Merriman) went home. Wyman testified that he did not give permission to Braden to leave early and I credit such testimony. Merriman had told Wyman earlier that he probably would be going home early because he did not feel well. Braden testified that he had mentioned his back was bothering him in a general conversation in the Red Flannel Restaurant earlier in the evening but did not know if Wyman heard it. Wyman testified he had not heard it and did not think he (Wyman) had been in the restaurant all night.

The next morning Braden went to Wilder's office with Priest and Bettys. While there Braden never informed Wilder that he had left early because of illness. Wilder was never informed that Braden's reason for going home was different from Priest's and Bettys' and for all Wilder knew Braden had walked off the job for the same reasons they had left. Thus Wilder had no reaosn to believe that Braden's case was different or that he should be treated differently from Priest and Bettys.

The General Counsel contends in his brief that since Priest, Bettys, and Braden had been leaders for the Union it was quite natural for the Respondent to assume that Braden had allied himself with Priest and Bettys in the walkout. The Respondent also contends that Wilder assumed that Braden had allied himself with Priest and Bettys in the walkout but not because of their union activities.

On the basis of the entire record, I find that Braden was discharged because Wilder believed he had allied himself with Priest and Bettys in the unauthorized walkout on June 21 and in so doing the Respondent was not motivated by any unlawful discriminatory motives. The complaint with respect to Braden should therefore be dismissed.

Upon the basis of the foregoing findings of fact, and upon the entire record in this proceedings, I make the following

CONCLUSIONS OF LAW

1. The Union is, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act
2. The Respondent is, and has been at all material times, an employer within the meaning of Section 2(2) of the Act.
3. The record does not establish that the Respondent committed the unfair labor practices alleged in the amended complaint.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and the entire record in this proceeding, I recommend that the Board enter an order dismissing the amended complaint.

Sav-On Drugs, Inc. *and* Retail Clerks Union, Local 1262, affiliated with Retail Clerks International, AFL–CIO. *Case No. 22–RC–1342. September 26, 1962*

DECISION ON REVIEW AND DIRECTION OF ELECTION

On November 14, 1961, John J. Cuneo, the Regional Director for the Twenty-second Region, issued a Decision and Order in the above-entitled proceeding dismissing the petition on the ground of inappropriateness of the proposed units. Thereafter the Petitioner, in accordance with Section 102.67 of the Board's Rules and Regulations, as amended, filed with the Board a request for review of such Decision and Order. The Employer filed a statement in opposition to the request for review.

The Board by telegraphic order dated December 15, 1961, granted the request for review because of the factual and policy issues raised.

The Board has considered the entire record in this case,[1] including the positions of the parties as set forth in the request for review, the opposition thereto, and their briefs, and makes the following findings:

The Petitioner seeks to represent separate units of (1) all professional employees and (2) all other employees at the Edison, New Jersey, retail store. The Employer contends that the appropriate units for such employees should encompass all like employees in its nine stores in New Jersey and New York, which together comprise an administrative subsidivision of its parent corporation, Kroger Company, or in the alternative, that the unit should embrace all the stores in the State of New Jersey. The Regional Director in his decision agreed with the Employer's primary position, in reliance on the policy statement made in prior Board decisions that "in cases involving retail chainstore operations, absent unusual circumstances, the appropriate unit for collective bargaining should embrace employees of all stores located within an employer's administrative division or geographic area."[2]

In its request for review of the Regional Director's unit determination Petitioner urged, *inter alia*, that there are compelling reasons for the Board to reconsider the above-stated policy. Reviewing our experience under that policy we believe that too frequency it has operated to impede the exercise by employees in retail chain operations of their rights to self-organization guaranteed in Section 7 of the Act. In our opinion that policy has overemphasized the administrative grouping of merchandising outlets at the expense of factors such as geographic separation of the several outlets and the local managerial autonomy of the separate outlets; and it has ignored completely as a factor the extent to which the claiming labor organization had sought to organize the employees of the retail chain. We have decided to modify this policy and to apply to retail chain operations the same unit policy which we apply to multiplant enterprises in general.[3] Therefore, whether a proposed unit which is confined to one of two or more retail establishments making up an employer's retail chain is appropriate will be determined in the light of all the circumstances of the case.[4] With these principles in mind, we turn to the facts disclosed in the record of the instant case relating to the unit issue.

[1] Following the hearing the hearing officer accepted and made part of the record a stipulation of the parties setting forth additional evidence as to employee interchange and the record of transfers between the Employer's several retail stores for the calendar year 1961.

[2] See *Daw Drug Company, Inc.*, 127 NLRB 1316; *Robert Hall Clothes*, 118 NLRB 1096; *Father & Son Shoe Stores, Inc*, 117 NLRB 1479.

[3] See *American Linen Supply Company, Inc.*, 129 NLRB 993; *Thompson Ramo Wooldridge, Inc.*, 128 NLRB 236; *Victory Grocery Company, et al.*, 129 NLRB 1415; *General Shoe Corporation*, 113 NLRB 905; *General Shoe Corporation*, 109 NLRB 618.

