, the order processors are under the direct supervision of a warehouse supervisor. In view of these facts, we find that these employees are plant clericals and include them.<sup>4</sup>

The Petitioner further contends that Spinicelli, Gaboric, Cecilia Jones, and Mrs. Kent should be excluded. Spinicelli is responsible for the operation of the service office. As he can effectively recommend the hire and discharge of the other employees, we find, contrary to the Employer, that he is a supervisor within the meaning of the Act and exclude him. Gaboric does the "paper work" for the general service manager. He maintains files and records and makes periodic inventory checks. Jones prepares inventory reports, maintains records of the various parts that are sent back for credit, and coordinates service records. She shares a private office with Gaboric and has little contact with the other employees. We find that their work and interests are closely allied to those of the office clericals and exclude them.<sup>5</sup> A question was also raised as to the supervisory status of Mrs. Kent, the senior employee among the delivery order processors. As she can neither hire, discharge, nor effectively recommend such action, and does not responsibly direct other employees, we shall include her in the unit.

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<sup>2</sup> *Southeastern Concrete Products Co., et al.*, 127 NLRB 1024; *Standard Trucking Company*, 122 NLRB 761, 762; and *Maule Industries, Inc.*, 117 NLRB 1710, 1711-1712.

<sup>3</sup> *Lillston Implement Company*, 121 NLRB 868.

<sup>4</sup> *Southern Steel & Stove Company, Inc., et al.*, 124 NLRB 577, 578.

<sup>5</sup> *Divco-Wayne Corporation, Wayne Works Division*, 122 NLRB 162. In view of our decision it is unnecessary to discuss the Petitioner's other asserted reasons for excluding these employees.

No position was taken by either party, at the hearing, as to the unit placement of Tyner, Collins, Hebert, Travis, and Gross. The Employer, however, maintains in its brief that Collins and Hebert are supervisors; that Gross is not a supervisor; and that the duties of Travis and Tyner are closely allied to those of the other employees sought and that they should be included. Tyner's duties entail the disposition of used merchandise and he exercises his own independent judgment in fixing the selling price. He is a salaried employee and has hired extra help to assist him. Collins and Hebert, respectively, are responsible for the white goods and paint departments. They can effectively recommend the hire, discharge, transfer, and promotion of employees in their departments. We find that Tyner, Collins, and Hebert are supervisors within the meaning of the Act and exclude them. Travis is employed primarily as a janitor but occasionally acts as a messenger. As he is paid on an hourly basis and enjoys the same benefits as the warehouse employees, we shall include him.<sup>6</sup> Gross previously was the supervisor of the television repair department. This position was eliminated by the Employer as a result of a departmental consolidation. Both Gross and the employees that are presently working with him were informed that Gross no longer has the authority to hire, discharge, transfer, discipline, or effectively recommend such action. As he is not now performing any supervisory duties and his future service in such capacity is speculative, we shall include him.<sup>7</sup>

We find that the following employees constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:<sup>8</sup>

All the employees at the Employer's warehouses in Tampa and Lakeland, Florida, including truckdrivers, helpers, repairmen, painters, mechanics, warehousemen, janitors, delivery order processors, inventory control clerks, service dispatchers, installation men, maintenance men, and plant clericals, but excluding employees in the accounting, advertising, payroll, and accounts payable departments, and office clericals, guards, watchmen, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

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<sup>6</sup> *Kentucky Rural Electric Cooperative Corporation*, 127 NLRB 887.

<sup>7</sup> *United States Gypsum Company*, 118 NLRB 20, 26-27.

<sup>8</sup> Neither the exact size of the unit nor the exact interest of the Petitioner is clear from the record before us. Accordingly, we instruct the Regional Director not to proceed with the election herein directed until he shall have first determined that the Petitioner has made an adequate showing of interest among the employees in the appropriate unit. Cf. *Swift & Co.*, 127 NLRB 87.