

made the customarily required showing of interest. We would direct the election.⁹

⁹ See, e.g., *Harvey Paper Products Company, etc.*, 117 NLRB 26. The majority avoids the issue, we believe, by centering its attack on the *Harvey* case which it states is inconsistent with *Sutherland Paper Co.*, 122 NLRB 1284. Our citation of *Harvey*, as already plainly shown, is illustrative of a longstanding and fundamental principle reflected in the lead *Zia* case, to which, indeed, our colleagues advert as authority. *Sutherland* certainly did not in fact or contemplation overrule *Zia* and the many other like cases following its basic rule. Nor is *National Cash Register Co.*, 119 NLRB 486, also cited by our colleagues, of any possible assistance to the majority position. There, severance was sought of a craft unit composed of employees already represented in several different existing units. Under the *Zia* rule, the petition was properly dismissed because an adequate showing of interest was not established for each of the represented groups sought to be combined in the craft unit. Here, as noted, the Petitioner's showing of interest is perfectly adequate within the rule.

Longs Stores, Inc., a California corporation,¹ Petitioner and Retail Clerks Union, Local 1222, Retail Clerks International Association, AFL-CIO. Cases Nos. 21-RM-678 and 21-RM-679. January 31, 1961

DECISION AND DIRECTION OF ELECTIONS

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a consolidated hearing was held before Max Dauber, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel [Members Rodgers, Jenkins, and Fanning].

Upon the entire record in these cases, 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.

¹ The Employer's name appears as amended at the hearing.

² The original petitions in these cases requested elections in units of all sales and stock employees, including pharmacists, at both the College Grove and El Cajon stores of the Employer. At the hearing, the Employer was permitted to amend the petitions to request elections in separate units of pharmacists and sales and stock employees at each store, or, in the alternative, separate overall units of pharmacists and sales and stock employees at all four of the Employer's San Diego County stores. The Union moved to dismiss the petitions on the ground they are inappropriate on their face because they request elections in a single unit containing both professional and nonprofessional employees without giving the professionals the separate election required by Section 9(b)(1). Therefore, the Union argues, the notice of hearing was improperly issued and the petitions could not be amended at the hearing to correct this defect. There is no merit to the Union's contentions. Section 9(b)(1) of the Act is not a general prohibition against the establishment of bargaining units composed of both professional and nonprofessional employees. Indeed, the Board consistently finds such units appropriate when professional workers indicate in a separate election that they desire to be included in a larger bargaining unit. As the amendments simply requested the voting procedure required by the statute, we find they were properly permitted. *Westinghouse Electric Corporation*, 107 NLRB 16.

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.³

4. The Employer-Petitioner seeks representation elections in units of sales and stock employees and pharmacists, at both its El Cajon and College Grove, California, retail drugstores. In the alternative, the Employer-Petitioner requests a representation election in an overall unit of sales and stock employees and pharmacists at all four of its San Diego County, California, retail drugstores.⁴ The Union contends that the Employer's alternative request sets forth the most appropriate unit, but the Union is willing to participate in any elections that may be directed.

The Employer operates 15 drugstores in the State of California, 4 of which are located within a 25-mile area in San Diego County. The Employer and the Union are parties to an existing collective-bargaining agreement which covers the employees in two of the four San Diego stores. The other two San Diego stores at El Cajon and College Grove were opened in July and September 1960, respectively, and the employees at these stores are currently unrepresented.

The Employer's operations at El Cajon and College Grove are characterized by a considerable degree of local autonomy on the part of the individual stores. Each store manager makes his own decisions as to what goods to purchase and in what amounts. The Employer's Oakland office issues merchandise memorandums which the store managers may follow, but the memorandums are not considered directions as to what to buy and many items are for sale in one store but not in others. The Employer has no central warehouse and each store keeps its own stock. The only item purchased centrally is the Employer's private-label liquor and each store decides independently what quantity it will need each month. Although each store does its own buying, all accounts are paid by the general office in Oakland. The Oakland office also keeps a running inventory for all stores, and when any one store finds itself with an excess of merchandise, a trade by invoice between the stores is usually effected and notice of the transaction is sent to the central office.

The Employer's individual store managers have full control of hiring and firing. The Employer has no centralized personnel de-

³ In its brief, the Union abandoned the contention made at the hearing, that an existing contract effective from June 2, 1956, to June 1, 1961, was a bar to an election. See *Pacific Coast Association of Pulp and Paper Manufacturers*, 121 NLRB 990.

⁴ The Union's contention that the Employer amended its petitions in a manner that made it impossible to determine what unit is being requested is without merit. Although the Employer requested separate "units" of sales employees and pharmacists on either a single-store or multistore basis, it is clear from the record and the Employer's brief that what the Employer is seeking is either a single-store or multistore unit of both sales employees and pharmacists with the inclusion of the pharmacists depending on their vote in the separate election required by Section 9(b)(1).

partment, and when an employee is hired, his application becomes a permanent record in that store and is not forwarded to the Oakland office. Each store makes up its own weekly payroll, although the central office does prepare an annual pay statement for income tax purposes.

Each store manager sets the opening and closing hours of his store and there is no uniformity in the hours of operation of the Employer's San Diego stores. Furthermore, each manager determines the hours of individual employees and has complete freedom to allow time off, grant sick leave, and set the vacation schedule. The store managers also may vary the prices at which goods are to be sold in their store. Although the Employer frequently runs one newspaper advertisement which is paid for by the Oakland office, each manager helps prepare the ad and each store is charged a proportionate amount for advertising based on its volume of business.

There is no direct interchange of personnel between stores, except for pharmacists who are sometimes transferred to new stores. There are occasional transfers of employees from sales clerk rank to supervisory status at different stores, but there is no interchange at the sales employee level.