[4] We disagree with our dissenting colleague's analysis that the intent of our decision is to make extent of organization the "decisive factor" in determining appropriate unit. In no way have we varied the factors to be considered. We have simply added the possibility—as in manufacturing and other multiplant enterprises—that a single location

The Employer is engaged in the sale of drugs and other merchandise in its nine stores in New Jersey and New York. As above indicated, it is a wholly owned administrative subdivision of Kroger Company. Seven of the stores are located in separate communities in northern New Jersey and two are in Staten Island, New York. The stores are geographically separated by distances ranging from approximately 5 to 65 miles. Each store is separately incorporated. However, all the stores are serviced administratively by a central office in Plainfield, New Jersey, which is approximately 10 miles from the Edison store. The central office handles various recordkeeping functions for all nine stores pertaining to personnel, payroll, invoices, bills, social security deductions, unemployment, etc.

Operating out of the central office and having overall responsibilities are the division manager and a division purchasing agent. The division manager visits each store at least once a week and gives advice to the store manager. However, the store managers are in charge of the day-to-day operations of their respective stores. They have complete hiring authority with respect to part-time employees. They also interview applicants for full-time positions and hire them upon approval of the division manager. The division purchasing agent visits merchandise shows and selects merchandise to be carried in the Employer's stores. However, there is no central warehouse for the division. Each store manager purchases merchandise for his own store from a list of companies approved by the division manager. Suggested advertising materials are supplied by Kroger Company's Chicago office. However, the store managers generally decide what and how to advertise. Sometimes stores in close proximity to one another advertise jointly.

There is some degree of interchange of employees between the stores to accommodate unexpected fluctuations in business volume. The Employer designates one pharmacist and one other employee as floaters and it appears that they are assigned to stores where they are most needed. Otherwise in the normal course of business transfers between stores are infrequent, mainly for relief work and emergencies. An exception arose in 1961 when 26 employees were transferred temporarily to assist in the opening of 2 new stores. A permanent transfer between the stores is made only with the employee's consent.

From the foregoing, it is clear that there are a number of factors militating in favor of units divisionwide in scope. However, there

or a grouping other than an administrative division or geographical area may be appropriate. Indeed, most of the cases which our dissenting colleague implies would be changed under the policy herein would have reflected the same result under it.

In addition, we think it too self-evident to admit of argument that the experience of this Board is that innumerable petitions for single store units or groupings of stores not in conformity with the administration division-geographical policy have been dismissed, largely in unpublished decisions.

are other factors supporting units confined in scope to the Edison store, such as geographic separation of the Edison store, the substantial authority of the store manager, the minimal interchange of employees between the Edison store and other stores, the absence of a bargaining history for any of the employees in the division, and the fact that no labor organization is seeking to represent employees on a broader basis. We find therefore, in view of these factors, that the requested units confined in scope to the Edison store is appropriate herein.

Accordingly, we find, contrary to the Regional Director, that a question affecting commerce eixsts herein 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.

We turn therefore to the composition of the Petitioner's proposed Edison store units:

The Petitioner agrees that Gangwisch, the store manager, who is one of the stores two pharmacists, is a supervisor, but it contends that the other pharmacist, Nisonoff, who is also the assistant manager of the store is not a supervisor and that as a professional employee a separate election as to his placement in the store unit is required under the Act. The Employer took no position.

Both Gangwisch and Nisonoff are registered pharmacists and are salaried. They work 48 hours a week. The regular workweek for full-time employees is 40 hours. The store is open 86 hours a week, during which the manager is present and in charge for 48 hours. During the remaining 38 hours Nisonoff is in charge, in compliance with a State law which requires that a registered pharmacist be in charge at all times. While in charge Nisonoff has authority to grant time off, discipline, suspend, and recommend the discharge of employees for serious rule infractions. We find that he is a supervisor as defined in the Act.

In the circumstances, as there are no nonsupervisory professional employees at the Edison store, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All regular full-time and part-time retail clerks at the Employer's Edison, New Jersey, drugstore, including the cosmetician clerk, but excluding the store manager, the assistant store manager, professional employees, guards, and all other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS, dissenting:

My colleagues are here abandoning the Board rule that the appropriate bargaining unit in retail chain store operations should embrace the employees of all stores within an employer's administrative or

geographical area. The principle which is being overturned has, since 1948, controlled requests for multistore units;[5] and has, since 1955, controlled, with rare exceptions, requests for single-store units.[6] This rule was grounded on, and recognized, the integrated nature of retail chain operations. It took cognizance of the fact that retail chains generally combine centralized control with a limited amount of local autonomy. Thus, in retail chains overall management generally establishes and to a large degree directs broad policy, while middle managers, in charge of administrative subdivisions, are generally responsible for the effective operation of all stores within their jurisdictions. Local store managers generally exercise only limited authority.[7] The rule also recognized a certain affinity between the stores in a geographical area. Thus, such stores are physically located close together, generally have a central personnel office, generally have uniform prices and advertising, and often interchange personnel.[8] These factors, in varying combinations, in some cases more, in others less, resulted, the rule recognized, in a singular community of interests for employees in such multistore groups.

