Allied Super Markets, Inc., Alled Discount Foods Division[1] ***and*** **Retail Clerks Union Local 445, Retail Clerks International Association, AFL–CIO, Petitioner.** Case 9–RC–7205

September 8, 1967

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND BROWN

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on April 28, 1967, before Mark Fox, Hearing Officer of the National Labor Relations Board. Subsequent to the hearing, the parties filed briefs with the Board.

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 Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 Petitioner and the Intervenor[2] are labor organizations within the meaning of the Act, and each of them 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 an election in a unit consisting of employees in the Employer's two stores located in Louisville, Kentucky, excluding employees who work exclusively in the meat departments. The Intervenor and the Employer contend that agreements entered into between them bar an election in the unit sought and that therefore the petition does not raise a question concerning representation. We find no merit in this contention.

The record shows that shortly after the Employer had opened its Louisville stores, it engaged in collective bargaining with the Intervenor as representative of employees at the Employer's store in Lexington, Kentucky. On March 14, 1967,[3] during the period when this bargaining was taking place, the Employer sent the Intervenor a letter, confirming a prior understanding "that recognition will be extended to cover employees in our Louisville, Kentucky, units upon presentation of cards demonstrating majority status in these units." Later that day, Petitioner, by telegram, informed the Employer that it had an organizational interest in employees at the Louisville stores. Thereafter, Petitioner, by letter dated March 15, and apparently received by the Employer on March 20, advised the Employer that Petitioner represented a majority at one of the Louisville stores, requested recognition, and suggested a meeting on March 20 in order to conduct a card check. On March 24, during the period when Petitioner and Intervenor were competing for organization of the Louisville stores, the Employer and the Intervenor reached an agreement on the terms of a collective-bargaining contract covering the Lexington store employees. On the same day the Employer and the Intervenor executed another agreement which stated that the terms of the Lexington agreement:

> . . . will apply to the Employer's [Louisville stores] . . . with the exception of wage rates. Wage rates will be negotiated on the basis of the Louisville metropolitan rates.

Thereafter, on March 27, Petitioner filed its petition covering the Louisville stores. On March 29, the Employer conducted a card check, which revealed that a majority of the employees in the Employer's two Louisville stores had authorized the Intervenor to act as their collective-bargaining agent.

In our opinion, the foregoing fails to establish, as the Intervenor and the Employer contend, that either the March 14 recognition agreement or the March 24 agreement, which referred to certain terms of the Lexington Agreement and sought to apply them to the Louisville stores, bars an election herein. Both were contingent upon Intervenor's subsequent acquisition of majority status, which Intervenor failed to attain until after the filing of the instant petition. Accordingly, we find that these agreements are not a bar to the present petition. Furthermore, neither of the "agreements" may be considered a bar within the meaning of the *Keller Plastics* doctrine,[4] for in this case, as in *Sound Contractors Association,*[5] and unlike the situations in which the *Keller Plastics* principle has been applied, "it does not affirmatively appear . . . that the Employer extended recognition to the Intervenor in good faith on the basis of a previously demonstrated majority and at a time when only that union was actively engaged in organizing the unit employees." Accordingly, we find, notwithstanding the agreements between the Employer and the Intervenor, that the petition was timely filed and that a question concerning representation exists.

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[1] Employer's name appears as corrected at the hearing

[2] District Union Local No. 227, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, herein called the Intervenor, was permitted to intervene on the basis of a showing of interest

[3] All dates refer to 1967

[4] 157 NLRB 583, *Universal Gear Service Corporation,* 157 NLRB 1169

[5] 162 NLRB 364.

4. As stated, the Petitioner seeks a unit encompassing the employees at the Employer's two Louisville stores, exclusive of employees engaged in the meat departments. The Employer and the Intervenor, in urging dismissal of the petition, contend that the only appropriate unit must include all employees, including those in the meat departments at both Louisville locations. Further, Petitioner would include, as employees, and the Intervenor and the Employer would exclude, as supervisors, the store comanager and the manager-trainee in each store.

The Board has recently held that a separate unit of grocery employees, excluding meat department employees, may constitute an appropriate bargaining unit.[6] As in other industries, the appropriateness of such unit depends upon analysis of all relevant factors.

Upon such analysis, we are satisfied that there are sufficient differences between the grocery store and meat department employees in this case to support the appropriateness of a separate unit limited to grocery employees. Thus, the two departments are physically and functionally separate, there is very little interchange of employees between them, and each is subject to separate immediate supervision. Meat department employees wear uniforms to distinguish them from other employees, and, in general, they have skills which differ from those of grocery department employees. Moreover, the general bargaining trend in the retail food store industry supports separate representation of meat and grocery department employees. Accordingly, we find that a unit of all full-time and regular part-time grocery store employees, excluding meat department employees, constitutes a separate appropriate unit. We note, however, that although the community of interest among all employees supports the appropriateness of a storewide unit as well, no question concerning Intervenor's representation of meat department personnel has been raised on the present record, and therefore no election will be directed among that group.[7] If, however, the Intervenor is designated by a majority of the grocery department employees in the election we direct, these employees will continue to be represented as part of the Intervenor's overall unit and the Regional Director shall issue a Certification of Results of Election.

We turn now to consider the voting eligibility of the comanager and the manager-trainee. The record shows that they, in conjunction with the store manager, exercise authority with respect to the day-to-day operation of the entire store. Each of them receives a weekly salary rather than an hourly wage. Neither punches a timeclock, as do rank-and-file employees, and both are covered by an insurance plan which differs from the one which covers the employees. In these circumstances, we shall exclude the comanager and manager-trainee on the ground that their community of interest lies more closely with management than with the rank-and-file employees.

On the basis of the foregoing and the entire record in this case, 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 full-time and regular part-time grocery store employees at the Employer's two food stores in Louisville, Kentucky, excluding meat department employees, the store manager, comanager, manager-trainee, guards, and supervisors as defined in the Act.

[Direction of Election[8] omitted from publication.]

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[6] See, e g., *Mock Road Super Duper, Inc*, 156 NLRB 983, *Priced-Less Discount Foods, Inc, d/b/a Payless*, 157 NLRB 1143

[7] Cf. *Bonwit Teller, Inc*, 159 NLRB 759

[8] 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 9 within 7 days after the date of this Decision 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. *Excelsior Underwear Inc*, 156 NLRB 1236