

ORDER

IT IS HEREBY ORDERED that the appropriate unit covered by the certification of District No. 6, International Association of Machinists, AFL-CIO, in Case No. 3-RC-1164, be, and it hereby is, clarified so as to include the following:

(a) Those employees now classified in department 12, who are to be transferred from the machine shop to the special grinding building to perform the same work as they are now doing in the machine shop.

(b) Those employees now classified in department 12, who are to be transferred from the machine shop to the special bushing manufacture and grinding building to perform the same work as they are now doing in the machine shop.

Montgomery Ward & Co., Incorporated¹ and International Association of Machinists, Ranger District No. 49, Petitioner. *Case No. 28-RC-1233. December 24, 1964*

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 Hearing Officer J. W. Cherry. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Upon the entire record in this case, the Board³ 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 herein.

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 Sections 9(c)(1) and 2(6) and (7) of the Act for the following reasons.

The Employer is an Illinois corporation with its principal place of business in Chicago, Illinois. It is engaged in the distribution of merchandise throughout the United States through a system of retail, mail-order, and catalog stores. The subject case concerns only the retail store in Thomas Mall, Phoenix, Arizona.

¹ As amended at the hearing.

² After the hearing and pursuant to Section 102.67 of National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director issued an order transferring this case to the Board for decision.

³ 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 Fanning and Brown].

The Petitioner seeks to represent, as a departmental unit, the service department employees of the automotive service center⁴ of the Employer's Thomas Mall store. The Employer contends that only a storewide unit is appropriate.

The Employer's Thomas Mall operations consist of a retail store and an automotive service center. The automotive service center is housed in a separate building about one block from the retail store⁵ and is divided into a sales floor and a service department with a small cashier's office off the service department floor.

The Employer has approximately 300 employees at its Thomas Mall operations of whom approximately 39 are supervisors. There are approximately 32 employees in the automotive service center of whom approximately 21, including 1 supervisor, are employed in the service department. Only the employees in the service department of the automotive service center are involved in this proceeding.

The Petitioner would include the following automotive service center employees in its requested departmental unit:

1. Approximately five mechanics. These mechanics install air-conditioners, transmissions, engines, and any parts sold in the auto accessories store. The Employer states that these are skilled employees. Although the Employer may hire inexperienced men, they are not accorded the status of mechanics until they have gone through the Employer's formal training program.

2. Four gas island attendants. As the name indicates, these employees sell gasoline to customers. They also lubricate automobiles when they are not busy selling gasoline.

3. Two seat cover installers. These employees install seat covers in customers' automobiles.

4. One stockman. The record is silent as to the duties of this employee. He is a regular part-time employee and works only in the automotive service center.

5. An unknown number⁶ of tire mounters. These employees mount tires and also lubricate automobiles when they are not busy.

The Petitioner would exclude the following automotive service center employees:

1. Four salesmen. These employees sell tires and automobile accessories. They are the only employees in the automotive service center who are on a commission basis. The Employer states that these salesmen do stockwork (arrange their stock to get ready for the next day's sales) every day but that it is not the same stockwork done by the stockman.

⁴ While the Petitioner-requested unit is expressed in terms of certain employees of the automotive service center, in effect it has requested all employees of the service department.

⁵ The Employer contends that this separation is required by a city safety ordinance.

⁶ When asked how many tire mounters were employed in the automotive service center, the Employer replied, "Well, I couldn't answer that exactly."

2. Two cashiers. These employees work in the small office adjacent to the service floor and accept payment for work performed on customers' automobiles. They also process shop cards that are presented to them by their supervisor. One of these employees is a regular part-time employee and works only in the automotive service center.

As stated earlier, the automotive service center is divided into a sales floor and a service department. The sales floor is further divided into a tires sales department and automobile appliances sales department. From the record it appears that all of the requested employees work in the service department,⁷ while the excluded employees work either on the sales floor or in the cashier's office. The requested employees in the automotive service center wear uniforms while the excluded employees do not.

There is no evidence of any interchange of service department employees with other employees nor is there evidence of employee interchange within the automotive service center. The Employer stated that the part-time cashier in the automotive service center was transferred from the main retail store. The Employer also stated, however, that no employees have been transferred from the automotive service center to the main retail store.

Each of the departments in the automotive service center is supervised by a different department manager. The Employer states, however, that each department manager may supervise employees of any of the other departments in the automotive service center. These department managers all report to the operating manager, who in turn reports to the store manager.

It is true that there are some factors which would justify the storewide unit contended for by the Employer. Thus, all employees at the Employer's Thomas Mall operations enjoy the same conditions of work and employee benefits. Furthermore, a storewide or overall unit is presumptively appropriate for the purposes of collective bargaining.⁸

However, Section 9(b) of the Act not only empowers the Board to decide in each case "the unit appropriate for the purposes of collective bargaining," but also directs it to make appropriate unit determinations which will "assure to employees the fullest freedom in exercising the rights guaranteed by this Act," i.e., the rights of self-organization and collective bargaining. In effectuating this man-

⁷ It is not clear where the stockman works. However, it would seem reasonable to assume that there would be stockwork in both the service department and on the sales floor.

