

Adams Drug Co., Inc. and Local 1325, Retail Clerks International Association, AFL-CIO, Petitioner. Case 1-RC-8949.

May 12, 1967

DECISION ON REVIEW AND DIRECTION OF ELECTION

By CHAIRMAN McCULLOCH AND MEMBERS FANNING AND ZAGORIA

On June 16, 1966, the Regional Director for Region I issued a Decision and Order in the above-entitled proceeding, in which he found that the requested unit of the Employer's retail drugstores confined to the State of Rhode Island was too narrow in scope to be appropriate. As the Petitioner disclaimed interest in any other unit, the Regional Director dismissed the petition. Thereafter, pursuant to National Labor Relations Board Rules and Regulations, the Petitioner filed a timely request for review of the Regional Director's Decision, contending that he departed from Board policy in finding the requested unit inappropriate. The Employer filed opposition to the request for review. Retail Clerks International Association filed a telegraphic request for permission to file an *amicus curiae* statement in support of the request for review.

By telegraphic order dated September 13, 1966, the National Labor Relations Board granted the request for review. Thereafter, the Petitioner filed a timely brief on review.

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.

The Board has considered the entire record in this case, including the briefs of the parties, and makes the following findings of fact:

The Petitioner requested a unit of all full-time and regular part-time store clerks, including sales girls, cosmeticians, fountain help, and stockmen, employed at the Employer's 25 retail drugstores located in the State of Rhode Island. The Employer contended that a chainwide unit is appropriate and, in the alternative, that the smallest area unit for the employees sought must encompass similar employees at its stores in Massachusetts and

Connecticut. The Regional Director concluded that the requested unit was inappropriate as the Rhode Island stores did not comprise a complete geographic or administrative division of the Employer's operations.

In its brief on review, the Petitioner concedes that there may be other groupings of the Employer's stores for unit purposes, but contends that its requested statewide grouping is also appropriate. In support of its contention, the Petitioner relies principally on the fact that the State of Rhode Island regulates almost every phase of drugstore operations within its jurisdiction, and on other evidence that the employees within the State share a community of interest. The *amicus* asserts that a statewide unit "is a traditional appropriate unit in the retail as well as other industries." We find merit in the Petitioner's contention.

The Employer operates a chain of 83 drugstores in Rhode Island, Massachusetts, Connecticut, New York, Kansas, and Oklahoma. Its central office and warehouse are in Pawtucket, Rhode Island. The stores are operated either directly by the Employer or by wholly owned subsidiaries of the Employer.¹ There are 25 drugstores in Rhode Island,² all but one of which operate under the Adams Drug Store trade name,³ and all are in the Providence-Pawtucket-Warwick metropolitan area.⁴ The Employer has 12 stores in Massachusetts,⁵ 7 in Connecticut,⁶ and 24 in New York, at points within and between the Buffalo-Niagara Falls and the Albany-Schenectady areas.

At its central office the Employer maintains records and prepares the payroll for all 83 stores. The central warehouse provides all stores with much of their merchandise. As to some merchandise such as newspapers, magazines, books, lunch counter items, certain drugs, and other items, the Employer designates the vendors from which the store managers may buy.

Store operations are under the overall supervision of a general store supervisor who reports to the Employer's treasurer and director of store operations. Under the general store supervisor are seven "area" supervisors who assist store managers in solving problems arising in the operations of their stores. There is also a cosmetic supervisor who assists managers of stores in the New England States in the operation of their cosmetic departments. Three of the area supervisors service

¹ The Employer directly operates the central office and warehouse and six of the Rhode Island stores.

² Certain food products are sold in most of the stores. Three operate fountains. Four operate post office substations.

³ The exception is the Brown-Adams store in Woonsocket. Five Massachusetts stores also operate under the Adams Drug trade name: Attleboro, Cambridge, Somerset, and two in Fall River.

⁴ See Standard Metropolitan Statistical Areas, 1964 edition, as amended May 24, 1966, published by Office of Statistical Standards, Bureau of the Budget. The Wakefield store is virtually on the boundary line of the area. Also within the area is the

Employer's Attleboro, Massachusetts, store, located 5 miles distant from the nearest Rhode Island store. The Employer's two stores in Fall River and one in Somerset, Massachusetts, located about 8 miles from the Rhode Island State line, are within a separate Fall River metropolitan area.

⁵ These stores are located in the eastern part of Massachusetts. Three of them do not operate a pharmacy.

⁶ One does not operate a pharmacy. The nearest Connecticut store is 50 miles from the Rhode Island stores. The average employee complement for Connecticut stores is 25; for Massachusetts and Rhode Island stores, it is 10 to 11.

stores in the New England States. However, the stores which each service do not necessarily fall within a distinct geographic area, as stores are assigned to them on the basis of convenience, workload, talent, and experience with the particular problem arising. It is clear, therefore, that the Rhode Island stores do not comprise an administrative subdivision of the Employer's chain.

