

**Sears, Roebuck and Co. and Chauffeurs, Teamsters and Helpers
Local Union 215, a/w International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of America, Petitioner.**
Case No. 25-RC-2664. April 21, 1965

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, hearings were held before Hearing Officers John Hines and Albert Fisher. The Hearing Officers' rulings made at the hearings are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, 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,¹ the 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.²

4. The Petitioner seeks a unit of all employees at the Employer's Evansville, Indiana, warehouse, excluding guards, professional employees, and supervisors as defined in the Act.³ The Employer contends that the proposed unit is inappropriate on the ground that the work of the employees sought is closely integrated with that of the other employees in its Evansville operations. There is no bargaining history for these employees.

Sears, Roebuck and Co. operates the following in the Evansville area: (1) a main downtown store; (2) a service station—1 block away; (3) a home modernization center—1 block away; (4) a warehouse or service center—6 blocks away; (5) two suburban stores, Washington Square and North Parker; and (6) a small store in Henderson,

¹ The Employer's request for oral argument is hereby denied as, in our opinion, the record and briefs adequately present the issues and the positions of the parties.

² The Employer moves to dismiss the petition on the ground that the Petitioner did not have a current showing of interest. The motion is denied. It is settled that a Petitioner's showing of interest is an administrative matter for the Board's determination not litigable in a representation proceeding. *O. D. Jennings & Company*, 68 NLRB 516, 518. Moreover, we are satisfied that the Petitioner's showing of interest is sufficient.

³ The Petitioner had alternatively requested various segments of the warehouse operation. However, since the work of those sought was substantially integrated with the work of others at the warehouse, we find such fragmented units inappropriate. See *Sears, Roebuck & Co.*, 149 NLRB 1525. At the hearing, the Petitioner indicated that it was willing to represent both sales and clerical employees in the warehouse unit if the Board included them.

Kentucky—14 miles away. The warehouse or service center performs diverse functions. In addition to the shipping and receiving departments, the warehouse contains an upholstery and drapery fabrication department, an installation department, a parts department, a merchandise service department, and the commercial tire sales and service departments. The warehouse manager, Mr. Neuffer, is responsible for the cleanliness and heating of the building and is overall supervisor for the shipping and receiving departments.

The warehousing activities, under Neuffer, are divided into two functions: receiving, under Fred Milke's supervision, includes employees who unload trucks, elevator operators, markers, checkers, stockmen, and receiving helpers; and shipping, under Noble Cutridge's supervision, includes shipping clerks and part-time employees when needed. Unlike employees at other parts of the Employer's operation, the warehouse building employees handle primarily bulk items. The warehouse personnel work closely with warehouse clericals, whom the Petitioner would include, in performing the initial work connected with the movement of merchandise.

The upholstery and drapery fabrication department performs upholstering work and fabricates draperies for the store's own use, as well as customer service—both at the shop in the warehouse and at the customer's location. Herbert Evans is the manager of the department.

The installation department under Manager James Fisher schedules the installation of equipment for customers on small jobs and arranges for use of independent contractors on large jobs. There are three clericals who do the scheduling.

The parts and mechanical service departments are under the direct supervision of Manager William Cline. Under him there are separate supervisors for each of these functions: Mr. Hilgediech, the parts manager; Mr. Deneen, the mechanical service manager; and Mr. Casey, the mechanical service shop supervisor. The parts department furnishes parts for the use of the Employer's other departments and sells parts directly to customers. The mechanical service department handles the deluxing of both mechanical equipment and furniture prior to sale and delivery. The mechanical service shop handles the repairs of lawn mowers, washing machines, and refrigerators. The service and parts departments work together frequently. In the mechanical service department there are service clericals who take the customers' telephone calls and route the servicemen.

The last department in the warehouse building is the commercial tire sales and service department under Manager Thomas Romaine. The department orders, receives, sells, delivers, and installs truck tires.⁴

⁴In addition to the above, there are maintenance employees in the warehouse building

Each of the departments in the warehouse is under its department manager. These department managers all report to the operating manager, who in turn reports to the general manager in charge of all Sears operations in the Evansville area.

The record does not reveal such a degree of integration between the Employer's other operations and the warehouse building as to preclude a unit limited to the warehouse building. Although there have been occasional permanent transfers between the various operating units of the Employer, there has been an average of only 5 transfers a year for the last 7 years, counting all types of transfers, and a maximum of 8 between the warehouse and the other operative units in a given year despite the fact that the entire operation in Evansville employs approximately 500 persons. Temporary transfers have generally occurred only in cases of emergency or when a special skill is required, and appear to be minimal.⁵ The Employer argues that there is integration between the different locations because employees in the various operations are in constant contact with one another. The evidence introduced tends to show, at most, only the normal contact between office clericals at the main store and warehouse building personnel. Employees on occasion go to the main store as part of their normal job tasks. The amount of time the employees spend in this activity is minimal and does not establish a community of interest between these groups of employees. We are not unmindful of the fact that there is some overlapping of work skills among the employees in the main store and the warehouse building, but we do not believe that in the circumstances of this case this factor is sufficient to destroy the homogeneity and mutuality of interest of the employees in the warehouse building.

