

The principal reason for the discharge, I am persuaded, was Day's admitted disclosure to persons in the Lake City community not connected with her employer or the Union of a problem relating to her employment and, in doing so, attributing a dictatorial attitude to Kehrer which, in his view, not only misrepresented his position but convinced him she lacked discretion and a proper sense of loyalty to her employer. A contributing factor, I find, was the revelation to the local chairlady and Cameron, contrary to policy, of information about the medical findings relating to an employee-patient. While I have no doubt that Kehrer was displeased with Day's association with Thomas, I do not believe that this relationship caused her termination. Accordingly, I find that Day was discharged for reasons not violative of the Act, and I shall therefore recommend that the complaint be dismissed in its entirety.¹⁴

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

CONCLUSIONS OF LAW

1. Southeastern Regional ILGWU Health and Welfare Fund is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. International Ladies' Garment Workers' Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondents have not engaged in any unfair labor practices as alleged in the complaint.

RECOMMENDED ORDER

It is hereby recommended that the complaint be dismissed in its entirety.

¹⁴In view of my finding that Day was not discharged because of her association with Thomas or because she refused to cease such association, as alleged in the complaint, it seems unnecessary to consider whether, if I had found the reason to be as alleged, a violation of Section 8(a)(3) and 8(b)(1)(A) and (2) would thereby be established.

**Haag Drug Company, Incorporated and Retail Clerks Union
No. 725, a/w Retail Clerks International Association, AFL-
CIO, Petitioner. Case No. 25-RC-2455. April 13, 1964**

DECISION, DIRECTION, AND CONTINGENT ORDER AND DIRECTION OF SECOND ELECTION

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted on August 22, 1963, under the direction and supervision of the Regional Director for the Twenty-fifth Region, among the employees in the agreed-upon unit. Upon the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately 315 eligible voters, 267 cast ballots, of which 124 were for, and 117 were against, the Petitioner, and 25 were challenged and 1 was void. The challenges were sufficient in number to affect the results of the election. Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation and on December 23, 1963, issued and duly served on the parties his report on challenged ballots and objections, in which he recommended that 5 challenges be sustained

and that 20 be overruled. He further recommended that objections Nos. 1 and 2 be overruled, and that objection No. 3 be sustained and the election set aside in the event the votes of the four additional eligibles there involved could affect the election results shown by the revised tally to be prepared. Thereafter, the Petitioner and the Employer filed timely exceptions to the Regional Director's report.

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 McCulloch and Members Leedom and Brown].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that all employees of the Employer at its retail drugstores located in Marion, Johnson, Monroe, and Shelby Counties in Indiana, including all regular part-time employees, but excluding all general office employees, warehouse employees, Huddle Restaurant employees, Mr. Pancake employees, store managers, assistant store managers, pharmacists, professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. The Board has considered the Regional Director's report, and the exceptions thereto, and hereby adopts the findings and recommendations of the Regional Director, with the following modifications.¹

The Petitioner excepted to the Regional Director's finding that Pearle M. Zollars and James E. Kesling are regular part-time employees and therefore eligible to vote.

The report indicates that Zollars has worked a scheduled 6-hour shift every other Sunday and, since beginning to work for the Employer in September 1961, has averaged about 15 hours per 2-week pay period. Also, she receives paid vacations, sick leave, holiday pay, and merchandise discounts as do the regular full-time employees. We agree with the Regional Director, on the basis of Zollars' employment history, that she is a regular part-time employee.

¹ We adopt *pro forma* the Regional Director's recommended disposition of the objections and of all the challenges to which no exceptions were filed.

Prior to April 1963, Kesling had substantial part-time employment with the Employer. However, since April 1963, he has had a full-time job elsewhere and has worked with the Employer on scheduled days providing overtime work on his full-time job did not interfere. Notwithstanding this fact, as of the election date, he had since April 1963 actually worked for the Employer during three consecutive 2-week pay periods for a total of 22½ hours and did not work at all in seven pay periods. Such an employment history does not, in our opinion, warrant a finding that Kesling is a regular part-time employee of the Employer. We conclude that he is an irregular or intermittent part-time employee and is therefore, under our policy, excluded from the unit and ineligible to vote. Accordingly, we hereby sustain the challenge to Kesling's ballot.

