

involving the same two contending labor organizations. The 1961 agreement was an attempt permanently to resolve this fundamental dispute by an allocation of work between members of the unions. From 1961 until the present dispute arose, it has been adhered to by the unions and most employers in the area. In other words, it resulted in a settlement of the longstanding jurisdictional dispute. In *Acoustic & Specialties*, the Board said that considerable weight should be given to voluntary agreements between unions resolving jurisdictional disputes. "By so doing the Board will be encouraging unions to settle such disputes by agreement, a desirable policy." Although the Lathers has now repudiated this agreement, the Board can still consider the practical effect of the agreement as a factor in determining how the jurisdictional dispute should be resolved. Because we believe that a preponderance of relevant factors favors carpenters, we shall award the disputed work to members of that craft. In making this determination, we are assigning the disputed work to carpenters who are represented by the Carpenters, but not to that labor organization or its members.

DETERMINATION OF DISPUTE

On the basis of the foregoing findings, and the entire record in the case, the Board makes the following Determination of Dispute pursuant to Section 10(k) of the Act:

Employees engaged as carpenters are entitled to do the work of installing metal tracks and studs to which drywall gypsum board is attached at the Lakewood House project of The Walter Corporation.

Bamberger's Paramus, a Division of Bamberger's New Jersey, a Division of R. H. Macy & Co., Inc.¹ and Local 723, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case No. 22-RC-2446. March 16, 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 Christopher J. Hoey. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Briefs have been filed by the Employer and the Petitioner herein and by the Retail Merchants Association as *amicus curiae*.

¹ The name of the Employer appears as amended at the hearing.

Upon the entire record² in this case, the National Labor Relations Board finds:

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

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 Section 9(c) (1) and Section 2(6) and (7) of the Act.

The Petitioner seeks a unit composed of all tire installers, brake-men, front-end men, stockmen, and seat cover men employed at the Employer's Paramus, New Jersey, Auto Center.³ The Employer opposes the unit sought and contends that only a storewide unit is appropriate.

R. H. Macy & Co., Inc., is engaged in the department store business with six operating divisions. Bamberger's New Jersey, herein called Bamberger's or the Employer, is one of these divisions. In addition to the Paramus store, the division operates stores in eight other New Jersey locations. Bamberger's employs approximately 9,000 employees, of whom approximately 1,400 work in the various departments at the Paramus store. This store has approximately 120 selling departments located in 1 large building and in 2 smaller buildings located in the Garden State Plaza Shopping Center in Paramus, New Jersey. One of the smaller buildings houses departments which sell pianos, rugs, sewing machines, and basement furniture. The other small building, located about 175 yards from the main building, houses the Auto Center, with which we are primarily concerned. The Auto Center is currently operating under a license agreement⁴ between Bamberger's and Vanderbilt Automotive Centers, Inc.⁵ This agreement specifies that employees in the Auto Center shall be employees of the Employer and not employees of the licensee.⁶ Under the license agreement, however, executive personnel and personnel performing services in confidential capacities in the

² The Petitioner's request for oral argument is hereby denied as the record, including the briefs, adequately presents the issues and positions of the parties.

³ Alternatively, the Petitioner would include in the unit salesmen who work in the Auto Center.

⁴ Other departments, all in the main store, operating under similar license agreements are jewelry, razor, typewriter, light fixture, stereo, millinery, shoe, picture, mirror, kitchen and planning, electrical appliance repair, and the photo studio. Nonlicensed departments are operated directly by Bamberger's.

⁵ The original license agreement was between Bamberger's and Tire Mart Inc. However, on December 31, 1961, pursuant to agreement of the parties, Tire Mart Inc. assigned all of its rights under the license agreement to B. F. Goodrich Company, and on January 1, 1962, B. F. Goodrich, in turn, assigned its rights under the agreement to Vanderbilt Automotive Centers, Inc., the present licensee.

⁶ The Petitioner concedes that the employees involved herein are employees of Bamberger's, and there is no contention that the licensee and Bamberger's are joint employers of these employees. Cf. *Frostco Super Save Stores, Inc.*, 138 NLRB 125.

Auto Center are employees of the licensee. The license agreement further provides that employees of the Auto Center otherwise are "selected, engaged, supervised and subject to discharge" by the Employer, and "all personnel policies and practices, including but not limited to, wages, hours and conditions of employment" are determined by the Employer in accordance with the Employer's regular procedures.

The Auto Center, which employs approximately 20 employees, is divided into separate selling and service areas. Salesmen, who constitute the Employer's department No. 7143, are engaged in selling tires and auto accessories in the selling area. Employees in the garage or service area, who constitute department No. 7144, install tires, brakes, mufflers, tailpipes, batteries, and seat covers and perform front-end alignment work and minor mechanical repairs. The service area contains 16 bays for housing cars while they are being serviced. Service employees have their own timeclock and washroom facilities in the Auto Center. Unlike the salesmen in the Auto Center and salesmen elsewhere in the Employer's department store, service employees wear special uniforms; in this connection, to protect them when they work outside and are exposed to inclement weather, they are also supplied with winter uniforms and jackets carrying the identifying insignia of the Employer. Service employees keep their street clothes and personal effects in lockers located in the service area, and most, if not all, of the servicemen, because of the dirt and grime incidental to their job, bring their lunch to work and eat in the service area rather than the cafeteria in the main building. While the salesroom at the Auto Center is cleaned by porters from the Employer's housekeeping department, service employees clean the garage area.

