

2. Neither International Longshoremen's Association, AFL-CIO, nor Local 1248, International Longshoremen's Association, AFL-CIO, is entitled to force or require the Hampton Roads Maritime Association, or any of its members, to assign the disputed work to employees whom it represents who are not employed by Norfolk Oil Transit, Inc., by means proscribed by Section 8(b)(4)(D) of the Act.

3. Within 10 days from the date of this Decision and Determination, International Longshoremen's Association, AFL-CIO, and Local 1248, International Longshoremen's Association, AFL-CIO, shall notify the Regional Director for Region 5, in writing, whether or not they will refrain from forcing or requiring, by means proscribed by Section 8(b)(4)(D) of the Act, the assignment of the work in dispute in a manner inconsistent with the above determination.

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**The Wm. H. Block Company and Retail, Wholesale and Department Store Union, AFL-CIO, Petitioner.** *Case No. 25-RC-2602.*  
*February 26, 1965*

### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Arthur Hailey. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Briefs were filed by both the Employer and the Petitioner.

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

2. The labor organizations involved claim to represent certain employees of the Employer.<sup>1</sup>

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<sup>1</sup>After the close of the hearing in this case, Hotel, Motel, Cafeteria, and Restaurant Employees and Bartenders' Union, Local No. 58, affiliated with Hotel and Restaurant Employees and Bartenders' International Union, AFL-CIO, filed with the Regional Director a written motion to intervene and a request to be placed on the ballot should an election be directed. On the basis of a showing of interest in the unit sought, the motion was granted by the Regional Director. The Intervenor took no unit position.

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.

4. The Petitioner seeks a unit of all food service employees at the Employer's 50 North Illinois Street, Indianapolis, Indiana, retail store, referred to as the Main Store. The Petitioner would be willing to participate in an election in a more comprehensive unit including food service employees at the Employer's service building and Southern Plaza store, if the Board so directs. The Petitioner would exclude the food stock employees and group leaders Graffa and Carter, all of whom work at the Main Store, and the candy workroom employees, who work at the service building, but would be willing to include them if the Board so directed.

The Employer contends that only a unit of all the selling and nonselling employees at all its operations is appropriate. However, in the event the Board finds a food service unit appropriate, the Employer urges that such unit should cover food operations at all its locations, together with the food stock employees, Graffa and Carter, and the candy workroom employees.

There is no bargaining history as to any of the employees here involved.

The Employer operates five retail stores and a service building in Indianapolis, Indiana. It has food operations at the Main Store, the Southern Plaza store, and the service building. In the Main Store, there is an employee cafeteria, tearoom, men's grill, luncheonette, and a kitchen and bakery. Approximately 135 food service employees work in these facilities. There are also two food stock employees who receive and store food. At its service building there are an employee cafeteria and a candy workroom, where candy is made for sale in its stores; and at its Southern Plaza store there is a tearoom, a counter, and a kitchen and bakery.

The employees who are actually engaged in food preparation and service receive, in addition to benefits received by other employees, free meals and uniforms. Their conditions of work are similar to those of other employees except that their hours of work differ since they are regulated by the requirements of food preparation and service.

One Griffin, a food consultant, has general supervision of food operations at all locations. Griffin is assisted by Miss Ringo, who is responsible for the menus and food preparation and service at all locations except Southern Plaza, which is under the supervision

of Miss Wineman, who reports to both Ringo and Griffin. In addition to the usual food-handling employees at the Main Store, there are a head hostess in the tearoom, a chef, a group leader at the luncheonette, a group leader in the employee cafeteria, and a group leader in the kitchen. There is a dispute only as to the unit placement of the group leaders in the employee cafeteria and the kitchen.

Transfers between food service operations and other jobs are infrequent.<sup>2</sup> In the event of temporary absences in food service occupations, employees are transferred from other service locations. The record, however, does not show the frequency of such temporary transfers.

