

3. By restraining and coercing Ivan H. Lewis in the exercise of the rights guaranteed him by Section 7 of the Act, as found above, Local 392 has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. By causing and attempting to cause Alco Products, Inc., to discriminate against Ivan H. Lewis in violation of Section 8(a)(3), Local 392 has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(2) of the Act.

5. The unfair labor practices found herein affect commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

American Stores Company, Petitioner and District Union Local No. 1, AFL-CIO, Amalgamated Meat Cutters, Butcher Workmen and Affiliated Crafts of N.A.

American Stores Company, Petitioner and Local 34, Amalgamated Meat Cutters, Butcher Workmen of North America, AFL-CIO. Cases Nos. 3-RM-217 and 3-RM-218. February 23, 1961

DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a consolidated hearing was held before Hymen Dishner, 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 National Labor Relations Act, as amended, the Board has delegated its powers in connection with the consolidated cases to a three-member panel [Chairman Leedom and Members Jenkins and Kimball].

Upon the entire record in the consolidated cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. No question affecting commerce exists concerning the representation of certain employees of the Employer for the following reasons:

The Employer, by its petition, seeks a determination from the Board as to the appropriateness of a single or two separate units of certain of its employees. The petitions state that the Unions herein are seeking to represent and bargain separately for all its grocery store employees, excluding supervisors, located within the Unions' respective jurisdiction. The Employer contends that a single unit of such employees is alone appropriate. It also contends that if the unit issue is resolved, assistant store managers should be excluded from the unit or units.

For a number of years prior to 1957 the Employer's predecessors had bargained with Local 1 as the exclusive bargaining representative of all their grocery store employees, excluding supervisors, in a geographical area over which Local 1 claimed jurisdiction. The Employer had similarly bargained with Local 34 as the exclusive bargaining representative of all such employees in an area over which Local 34 claimed jurisdiction. In 1957 the Employer acquired the interests of its predecessors and combined the previously separate area operations into a single administrative unit. With the consent of Local 1 and for the purpose of simplifying its collective bargaining, it executed a contract with Local 34 covering all employees represented by Local 34 and those represented by Local 1. The parties agreed, however, that Local 1 would continue to represent, collect dues from, and handle grievances for its members. Bargaining on this arrangement having proved unsatisfactory to the Unions, they reasserted their claims to representative status in their respective historical units. None of the above contract units has ever been certified by the Board.

The parties stipulated that each Union represents a majority of the employees in the respective unit it seeks to represent, that Local 34 represents a majority of the employees in the unit claimed by the Employer as the only appropriate unit, and, therefore, that none seeks an election in any unit which the Board may determine as appropriate.

It is apparent from the foregoing that the parties are merely asking the Board to advise them as to which of the units is appropriate for collective bargaining so that bargaining may thereafter proceed on a voluntary recognition basis. The Board, however, has held that the Act, neither expressly nor impliedly, empowers it, on matters of this type, to give advisory opinions which are binding upon neither the parties nor the Board.¹

In a proceeding such as the proceeding herein, under Section 9(c)(1) the Board may make a unit determination only when it finds that a question concerning representation exists. But as none of the parties seeks an election, there can be no question concerning representation.² Accordingly, we shall dismiss the petitions forthwith.

[The Board dismissed the petitions.]

¹ *The Bell Telephone Company of Pennsylvania*, 118 NLRB 371, 374.

² *Ibid.* at 373.

Although Chairman Leedom dissented in the *Bell* case, and would have clarified the existing unit there, even though it was not a Board-certified unit, by determining the unit placement of the "supervisors," he agrees that the petitions herein should be dismissed, in the absence of a desire for an election, because, unlike the *Bell* case, these petitions place in issue the basic appropriateness of the existing uncertified units.