

Seaway Food Town, Inc. and Retail Store Employees Union Local 954, Retail Clerks International Association, AFL-CIO,¹ Petitioner and Amalgamated Food and Allied Workers District Union 626, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO,² Intervenor. Case 8-UC-21

May 23, 1968

DECISION AND ORDER GRANTING PETITION TO CLARIFY NONCERTIFIED BARGAINING UNIT

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND JENKINS

Upon a petition of Retail Clerks for clarification of unit duly filed on August 30, 1967, under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held on September 27, 1967, and October 2, 1967, before Hearing Officer John J. Horston. On October 23, 1967, the Regional Director for Region 8 issued an order transferring the case to the Board. Thereafter, briefs were filed by the Petitioner and Intervenor.³

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 reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings are hereby affirmed.⁴

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Petitioner and the Intervenor are both labor organizations within the meaning of the Act, and both claim to represent certain employees of the Employer.

3. The Employer operates approximately 20 grocery stores in the Toledo, Ohio, area, including 1 in Sandusky, Ohio, where the present dispute has arisen. Retail Clerks represents, according to its contract, all of the nonsupervisory employees in these stores excluding employees of the "existing

meat department," whereas Meat Cutters represents, under its contract, all of Employer's employees who "handle meat and delicatessen products." At the time the present question arose, only one store other than the Sandusky store operated a delicatessen department, that one in Toledo, and the employees in that department are covered by Meat Cutters agreement. Neither union is certified by the Board in any of the Employer's stores, but on the other hand neither union disputes the fact that the Employer recognizes each as the bargaining agent for the employees covered by its respective current contract, as set forth above. On or about June 1, 1967, the Employer opened its Sandusky store, containing an in-store delicatessen department. Each union claims to represent the delicatessen department employees, each asserting that, by virtue of the terms of its agreement and the nature of the work performed by them, the employees constitute an accretion to its respective unit. It is to resolve these opposing claims that the petition to clarify its unit was filed by Retail Clerks.

The Sandusky delicatessen department is located in front of the store while the meat department is located in the rear. The delicatessen in the Toledo store is contiguous to the meat department. In Toledo, the delicatessen department, which is covered by the Meat Cutters contract, is under the meat department manager. In Sandusky, the delicatessen department is under the store manager; whether there is also intermediate supervision is uncertain.

There are approximately four employees in the Sandusky delicatessen department. Their responsibilities are to wait on customers and to make sure that the shelves in the department are stocked with food. They spend a substantial part of their time in contact with customers.

The delicatessen departments sell such products as potato salad, coleslaw, prepackaged meat, specialty meats, and fish, and also some cooked foods, such as chicken. In both the Sandusky and Toledo stores, food for sale in the delicatessen departments is ordered by the meat department manager from the supplier, although, unlike the situation in Toledo, initial responsibility for determining the needs of the Sandusky delicatessen department rests with one of the employees in that department. In addition, the delicatessen departments receive their chickens directly from the meat departments,

lowed Robert L. Parker, president of the Intervenor, to testify regarding a statement made to him by one of Intervenor's stewards that she had not said anything to Employer's store manager about excluding delicatessen department employees from the bargaining unit represented by Intervenor. Inasmuch as we do not rely on the truth or falsity of that statement in reaching our conclusions herein, we will not disturb the ruling of the Hearing Officer.

¹ Herein called Retail Clerks.

² Herein called Meat Cutters or Intervenor. Meat Cutters was allowed to intervene on the basis of a colorable claim to represent the employees sought by Retail Clerks.

³ The Intervenor's request for oral argument is hereby denied, as the record and briefs adequately present the issues and positions of the parties.

⁴ Over the objection of counsel for Petitioner, the Hearing Officer allowed Robert L. Parker, president of the Intervenor, to testify regarding a statement made to him by one of Intervenor's stewards that she had not said anything to Employer's store manager about excluding delicatessen department employees from the bargaining unit represented by Intervenor. Inasmuch as we do not rely on the truth or falsity of that statement in reaching our conclusions herein, we will not disturb the ruling of the Hearing Officer.

and some food items sold are supplied by other departments of the store. The Sandusky delicatessen department inventory is kept separately from the rest of the store.