⁸ See Section 9(b), National Labor Relations Act, Series 8, as amended. See also *J. W. Mays, Inc.*, 147 NLRB 968; *Polk Brothers, Inc.*, 128 NLRB 330; *Bullock's Incorporated, d/b/a I. Magnin & Company, etc.*, 119 NLRB 642, 643; *Western Electric Company, Incorporated*, 98 NLRB 1018, 1032; *May Department Stores Company, Kaufmann Division*, 97 NLRB 1007, 1008.

date, the Board has recently reemphasized that the Act does not compel labor organizations to seek representation in the most comprehensive grouping of employees unless such grouping constitutes the *only* appropriate unit.⁹ Although a unit consisting of all employees of the Employer at its Thomas Mall operations may be appropriate for the purposes of collective bargaining, there is no bargaining history covering such a unit. In such circumstances, the Board has held that the appropriateness of an overall unit does not establish that a smaller unit is inappropriate.¹⁰ Thus, the issue here is simply whether a unit consisting of only employees of the service department is appropriate in the circumstances of *this* case and *not* whether another unit consisting of all employees employed in the Employer's Thomas Mall operations or all employees employed in the automotive service center would also be appropriate, more appropriate, or most appropriate.

Under all the circumstances of this case, it is our opinion that the service department *is* sufficiently homogeneous, identifiable, and distinct from the other departments to warrant a finding that the employees constitute a separate appropriate unit. In view of the fact that they exercise different skills, have separate supervision, work in an area different from the other employees, wear uniforms which set them apart, and perform no selling function, we find that the employees sought herein have a mutuality of interests not shared by other employees which is sufficient to justify their establishment as a separate bargaining unit, and which "will assure to [them] the fullest freedom in exercising the rights guaranteed by [the] Act."¹¹ We also note that no labor organization seeks to represent these employees in a broader unit. Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed in the service department of the automotive service center of the Employer's Thomas Mall, Phoenix, Arizona,

⁹ *Bagdad Copper Company*, 144 NLRB 1496; *P. Ballantine & Sons*, 141 NLRB 1103. See also *F. W. Woolworth Company*, 144 NLRB 307; *Dixie Belle Mills, Inc., a Wholly-Owned Subsidiary of Bell Industries, Inc.*, 139 NLRB 629; *Sav-On Drugs, Inc.*, 138 NLRB 1032; *Quaker City Life Insurance Company*, 134 NLRB 960, enfd. on this point 319 F. 2d 690 (C.A. 4).

¹⁰ *Bagdad Copper Company*, *supra*, footnote 9; *P. Ballantine & Sons*, *supra*, footnote 9; *Dixie Belle Mills, Inc., etc.*, *supra*, footnote 9.

¹¹ We distinguish our holding here from *Montgomery Ward & Company, Incorporated*, 78 NLRB 1070, where the Board refused to grant a separate unit of filling station attendants, drivers, greasers, and tiremen employed at the filling station and tire store of the employer's retail store on the grounds that the requested employees were not a skilled craft group and because of the close relationship of their work to that of the sales clerks at the service station and the similarity of the wages, hours, and working conditions of all the employer's retail store employees. In the instant case, there is a nucleus of craft employees (the mechanics) and the record, moreover, reveals the absence of any close relationship between the work of the requested employees and any other group of employees employed by the Employer at its Thomas Mall operations.

operations, including mechanics, tire mounters, seat cover installers, stockmen,¹² and gas island attendants; excluding all other employees, office clerical employees, cashiers, salesmen, watchmen, guards, and supervisors, as defined by the Act.

[Text of Direction of Election omitted from publication.]

¹² As it is not clear from the record whether the requested stockman actually works in the service department, we shall permit him to vote subject to challenge.

Gainesville Publishing Company, A Division of Cowles Magazines and Broadcasting, Inc. *and* Robert Lamar Lee *and* Dorus E. Norwood *and* Gainesville Typographical Union, No. 911, International Typographical Union, AFL-CIO

Gainesville Publishing Company, A Division of Cowles Magazines and Broadcasting, Inc. *and* Rosemary L. Hertel *and* William C. Strawn *and* Gainesville Typographical Union, No. 911, International Typographical Union, AFL-CIO *and* Richard P. Arnold *and* Preston E. Dennington *and* Raymond A. Glass. *Cases Nos. 12-CA-2680-1, 12-CA-2680-2, 12-CA-2680-3, 12-CA-2737-1, 12-CA-2737-2, 12-CA-2737-3, 12-CA-2737-4, 12-CA-2737-5, and 12-CA-2737-6. December 28, 1964*

DECISION AND ORDER

On April 29, 1964, Trial Examiner Paul Bisgyer issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief. The General Counsel and the Charging Union filed no exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Jenkins].

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 entire record in this case, including the Trial Examiner's Decision