Now the rule is being abandoned, and no good reason is advanced for the change. The sole rationale my colleagues set forth is that the rule has operated to impede the exercise by employees of their right to self-organization under Section 7 of the Act. Significantly, my colleagues cite no authority to support their sweeping conclusion in this respect other than the magic catch-all phrase "our experience." Established precedent ought not to be overturned on the basis of such conclusionary generalizations. Moreover, the fact that my colleagues point to the dismissal in unpublished cases of petitions for single-store units proves only that the Board has applied established precedent to such unit requests in the past—the same precedent from which it is now departing.

[5] *Westbrook Enterprises, Inc.*, 79 NLRB 1032; *C. Pappas Company, Inc*, 80 NLRB 1272; *The Great Atlantic and Pacific Tea Company*, 85 NLRB 680; *The Kroger Company*, 85 NLRB 6; 88 NLRB 194; *Schaeffer Stores Co*, 88 NLRB 1446; *Safeway Stores, Incorporated*, 96 NLRB 998; *The Great Atlantic and Pacific Tea Company*, 99 NLRB 1500; *Crown Drug Company*, 108 NLRB 1126; *Frank G. Shattuck Company*, 106 NLRB 838; *L. Wiemann Company*, 106 NLRB 1167; *Jewel Food Stores*, 111 NLRB 1368; *Food Fair Stores, Inc*, 114 NLRB 521; *B.G. Wholesale, Incorporated, etc.*, 114 NLRB 1429; *Jackson Jitney Jungle Stores, Inc.*, 115 NLRB 374, at 374–375; *Father & Son Shoe Stores, Inc*, 117 NLRB 1479; *The Great Atlantic & Pacific Tea Company, Inc.*, 119 NLRB 603; 121 NLRB 1193; *Paxton Wholesale Grocery Company*, 123 NLRB 316; *Katz Drug Company*, 123 NLRB 1615; *Winn-Dixie Stores, Inc*, 124 NLRB 908; *Royal Tile Company*, 124 NLRB 1233; *Daw Drug Co, Inc*, 127 NLRB 1316; *The Great Atlantic and Pacific Tea Company, Inc.*, 128 NLRB 342; 132 NLRB 797; 132 NLRB 999.

[6] *Sparkle Markets Company*, 113 NLRB 790; *Robert Hall Clothes, Inc.*, 118 NLRB 1096; *ACF–Wrigley Stores, Inc*, 124 NLRB 200; *Weis Markets, Inc.*, 125 NLRB 148; *Quality Foods Markets, Inc.*, 126 NLRB 349; but compare *Walgreen Company*, 114 NLRB 1168; and *Goldblatt Bros, Inc*, 118 NLRB 643; 119 NLRB 1340.

[7] See *Safeway Stores, Incorporated*, 96 NLRB 998; *The Great Atlantic & Pacific Tea Company*, 132 NLRB 999.

[8] See *The Great Atlantic & Pacific Tea Company*, 99 NLRB 1500, *B G Wholesale Inc, supra; ACF–Wrigley Stores, Inc. supra, The Great Atlantic and Pacific Tea Company, Inc.*, 128 NLRB 342

I certainly have no desire to frustrate the employees' right to self-organization. But that right must be accommodated by the Board to the prohibition in Section 9(c)(5) of the Act that, in deciding the unit appropriate for the purposes of collective bargaining, "the extent to which the employees have organized shall not be controlling." In short, what the present change signifies, in my opinion, is that the union's extent of organization has now become, and will be, a decisive factor in determining the appropriate unit for retail store operations.[9]

[9] *Quality Food Markets, Inc.*, 126 NLRB 349, at page 351 See also the following pre-Taft-Hartley cases in which the Board relied on extent of organization: *First National Stores, Inc.*, 26 NLRB 1275, at 1279–1280; 55 NLRB 1346, at 1347–1348; 56 NLRB 1870, at 1872–1873; and 63 NLRB 138, at 139–142.

Colgate-Palmolive Company *and* Phyllis Boyle

International Longshoremen's & Warehousemen's Union, Local 6 *and* Phyllis Boyle. *Cases Nos. 20–CA–2116 and 20–CB–866. September 27, 1962*

DECISION AND ORDER

On January 9, 1962, Trial Examiner James R. Hemingway issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Intermediate Report. Thereafter, the Respondents filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner to the extent consistent herewith.

On June 12, 1961,[1] Phyllis Boyle became delinquent as to her May dues. On June 24, the Union sent her a warning notice stating that the deadline for payment of the amount in arrears was July 12, and urging her to "straighten out this matter immediately." On June 27, in accord with established practice,[2] the Respondent Union sent to the Respondent Company a letter containing a list of members (including Boyle) whose dues were delinquent for the month of May and advised the Respondent Company that their memberships would be terminated unless the subject dues were paid by July 12.

[1] All dates refer to 1961.

[2] The union-shop contract and the practices of the Union and Company thereunder are fully described in the Intermediate Report and will not be repeated here