The central office exerts control of store operations in other ways. It establishes price lists, negotiates prices for items to be bought from the outside vendors, and formulates advertising content. Prices are uniform for all stores except as to fair-trade items and local discounts permitted for promotional or competitive purposes. Identical forms are prescribed for all stores. Central office personnel hire the supervisory and professional staff for stores in the four eastern States,⁷ as well as most stockmen and, on occasions, cosmeticians, and they screen all employment applications. The central office sets store hours.⁸ It issues store bulletins setting forth operational guide lines for store managers, including the duties of employees and their starting wages. All store clerks are given the same "PM's," bonuses for sales of certain items of merchandise. A uniform vacation policy is followed for all Rhode Island stores and the five Massachusetts stores which use the Adams Drug Store trade name. The central office arranges for a shopping service to submit factual reports on the competence and honesty of all store personnel. It administers a single noncontributory health and accident plan for all full-time employees at stores in the New England States, as well as group insurance plans for all store employees.

The store managers direct the day-to-day operations of their stores, within the guidelines set by the central office. Except when problems arise, area supervisors visit the stores infrequently. Store managers determine the size of the store complement, hire their own sales clerks, and recommend promotions. However, as above indicated, cosmeticians are sometimes hired by the cosmetic supervisor, and stockmen, who are assigned one per store, except at a few larger stores, and who have been promoted to store manager positions at a few stores, are generally hired by central office personnel. The stockmen and

pharmacists, who are generally males, are interchanged and transferred from store to store on occasions: to wit, as part of the training of stockmen, on promotion to store managers, and as substitutes during vacations and emergencies.⁹ On the other hand, the store clerks, who are mostly females, are rarely interchanged between stores.

From the foregoing, it is evident that there are a number of factors indicating, as contended by the Employer, that the store employees involved could be bargained for on the basis of an employerwide or New England States areawide unit. Indeed, the facts support a grouping of stores within the Providence-Pawtucket-Warwick metropolitan area as an appropriate unit, and such a grouping would require the addition of only the Attleboro store to the Petitioner's proposed unit. However, in the absence of any history of collective bargaining, where no labor organization is seeking a broader appropriate unit, the Board has long held that the petitioning labor organization needs only to establish that the group of employees it has attempted to organize and seeks to represent is "an" appropriate unit.¹⁰

Here, the Petitioner has restricted its interest to a Rhode Island State grouping of the Employer's drugstore employees. The facts set forth above clearly demonstrate that the requested employees have substantial interests in common, notwithstanding the fact that they do not fall within a distinct administrative subdivision of the Employer's multistate operations. Although it is true that employees at stores outside the State share some of these interests, we are persuaded that the employees in the Rhode Island stores enjoy a special community of interest apart from the others by reason of the State's regulation of the retail drug industry. The Board has stated in cases arising in the insurance industry that groupings of district offices within a State may constitute appropriate geographic area units.¹¹ We believe the same considerations apply to retail drug chains. The State of Rhode Island, under its police power, can and does regulate pharmacies and the sale and distribution of pharmaceutical, cosmetic, food, and other products within its political boundaries. This control by the State also affects the terms and conditions of employment of all employees in the drugstores.¹² We conclude, therefore, that all

⁷ In Case 1-RC-8507, in which the Petitioner herein sought a unit of all pharmacists employed at the Employer's Rhode Island stores, the Regional Director in a Decision issued October 28, 1965, found that all pharmacists are supervisors as defined in the Act. He indicated that, at all but five stores, the store managers were pharmacists and that all other pharmacists were assistant store managers.

⁸ Most of the stores, located in or near suburban residential areas, are "long hour" stores, those located in downtown business districts are "short hour" stores.

⁹ Once a year an inventory crew, made up of an inventory crew chief, an area supervisor, the cosmetic supervisor, and selected male store personnel, spends a day at each store.

¹⁰ See *Davis Cafeteria, Inc.*, and *Polly Davis Broward Cafeteria, Inc.*, 160 NLRB 1141.

¹¹ See *State Farm Mutual Automobile Insurance Company*, 158 NLRB 925, *Metropolitan Life Insurance Company*, 156 NLRB 1408, 1417, *ibid.*, 43 NLRB 962, 968.

¹² Without attempting to detail the extent of this control, we note that the State of Rhode Island has on its statute books laws governing the licensing of pharmacies and of pharmacists, and laws pertaining to health and safety in the operation of pharmacies and the sale and distribution of pharmaceutical, cosmetic, food, and other products dispensed by drugstores within the State. The State of Rhode Island also imposed sales and payroll taxes and has other laws setting forth minimum standards for health and safety in employment.

drugstores of the Employer within the boundaries of the State of Rhode Island constitute a clearly delimited geographic area appropriate for purposes of collective bargaining.

Accordingly, we find that 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, and 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 full-time and regular part-time employees employed at the Employer's drugstores located in the State of Rhode Island, including post office substation employees,¹³ but excluding pharmacists, store managers and assistant managers, guards, and all other supervisors as defined in the Act.¹⁴

[Text of Direction of Election¹⁵ omitted from publication.]

¹³ The Petitioner would exclude two full-time post office substation employees employed at stores 4 and 28. The record indicates that they are employees of the Employer, and share the same supervision and employment conditions as other employees. In addition to their principal post office duties, they receive public utility payments, maintain records, and, at times, perform other sales and nonsales work of the type performed by other store employees. We find that they have sufficient interests in common with other store employees to warrant their conclusion in the unit.

¹⁴ The Petitioner would exclude as supervisors fountain managers at three of the drugstores. As the record contains insufficient evidence pertaining to their status, we shall permit them to vote subject to challenge.

¹⁵ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 1 within 7 days after the date of this Decision on Review and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelstor Underwear Inc.*, 156 NLRB 1236.