Under all the circumstances of this case, we find no merit in the Employer's contention that only a unit of all the selling and nonselling employees at all the operations is appropriate. Although it is apparent that there are some factors to support a finding of the appropriateness of such a unit, it is equally clear that the food service employees have a sufficient mutuality of interests to justify their establishment in a bargaining unit, apart from the other store employees. The Board has recently reaffirmed its prior holdings that a unit of employees such as that sought herein is appropriate in the retail store industry.<sup>3</sup>

We also find no merit in the Employer's contention that a unit of food service employees must encompass such employees at all its locations. Section 9(b) of the Act directs the Board to make appropriate unit determinations which will "assure to employees the fullest freedom in exercising the rights guaranteed by this Act . . . ." In order to effectuate this mandate, the Board has held "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."<sup>4</sup> Although a unit of food service employees at all the Employer's operations may be appropriate for purposes of collective bargaining, there is no bargaining history for such a unit, no labor organization seeks such a unit, and the appropriateness of an overall unit does not establish the inappropriateness of a smaller unit.

<sup>2</sup> Discontinuance of the Riley Room, one of the restaurant operations in the Main Store, sometime in 1964, and the absorption of most of the personnel affected into other operations, resulted in an unusually large number of transfers in 1964.

<sup>3</sup> *Arnold Constable Corporation*, 150 NLRB 788; *Allied Stores of New York, Inc, d/b/a Stern's, Paramus*, 150 NLRB 799. See also *Allied Stores of Ohio, d/b/a A. Polsky Company*, 90 NLRB 1868, 1869; *Thalhimer Brothers, Incorporated*, 93 NLRB 726; *F. W. Woolworth Company*, 144 NLRB 307.

<sup>4</sup> *Montgomery Ward & Co., Incorporated*, 150 NLRB 598; *Bagdad Copper Company*, 144 NLRB 1496; *P. Ballantine & Sons*, 141 NLRB 1103; *Quaker City Life Insurance Company*, 134 NLRB 960, *enfd.* on this point, 319 F. 2d 690 (C.A. 4).

Therefore, as the food service employees at the Main Store are geographically separated from the Employer's other establishments where food service is carried on, the extent of interchange among these employees at the different locations is not substantial, there is an internal cohesiveness among these Main Store employees, there is no bargaining history in a more comprehensive unit, and no labor organization is here seeking to represent such employees on a broader basis, we find that a unit of food service employees at the Main Store is appropriate.<sup>5</sup>

The Petitioner would exclude the following categories whereas the Employer would include them:

*Food stock employees:* The two food stock employees work in the subbasement at the Main Store, where they receive and store food stock which is used at the various restaurant facilities. In view of the fact that these employees handle food materials and share common supervision with food service employees, we shall include them in the unit.<sup>6</sup>

*Group leaders Graffa and Carter:* These two individuals are the group leaders in the employee cafeteria and the kitchen, respectively. The record shows that both of them assign work, arrange overtime, transfer employees, and are concerned with such employee problems as days off and tardiness. In view of their authority to carry out these functions, and the fact that, if Graffa and Carter are not supervisors, there is, as far as the record shows, no immediate supervisor in the employee cafeteria or in the kitchen of the Main Store, we find that they are supervisors within the meaning of the Act, and we shall therefore exclude them from the unit.

In view of the foregoing, we find that the following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All regular full-time and part-time food service employees at the Employer's 50 North Illinois Street, Indianapolis, Indiana, retail store, including food stock employees, but excluding all other employees, office clerical employees, professional employees, guards, group leaders in the Employer's cafeteria and kitchen, and all other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

<sup>5</sup> *Sav-on-Drugs, Inc.*, 138 NLRB 1032, 1034-1035; *Piggy Wiggy California Company*, 144 NLRB 708.

<sup>6</sup> Member Brown would exclude the food stock employees on the grounds that they handle food only for storage, do not participate in food preparation or service, do not receive free meals and uniforms as do the food service employees, and would appear to have a greater community of interest with stock employees in general than with the food service employees here involved.