

Unishops of Clarkins, Inc. and Retail Clerks International Association Local No. 698, AFL-CIO¹ and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, District Union 427.² Case 8-UC-26

June 17, 1968

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND JENKINS

Upon a petition of Retail Clerks for clarification of unit, duly filed on January 29, 1968, under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held on February 15, 1968, before Hearing Officer Richard A. Du Rose. On February 20, 1968, the Regional Director for Region 8 issued an order transferring the case to the Board. Both parties waived the filing of briefs.

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.

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 labor organizations within the meaning of the Act and both claim to represent certain employees of the Employer.

3. In this clarification proceeding we are asked to resolve the competing claims of Retail Clerks and Meat Cutters for delicatessen employees in two of the Employer's stores in Akron, Ohio. The facts giving rise to the dispute are as follows:

The Employer started operations in 1962 at a store named Clarkins Carrousel in Canton, Ohio. Some of the departments were owned by the Employer, while 15 were leased. The grocery department, which included within it the meat department, was leased by C & C Foods, Inc. The delicatessen department was leased and operated by a firm called Disco.

The Retail Clerks claims that in the fall of 1966

C & C Foods became the lessee of the delicatessen department. The Meat Cutters denies this to be factually correct. However, the testimony of the Employer's vice president, and of an employee in the delicatessen department of the Canton store supports the position of the Retail Clerks in this regard. In the latter part of 1962 the Meat Cutters was recognized as the bargaining representative for the meat department employees. In May 1962, after an election, the Retail Clerks was certified as the representative of the grocery department. In June 1963, by voluntary recognition, after a card check, the Retail Clerks was recognized as the representative of all employees of Clarkins Carrousel's wholly owned and leased departments (including the delicatessen) plus similar departments at the Employer's stores at other locations, including Wooster-Hawkins. Excluded from this unit were employees in the meat department, grocery department, beauty shop, barber shop, and garage.

Retail Clerks presently has two collective-bargaining contracts with the Employer: (1) the grocery department contract covering all Employer's stores in the Canton-Akron area, and (2) all wholly owned and leased departments with the exclusion of the grocery, meat, and some other departments. The delicatessen employees at the Canton store are in this unit, and the Retail Clerks claims that the delicatessen employees at the Akron and Wooster-Hawkins store are also within this unit by way of accretion. The Meat Cutters represents the meat departments of Employer's entire operations.

In July 1966 Clarkins merged with Unishop and became the present corporation, Unishops of Clarkins, Inc. C & C Foods was eliminated. From July 1966 the food division, which encompassed the grocery and meat department at the Canton store, has been owned by Unishop. The delicatessen, in November 1966, was leased to RLN Enterprise.

The Employer has operated other stores located at South Main Street in Akron, on Cherry Street in Canton, and a store in Kent, but none of these stores ever had a grocery, meat, or delicatessen department.

In late November 1966, the Employer completed an expansion of its wholly owned store located in the Wooster-Hawkins Plaza, Akron, Ohio. The Retail Clerks has been recognized as the bargaining representative for the grocery department and the Meat Cutters as the representative of the meat department. Prior to expansion, the Retail Clerks was the only Union representing employees at this

¹ Herein called Retail Clerks or Petitioner.

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 the Retail Clerks

store, and did so under its nongrocery contract.

On October 12, 1967, the Employer opened a new wholly owned store located at 3200 Arlington Road, Akron, Ohio. The Retail Clerks was immediately recognized as the representative of all employees other than the meat department and the delicatessen department. The Meat Cutters was recognized as the representative of the meat department.

Subsequent to the opening of the delicatessen in the two Akron stores, the Employer and Meat Cutters signed an addendum purporting to cover delicatessen employees. The addendum states in part:

Article A—Recognition—The Employer recognizes the Union as the sole bargaining agent for all employees in the *Prepared Foods Departments of its food stores* in the counties of . . . excluding supervisors, as defined in the National Labor Relations Act, as amended. The Prepared Foods Department has separate facilities for the preparation of the foods for “carry-out” (ready-to-eat) and for customer sales and services on the premises.

Article B—Work Jurisdiction—Work jurisdiction at the store level for all fresh and frozen meats, poultry, fish, rabbits, sausage and smoked meats normally handled, processed, and offered for sale in the meat departments of stores remains with meat department employees.

According to the Meat Cutters, the reason for the addendum was that the delicatessen department services customers rather than being self-service as in the case in the meat departments. However, the Employer’s representative stated on the record that the Employer did not consider the aforesaid addendum to be binding on the issue of the placement of the delicatessen employees.

The pertinent provisions of the Retail Clerks contracts state:

A. The Non-Grocery Contract

1. Recognition—The Company hereby recognizes the Union as the sole and exclusive bargaining agent for and on behalf of all employees of the Company with respect to wages, rates of pay, hours of work, and other conditions of employment, for the appropriate bargaining unit herein described as follows:

2. All full time and regular part-time employees of Clarkins wholly-owned departments and employees of all licensed departments, but

excluding store managers . . . meat department, grocery department, beauty shop, barber shop . . .

B. Grocery Department Contract

Bargaining agent—The Employer recognizes the Union as the exclusive bargaining agent on all matters pertaining to wages, hours, and general working conditions for all of its employees excepting executives, managerial and supervisory employees.

At the Arlington store the meat department and the delicatessen department are in the rear of the grocery department and are located next to each other. A customer can pay either at the delicatessen department or go through the general checkout. Meat department products can be paid for either at the meat department or grocery checkout. At the Wooster-Hawkins store, the delicatessen is located in the front of the store next to the grocery, and the meat department is located in the rear. The delicatessen department and the grocery department each has its own checkout. Delicatessen products are paid for only at the delicatessen department.

