

Western Auto Supply Company and Retail Clerks International Association, Local No 698, AFL-CIO, Petitioner
Case 8-RC-7570

May 20 1970

DECISION ON REVIEW

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING
AND JENKINS

On August 12, 1969, the Regional Director for Region 8 issued his Decision and Direction of Election in the above-entitled proceeding, in which he found appropriate the requested unit confined to the Employer's Canton #3 retail store, rejecting the Employer's contention that the smallest appropriate unit under Board precedent would include its two stores in Canton, Ohio. Thereafter, pursuant to National Labor Relations Board Rules and Regulations, the Employer filed a timely request for review, in which it contended, *inter alia*, that in finding the requested single-store unit appropriate, the Regional Director departed from officially reported Board precedent.

By telegraphic order dated November 10, 1969, the National Labor Relations Board granted the request for review. Thereafter, the Employer filed a statement relying upon its request for review and its brief to the Regional Director, which was attached to the request for review.

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 this case to a three-member panel.

The Board has considered the entire record in this case with respect to the issue under review and makes the following findings:

The Regional Director found that the requested single-store unit was presumptively appropriate and that the presumption had not been successfully rebutted, distinguishing the precedent cited to him in the Employer's posthearing brief. In its request for review, the Employer contends that the Regional Director erred in so concluding and that the smallest appropriate unit is comprised of all the Employer's employees at its two stores within Canton, Ohio, which in the Employer's chain operations is given the nomenclature of a metro-market area. We find merit in this contention.

The Employer is engaged in the retail sales of automobile supplies, appliances, and other products through a large number of small standardized stores which it owns and operates throughout the United States. It has at present two stores in the city of Canton, referred to as Canton #3 and #2, which are 5 miles apart.¹ These two stores are included within the Employer's Columbus retail sales district, which is comprised of 10 stores under the supervision of a retail sales manager who reports directly to the Employer's northeastern

regional vice president.² The next nearest stores are in Akron, Ohio, some 25 miles away, in a different retail district.

There is no bargaining history at the two stores in Canton or in any other store within the Columbus district. However, the record discloses that employees in other metro market areas in the Employer's operations are organized in metropolitan area units,³ and there is no instance of a single-store unit in any of its metro-market areas.

The Employer's district operations are centrally administered through the District central reporting and accounting office in Columbus, Ohio, which handles all payroll and other administrative functions for all stores within that district. All employees at all stores within the district enjoy identical benefits. The Employer prescribes uniform rules of conduct and modes of dress for all employees, it provides attire for the automotive installation men.

Despite the central administration on a district level, the two stores in Canton, Ohio, are distinguishable from other stores within the district in that they constitute, as above indicated, a metro-market area in the Employer's operations. They have identical merchandise, prices, wage rates, and operating hours and use common advertising and telephone listings. Both stores submit merchandise requests to maintain the inventory levels set by the district retail sales manager on the same day and receive merchandise by a common truck. Goods are transferred between the stores. Both serve the same customer market area and draw their employees from the same labor market.

There are seven or eight employees in each of the Canton stores, in the classifications of credit clerk, automotive installation man, part-time stockman and salesman. The sales employees from both stores attend joint training classes conducted by the district retail sales manager. Pursuant to the Employer's policy of "interbranching,"⁴ there are daily telephone calls and frequent visits of sales employees between the two stores. There has been promotional transfer between the stores,⁵ and one individual works part time at both locations to complete full-time employment. The automotive installation men at the two stores frequently assist each other, especially on Friday and Saturday evenings, to accommodate for business fluctuations. In addition,

² District Retail Sales Manager Mayernik is responsible for the two stores in Canton, seven in Columbus, Ohio, and one in Huntington, West Virginia. Canton is 120 miles from Columbus, which in turn is 137 miles from Huntington. Huntington is 229 miles from Canton. The Columbus stores also constitute what the Employer refers to in its operations as a separate metro market area.

³ E.g., St. Louis, Minnesota, Detroit, Michigan, and Los Angeles, California.

⁴ Interbranching entails the transfer of merchandise between the stores to satisfy customer demands when one store lacks an adequate supply of the particular item. The store furnishing merchandise charges the store requesting the merchandise and receives credit for the charge. Under this practice, some sales made in one store are delivered in the other to the customer himself or to a salesman from the purchasing store.

⁵ A salesman at store #2 was recently promoted to store manager of store #3.

¹ Canton #1 was discontinued more than 4 years ago.

personnel are interchanged between the two stores when employees are absent due to illness or vacation. Employees from both stores assist in taking regular inventory at each store.

The district retail sales manager is directly responsible to the regional vice president for the sales, operations, and general administration (including personnel) of all the stores within his district. He visits the stores regularly and for extended periods of time, usually for a working day or two at least every 2 weeks. He is in constant telephone communication with all district stores. He sets the manpower quota for each store; determines the store selling hours; takes up personnel grievances and complaints during his visits; investigates applications for initial employment forwarded to him by the store manager; discusses with employees disciplinary actions initiated against them by the store manager; passes on recommendations made by the store manager for merit increases which are based on length of service and an automatic progression scale; conducts metro-market sales meetings; explains the Employer's policies, procedures, benefits and the like to employees.

The store managers have no authority to hire, but they accept applications for employment when vacancies occur within their manpower quotas; they interview applicants, administer standard tests, and transmit the completed forms with their recommendation to the district retail sales manager. They have no authority to deviate from wage ranges for job classifications or from established policies on merit increases but, as indicated, they initiate recommendations for salary adjustments and for discipline. They schedule employee working hours, subject to review by the district retail sales manager. They have no discretion as to the kinds of merchandise carried, stock levels, prices, sources of merchandise, or means of delivery. They can spend no more than \$10 without prior approval.

Upon the foregoing and the entire record herein, we find that the smallest appropriate unit for the request-

ed employees should encompass both Canton stores. In so finding, we rely not only on the fact that the Employer considers these two stores as being in a distinct metro-market area but on the additional circumstances that their operations are highly integrated, that employee interchange between them regularly occurs, that the degree of authority exercised by store managers is limited, and that other metro-market areas in the Employer's chain are organized on a metropolitan area unit basis.⁶

Accordingly, we shall remand the case to the Regional Director in order that he may, in the event the Petitioner establishes within 10 days that it has an adequate showing of interest, conduct an election pursuant to his Decision and Direction of Election, as modified herein,⁷ except that the eligibility date therefor shall be the payroll period immediately preceding the date below.

⁶ See *The Pep Boys—Manny, Moe & Jack*, 172 NLRB No 23, *Caribbean Restaurants, Inc.*, 162 NLRB 676; Cf *Haag Drug Company, Incorporated*, 169 NLRB 877. The cases relied upon by the Regional Director to support his contrary finding are in our opinion factually distinguishable.

⁷ In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236, *NLRB v Wyman-Gordon Company*, 394 U.S. 759. Accordingly, it is hereby directed that a corrected election eligibility list, containing the names and addresses of all the eligible voters, must be filed with the Regional Director for Region 8 within 7 days of the date of this Decision on Review. The list may initially be used by the Regional Director to assist in determining an adequate showing of interest. The Regional Director shall make the list available to all parties to the election when he shall have determined that an adequate showing of interest has been established among the employees in the unit found appropriate. 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.

As the unit found appropriate is broader than that requested, the Petitioner may withdraw its petition without prejudice upon written notice to the Regional Director within 10 days from the date of this Decision on Review.