The Petitioner also excepted to the Regional Director's finding that six apprentice pharmacists are not professional employees and are therefore eligible to vote. The Petitioner urges that they are professional employees because they are licensed by the State of Indiana and they fill prescriptions for the Employer. However, it is clear from the facts set forth in the report that they fill prescriptions only under the direction and with the approval of the pharmacists, and that they rarely if ever do any compounding. As neither their educational qualifications nor the work they do is such as to bring them within the term "professional employee" as defined in Section 2(12) of the Act, we conclude that the apprentice pharmacists are not professional employees. In view of their community of interests with other store employees, we find that they are within the unit and eligible to vote. Accordingly, the challenges to their ballots are overruled.

The Employer excepted to the Regional Director's findings that Harry W. Brandenburg and Samuel J. Austin are managerial employees. We find merit in this contention. The report shows that Brandenburg, classified as a senior sales clerk, and Austin, classified as a floor manager, are engaged principally in ordering, marking, and displaying merchandise. Both order merchandise from the Employer's warehouse stocks. An order for any item not stocked in the warehouse must be signed by the manager. Although Brandenburg exercises judgment as to whether to discontinue items selling for less than \$5 and Austin does the same as to items selling for less than \$7, such decisions are based solely on the lack of customer demand for the items. Furthermore, these items will generally continue to be available in the warehouse and the final decision as to whether to continue to stock the items is made elsewhere. In view of the limits on their discretion in making these decisions and the absence of any

authority on their part to pledge the Employer's credit, we find that they are not managerial employees and that they are in the unit and eligible to vote.² Accordingly, we shall overrule the challenges to their ballots.

As we have overruled the challenges to 21 ballots, we shall direct the Regional Director to open and count such ballots. In the event the revised tally of ballots shows that a majority voted for the Petitioner, and such majority could not be affected by four additional votes, the Regional Director is directed to certify the Petitioner as the representative of the employees in the appropriate unit.³ If, on the other hand, the Petitioner does not receive a majority, and four additional votes could affect such results, the Contingent Order and Direction of Second Election set forth below shall become applicable.

[The Board directed that the Regional Director open and count the ballots of Adamson, Chaille, Goodwin, McElroy, D. Long, Fancher, Murray, Van Horn, R. E. Thompson, Glazer, Zollars, Smith, Todd, Brandenburg, Austin, Morgan, T. V. Thompson III, Bough, Lang, Welsh, and Gibbs, and thereafter serve upon the parties a revised tally of ballots, including therein the count of the above-mentioned ballots. If, according to the revised tally of ballots, the Petitioner has received a majority of the valid ballots cast in the election, and four additional votes could not affect such results, the Regional Director is directed to certify Retail Clerks Union No. 725, a/w Retail Clerks International Association, AFL-CIO, as the exclusive bargaining agent for the employees in the appropriate unit. If, according to the revised tally of ballots, the Petitioner has not received a majority of the valid ballots cast in the election, and four additional votes could not affect the results, the Regional Director shall issue a certification of results of election. If, on the other hand, four additional votes could affect the results according to the revised tally, the following Order and Direction of Second Election shall be applicable.]

[The Board set aside the election conducted herein on August 22, 1963.]

[Text of Direction of Second Election omitted from publication.]

² *Eastern Camera and Photo Corp.*, 140 NLRB 569, 571.

³ The Regional Director found, as to objection No. 3, that the Employer's conceded inadvertence in failing to post the notice of election at store 29 resulted in confusion of four employees concerning voting hours. He therefore recommended, as above indicated, that the objection be sustained and the election set aside if four additional votes could affect the election results. No exceptions were filed to this recommendation.