There are approximately five to eight employees in the delicatessen department of each Akron store and eight in the meat departments. The products sold at each delicatessen department are similar except that perhaps more baked goods are sold at the Wooster-Hawkins store. The delicatessen department sells such items as sliced luncheon meats, barbecued chicken and ribs, prepared salads, and baked goods. Each department, including the meat and delicatessen departments, is supervised by a department head, who is excluded by the terms of the contract. The parties stipulated that the employees that are employed at the two stores in the delicatessen department generally have the same hours as other employees in the other departments in both of those stores.

The Retail Clerks and the Meat Cutters both claim that all questions concerning representation of delicatessen employees have been settled by their respective contracts. As additional support for its position, Retail Clerks points to its representation of the delicatessen department operated by Clarkins at the Canton store,³ for the last 5 years, and its representation of delicatessen departments in three other similar stores in the Akron area.

The Meat Cutters alleges the reason it never represented the delicatessen department at the Canton store was that the delicatessen was not in

³ At the Canton store, the delicatessen department is located near the grocery and rings up its sales. It does not sell bakery items or prepare food. The meat department is in the rear of the grocery department

operation at the time the Union was recognized as the bargaining agent for the meat department. Further, C & C Foods did not operate, own, or control, nor has it ever operated, owned, or controlled, the delicatessen operation. Additionally, the Meat Cutters states that in two of the three stores where the Retail Clerks claims it represents the delicatessen department, the delicatessen departments have closed and the work theretofore performed in the delicatessen department is now done in the meat department. Further, the Meat Cutters states that in the Akron-Canton area there are approximately 115 stores in which the Meat Cutters represents the meat departments and that the type of work done in the delicatessens at the Employer's stores is similar to the type of work generally done in meat departments.

Neither Union is certified by the Board as representative of employees in the two Akron stores; however, neither Union disputes the fact that the Employer recognizes each as the bargaining agent for the employees covered by its respective contracts as set forth above.

As indicated above, the issue facing us is whether the employees in the delicatessen departments, which, together with the grocery and meat departments, constitute the foodstore segment of the Arlington and Wooster-Hawkins stores, are to be deemed part of the multistore nongrocery unit represented by the Retail Clerks or part of the multistore meat department unit represented by the Meat Cutters. Although delicatessen employees at the Canton store are included in the Retail Clerks nongrocery unit, this is the result of historical development.

Though the Board has traditionally found units of all employees in a grocery supermarket to be presumptively appropriate for purposes of collective bargaining,⁴ it has also found, in appropriate circumstances, separate units of grocery department and meat department employees to be appropriate.⁵ The circumstances in which separate units of meat department employees have been established have involved at the minimum separate supervision of meat department employees, lack of interchange between such employees and other employees in the store, the inclusion in the unit of skilled meat-

cutters with training and knowledge in the identification and cutting of the great variety of meat cuts from larger portions of carcasses, and the use of similar knowledge in identification of grades and cuts of meats for accurate labeling, weighing, and pricing of cuts by the employees in this department.

In the instant case, the record does not indicate that the delicatessen employees, though they handle and slice coldcuts, have either the training in, or the need to use, the skills required of employees in the meat department. Moreover, they are not supervised by the meat department supervisor, nor do they interchange with such employees. In the recent *Ideal Super Markets* case,⁶ the Board found that delicatessen employees could not constitute a separate appropriate bargaining unit, and could not be added to the existing meat department unit either by way of accretion or by way of a self-determination election. In *Payless*,⁷ an 8(a)(5) complaint case, the Board included delicatessen employees in a represented grocery department unit over the objection of another union seeking recognition. In both of those cases, the Board concluded that delicatessen employees' community of interest lay with the grocery department employees rather than with separately supervised more skilled meat department employees. Here too, we reach the same conclusion, in view of the absence of common supervision of delicatessen and meat department employees, the lack of interchange between the two departments, and the fact that delicatessen employees need not possess, and do not utilize in their work, the skills and knowledge required of meat department employees.⁸ Accordingly, we reject the Meat Cutters contention that the delicatessen employees constitute an accretion to the existing meat department unit. Inasmuch as the Retail Clerks seeks to include the delicatessen employees in its nongrocery unit rather than in its grocery department unit, and we find such inclusion to be improper, we shall dismiss the petition for unit clarification filed herein.⁹

ORDER

It is hereby ordered that the petition be, and it hereby is, dismissed.

distinct and separate from the delicatessen department.

⁹ Although our decision bespeaks the appropriateness of the inclusion of the delicatessen employees in the grocery department unit, we do not hereby clarify that unit because there is substantial indication in the record that the delicatessen departments in these stores were staffed at the time the Employer extended recognition to the Retail Clerks for the grocery department employees. Accordingly, it may be that inclusion of these employees by way of unit clarification of the grocery department unit rather than by affording the delicatessen employees an opportunity for self-determination on this issue is an inappropriate way to proceed.

⁴ *The Great Atlantic & Pacific Tea Company, Inc.*, 132 NLRB 744. *Schaeffers Prospect IGA Store*, 124 NLRB 1433.

⁵ *American Stores Company*, 80 NLRB 126, *Mock Road Super Duper, Inc.*, 156 NLRB 983.

⁶ 171 NLRB No. 1.

⁷ *Priced-Less Discount Foods, Inc., db/a Payless*, 157 NLRB 1143.

⁸ We reject the Meat Cutters position that its "prepared foods addendum" is controlling and the delicatessen employees should be accreted to the meat department unit based on the Employer's recognition of the jurisdiction of Meat Cutters over the prepared food departments, in view of language in the addendum indicating that the prepared food department is