Thus, although the overall unit alleged to be appropriate by the employer might be appropriate, it is not the only appropriate unit and therefore does not preclude a finding that the unit here requested is appropriate for purposes of collective bargaining. 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 rights guaranteed by this Act", i.e., the rights of self-organization and collective bargaining. In effectuating this mandate, the Board has emphasized that the Act does not compel labor organizations to seek representation in the most

⁵ Most evidence on this point referred to such unusual occasions as the opening of a new store in Washington Square and the expansion of a North Park store or to such a seasonal occurrence as warehouse employees assisting in the deluxing process at the main store during Christmas time. Outside of these, the Employer can at best point to only five specific cases of temporary transfers. While an employee might go from the warehouse building to the main store in the course of his work, this is not a transfer

comprehensive grouping of employees unless such grouping constitutes the only appropriate unit.

The facts of this case do not reveal such a degree of integration or merger of operations as would require our rejection of the Petitioner's request for the single warehouse building unit. The warehouse building employees constitute a homogeneous, identifiable, and distinct group having a close community of interest. In view of the separate location of the warehouse building from the other operations of the Employer, the autonomous day-to-day operations of the warehouse building, the lack of integration of the warehouse building employees with other operations of the Employer, the absence of a history of collective bargaining, and the fact that no union requests a broader unit, we find that a unit limited to warehouse employees is appropriate.⁶

There remains for consideration the unit placement of the following :

Supervisors: The parties are in disagreement over the placement of Milke, Cutridge, Deneen, Hilgedrieck, and Casey. The Petitioner would exclude them as supervisors, while the Employer would include them. Milke is the receiving manager and Cutridge is the shipping manager. Both are classified as managers and were referred to during the hearing as being in charge of their respective departments, and both assign and direct employees in their departments. Also, both are looked upon by the rank and file employees as leaders. The same is true of Hilgedrieck, the parts manager, and Deneen, the mechanical service manager. Casey, the mechanical service shop supervisor, is responsible for seeing to it that men in his section are working and has the power to discipline employees. In view of the foregoing, we find that Milke, Cutridge, Deneen, Hilgedrieck, and Casey are supervisors within the meaning of the Act, and we shall exclude them from the unit.

Commercial tire salesmen: The Employer would include the tire salesmen in the unit. The Petitioner would exclude them, but will represent such employees in the event the Board should include them in the unit. The tire salesmen and the tire changers work together loading tires on the tire changer's truck. In case of emergency the tire salesman will load the tires in his car and make a delivery. When out on the road the tire changers help sell tires to customers. The tire changers and the tire salesmen meet monthly to discuss mutual problems. In addition, all the tire salesmen have had training as installers and some in fact were installers before becoming salesmen. We find that there is a sufficient community of interest between the tire salesmen and other employees in the unit, particularly the tire changers, to warrant their inclusion in the unit.

⁶ *Sears, Roebuck and Co.*, 151 NLRB 1356.

Clericals: The record reveals that the work of the clericals in the service, installation, shipping, and receiving departments brings them in frequent contact with the other employees of the warehouse building and that the duties are a part of the functional operation of the warehouse. Under the circumstances, we believe that the clerical employees are plant clericals whose interests are closely related to those of other warehouse building employees, and we include them in the 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 by the Employer at its warehouse service center located at Second and Clark Avenue building in Evansville, Indiana, including plant clericals and tire salesmen, but excluding guards, professional employees, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Hoisting and Portable Engineers Local No. 701, International Union of Operating Engineers, AFL-CIO and Darwin T. Chapek and Peter Kiewit Sons' Co., Party to the Contract. Case No. 36-CB-326. April 22, 1965

DECISION AND ORDER

On October 12, 1964, Trial Examiner Howard Myers 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 his attached Decision. Thereafter the Charging Party filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations 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 Decision, the exceptions and brief, and the entire record in this case, and hereby adopts the findings,¹ conclusions, and recommendations of the Trial Examiner with the following modifications:

¹As no exceptions were filed with respect to the Trial Examiner's findings that the Respondent violated Section 8(b)(1)(A) and (2) of the Act, we adopt these findings *pro forma*.