Although there is a history of collective bargaining on a multistore basis, the Board normally permits employees at a new operation to decide whether they wish to be included within a multistore unit.⁵ Accordingly, in view of the bargaining history and the fact that the four stores comprise all the Employer's stores in the same geographical area,⁶ we find that, for the purposes of collective bargaining, the employees at the El Cajon and College Grove drugstores may appropriately be included in the multistore bargaining unit currently represented by the Union. We shall, therefore, make no unit determinations with respect to the employees at the El Cajon and College Grove stores at this time, but shall first ascertain the desires of these employees as expressed in the elections hereinafter directed.

We now turn to a consideration of those employees whose supervisory status is in issue.

At the Employer's College Grove store, the lobby manager and drug manager may act as replacements for the manager or assistant manager on four or five occasions a year for periods of a day to 2 weeks, and at such times they may exercise the power to hire and fire. These employees always have the right independently to assign employees to work stations, to discipline, and to grant employees time off. Furthermore, they have recommended wage increases in the past and their recommendations generally have been followed. On these facts, we

⁵ *Pay Less Drug Stores*, 127 NLRB 160. And see *Krambo Food Stores, Incorporated*, 119 NLRB 369, 373.

⁶ *ACF-Wrigley Stores, Inc.*, 124 NLRB 200.

find that the drug manager and lobby manager at the Employer's College Grove store are supervisors within the meaning of the Act and we shall exclude them from the voting group at that store.⁷

At the Employer's El Cajon store, on the other hand, only the store manager and sundry manager have authority to hire, fire, and discipline employees. The assistant sundry manager and lobby manager at El Cajon can make work assignments only after consulting the manager. They may recommend wage increases, but their recommendations are not always followed. Furthermore, independent investigation of the facts is always made before the recommendations of the lobby manager or assistant sundry manager as to discipline are followed. As the assistant sundry manager and lobby manager at the Employer's El Cajon store do not possess any of the indicia of supervisory authority enumerated in Section 2(11) of the Act, we shall include them in the voting group at that store.

There are pharmacists employed at both the El Cajon and College Grove stores. It is clear that these pharmacists are professional employees within the meaning of the Act. As Section 9(b)(1) of the Act precludes the Board from including in a single bargaining unit professional and nonprofessional employees without according to the former an opportunity of separately expressing their desires respecting such inclusion, we shall poll the professional employees.

We shall, therefore, direct separate elections in the following voting groups:

(a) All sales and stock employees at the Employer's College Grove, California, drugstore, excluding professional employees (pharmacists), office clerical employees, guards, watchmen, the store manager, the assistant store manager, drug manager, lobby manager, and supervisors as defined in the Act.

(b) All professional employees (pharmacists) at the Employer's College Grove, California, drugstore, excluding all sales and stock employees, guards, watchmen, the store manager, the assistant store manager, drug manager, lobby manager, and supervisors as defined in the Act.

(c) All sales and stock employees including the lobby manager and assistant sundry manager at the Employer's El Cajon, California, drugstore, excluding professional employees (pharmacists), office clerical employees, guards, watchmen, the store manager, sundry manager, and supervisors as defined in the Act.

(d) All professional employees (pharmacists) at the Employer's El Cajon, California, drugstore, excluding all sales and stock employees, the lobby and assistant sundry managers, office clerical employees, guards, watchmen, the store manager, sundry manager, and supervisors as defined in the Act. The employees in the nonprofes-

⁷ *Katz Drug Company*, 123 NLRB 1615.

sional voting groups (a) and (c) will be polled as to whether they desire to be represented by the Retail Clerks or by no union.

The employees in the professional groups (b) and (d) will be asked two questions on the ballot:⁸

1. Do you desire the professional employees to be included in the same unit as the nonprofessional employees at the Employer's College Grove, California (or El Cajon, California, as the case may be), drug-store for the purposes of collective bargaining?

2. Do you desire to be represented for the purposes of collective bargaining by Retail Clerks Union Local 1222, Retail Clerks International Association, AFL-CIO, or by no union?

If a majority of the professional employees in voting groups (b) and/or (d) vote "yes" to the first question, indicating their wish to be included in a unit with the nonprofessional employees, the group or groups so voting will be included. Their votes on the second question will then be counted together with the votes of the nonprofessional groups (a) and/or (c), respectively, to decide whether the employees desire to be part of the multistore unit. However, if a majority of the professional voting groups (b) and/or (d) vote against inclusion, the group or groups so voting will not be included with the nonprofessional employees. Their votes on the second question will then be separately counted to decide whether they desire the Retail Clerks to represent them in separate professional units. There is no indication in the record that the Retail Clerks would not be willing to represent the professional employees separately if these employees vote for separate representation. However, if the Retail Clerks does not desire to represent the professional employees in separate units even if those employees vote for such representation, that union may notify the Regional Director to that effect within 10 days of this Decision and Direction of Elections.

Our unit determination is based, in part, then, upon the results of the election among the professional employees. However, we now make the following findings:

(1) If a majority of the professional employees in voting groups (b) and/or (d) vote for inclusion in a unit with nonprofessional employees, and if a majority of the employees in combined voting groups (a) and (b), and/or (c) and (d) vote for the Union, they will be taken to have indicated their desire to be a part of the multistore unit, and the Union may bargain for them as part of its existing unit.

(2) If a majority of the professional employees in voting groups (b) and/or (d) vote against inclusion in a unit with nonprofessional employees or vote against representation by the Union, and if a majority of the employees in voting groups (a) and/or (c) select the Union, the employees in the latter groups will be taken to have indi-

⁸ See *Miller Brewing Company*, 117 NLRB 1, 4.

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.]

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.¹

¹The 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