The Auto Center, which normally opens 1½ hours earlier than the main store, is supervised by a sales manager who reports directly to one of the Employer's area managers. The sales manager, although responsible to the Employer for seeing that Bamberger's policies and procedures are followed, is an employee of the licensee. He initiates all disciplinary proceedings, passes upon merit increases, and has authority effectively to recommend the hire or discharge of service employees. While there have been a number of temporary and permanent transfers of salesmen in and out of the Auto Center, transfers among the service employees have involved only a limited number of stock clerks.

Bargaining at the Paramus store is currently confined to four separate craft units. There has been no other bargaining history.

It is true that there are some factors which could justify the store-wide unit urged by the Employer. Thus, fringe benefits of Auto Center employees are comparable to those of other employees of the

store and, except for the brake installer and wheel alignment men who receive an "unclassified rate," Auto Center employees are paid on the same basis as other employees. Also, charge accounts and customer policies apply at the Auto Center as well as at the main store; all personnel records, payroll records, and the like for all employees, including Auto Center employees, are maintained in the main store building; all interviews and physical examinations are conducted in the main store building; and there are standard application, health, and review forms for all employees. Furthermore, a storewide or overall unit is presumptively appropriate for the purposes of collective bargaining.⁷

However, as we recently stated in the *Montgomery Ward* case,⁸ 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 determination 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 mandate, 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 Thus, the issue here, as in *Montgomery Ward*, is whether a unit consisting of only the servicemen in the Auto Center is appropriate in the circumstances of *this* case and *not* whether another unit consisting of all employees employed in the Employer's Paramus store or all employees employed in the Auto Center would also be appropriate, more appropriate, or most appropriate.

Under all the circumstances of this case, we are persuaded that the Petitioner's requested unit of service employees in the Auto Center comprises a homogeneous and identifiable grouping sufficiently distinct from other employees in the Paramus store to warrant a finding that such unit is appropriate. We rely on the facts that service employees in the Auto Center perform different functions, utilize different skills, work in a separate area of the Auto Center building, wear uniforms which set them apart from other employees, and have limited interchange and minimal contacts with other employees. In

⁷ See Section 9(b), National Labor Relations Act, as amended. See also *J. W. Mays, Inc.*, 147 NLRB 942; *Polk Brothers, Inc.*, 128 NLRB 330; *Bullock's Incorporated, d/b/a I. Magnin & Company*, 119 NLRB 642, 643; *Western Electric Company, Incorporated*, 98 NLRB 1018, 1032; *May Department Stores Company, Kaufmann Division*, 97 NLRB 1007, 1008.

⁸ *Montgomery Ward & Co., Incorporated*, 150 NLRB 598. In that case, the Board found appropriate a unit of service department employees of the automotive service center of the employer's department store.

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.*, 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).

excluding Auto Center salesmen from the unit, we rely on the fact that salesmen are separately located, do not interchange with service employees, and, unlike service employees who perform no selling functions,¹⁰ are engaged primarily in selling. As recently articulated by the Board in *Allied Stores of New York, Inc. d/b/a Stern's Paramus*, 150 NLRB 799, and in other cases, there is a separability for unit purposes between selling and nonselling employees in the retail store industry.¹¹ Accordingly, we find that the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:¹²

All employees employed in the service department of the Auto Center at the Employer's Paramus, New Jersey, store, including tire installers, brakemen, front-end men, stockmen, and seat cover men, but excluding all other employees, office clerical employees, salesmen, guards, and supervisors, as defined by the Act.

[Text of Direction of Election omitted from publication.]

¹⁰ Although service employees may receive commissions or "stims" for suggesting the sale of certain items to customers while servicing their cars, we do not regard this fact as establishing that these service employees are engaged in a selling function.

¹¹ Consistent with his dissenting opinion in the *Allied Stores* case, Member Jenkins would include the Auto Center salesmen in the unit.

¹² See *Montgomery Ward & Co., Incorporated, supra*; *J. C. Penney Company Store No. 139*, 151 NLRB 53.

Wenatchee Thrifty Drugs, Inc. and Retail Store Employees Local 631, Retail Clerks International Association, AFL-CIO. Cases Nos. 19-CA-2687 and 19-CA-2812. March 17, 1965

**DECISION AND ORDER REMANDING
CASE TO THE TRIAL EXAMINER**

On September 10, 1964, Trial Examiner Martin S. Bennett issued his Decision in the above-entitled proceeding, recommending that the complaints be dismissed for the reason that the operations of the Respondent do not meet the National Labor Relations Board's standards for the assertion of jurisdiction, as set forth in the attached Trial Examiner's Decision. Thereafter, the Charging Party filed exceptions to the Trial Examiner's Decision and a supporting brief and the Respondent filed a brief in reply to the Charging Party's exceptions.

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 these cases to a three-member panel [Chairman McCulloch and Members Brown and Jenkins].