All of the employees in the store work generally the same hours. Work scheduling is done by the department head in conjunction with either the store manager, the assistant store manager, or, in the case of the meat department, by the meat department manager. Timecards for all employees are kept in the store in the same rack. Wages paid employees are based on the collective-bargaining agreements with the respective unions. The delicatessen department employees in the Sandusky store, although unrepresented, are currently being paid the wage rate established in the contract between the Employer and the Meat Cutters of the employees in the Toledo store delicatessen department. This is the only specific delicatessen rate provided for in any of the Employer's collective-bargaining agreements. However, the delicatessen department employees are not at present covered by the fringe benefit programs of either union. Rather, moneys are being held in escrow by the Employer until such time as the placement of these employees has been decided.

Meat Cutters argues that there is no question to be clarified regarding the unit placement of the delicatessen employees because its contract with the Employer covers all employees who "handle meat and delicatessen products," thus giving it a clearly superior contractual claim to that of Retail Clerks, whose contract assignment is only residual.

Retail Clerks, on the other hand, maintains that the Board has customarily included delicatessen department employees in units of food clerks,⁵ and that the inclusion of the delicatessen department employees at the Toledo store in the meat department resulted from an interunion agreement which, if anything, would dictate a contrary result in the present circumstances.⁶

We believe that we can give no substantial weight in the present instance to the fact of representation of the delicatessen department employees by Meat Cutters at the Toledo store stemming from an interunion arrangement uncertain in scope and intent. In any event, we are not bound by jurisdictional arrangements of unions.

⁵ See *Priced-Less Discount Foods, Inc., db/a Payless*, 157 NLRB 1143, 1145; *Food Fair Stores, Inc.*, 138 NLRB 1, 7.

⁶ The agreement provided that the jurisdiction of Meat Cutters unions would extend to all areas "displaying meat, poultry, sausage or fish only, that are located immediately adjacent to one another in a contiguous and concentrated area, unbroken by the display of any other products." Thus, explains Retail Clerks, when the Toledo delicatessen was opened, the

In the light of the facts in the present record, we are persuaded that the duties and functions of the delicatessen department employees in Sandusky are more akin to grocery, produce, dairy, and bakery employees than to the employees in the meat department. The delicatessen department employees possess no journeyman skills and are not required to possess them; unlike the meat department employees they serve the public directly, as is true of the bakery employees; they are under the general supervision of the store manager and not of the meat department manager; such interchange as exists is with the bakery department employees and not the meat department employees; there is no indication in the record of a line of progression from delicatessen department employees to journeymen meatcutters; they handle a variety of nonmeat as well as meat products; and in view of their location in the store their predominant contacts are with the employees in the Retail Clerks unit. The fact that their wage rates are similar to those of the delicatessen employees at Toledo does not suggest that they are patterned on wage scales of the skilled employees in the meat department, or suggest, on the present record, a level of rates so superior to those prevailing in the grocery and other departments as to reflect a community of interest different from the employees in the latter departments. We find, therefore, on the record as a whole, that the delicatessen department employees at Sandusky do not constitute a group entitled to separate representation, and that their duties, functions, and interests are such as to constitute them an appropriate part of and an accretion to the unit represented by Retail Clerks and not the unit represented by Meat Cutters. Accordingly, we shall clarify the present contract units by including the delicatessen department employees in the unit represented by Retail Clerks.

ORDER

It is hereby ordered that the existing contract unit represented by Retail Store Employees Union Local 954, Retail Clerks International Association, AFL-CIO, be, and it hereby is, clarified by specifically including in the description of the unit, all employees in the delicatessen department located in the store of Seaway Food Town, Inc., in Sandusky, Ohio.

agreement required it to accede jurisdiction to Meat Cutters because the department was located contiguous to the meat department. But, it argues, neither the jurisdictional agreement nor the Meat Cutters contract requires that in Sandusky the employees be placed in the Meat Cutters unit. Unlike the situation in the Toledo store the delicatessen department in Sandusky is not located contiguous to the meat department and is therefore not within the Meat Cutters jurisdiction under the agreement between the unions