

**Allied Stores of Ohio, Inc. and Retail Clerks
International Association, Local No. 698,
AFL-CIO Petitioner. Case 8-RC-7156**

May 13, 1969

**DECISION AND DIRECTION OF
ELECTION**

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer John Vincek. Following the hearing, this case was transferred to the National Labor Relations Board in Washington, D.C., pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended. Thereafter, briefs were filed by the Employer and the Petitioner.

Pursuant to the provisions of Section 3(b) of the Act, 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, including the briefs, the Board finds:

1. The Employer¹ is engaged in commerce within the meaning of the Act.
2. The labor organization involved claims to represent certain employees of the Employer.
3. 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.
4. The appropriate unit: The Petitioner seeks to represent a unit consisting of all regular selling and nonselling employees at the Employer's downtown Akron, Ohio, store and attached service building, including employees of leased departments. However, the Petitioner would be willing to participate in an election in separate units of the downtown Akron store and service building, should the Board find such units appropriate. The Employer contends that a unit limited to the Akron location is inappropriate and that the unit should include all the Employer's locations in Ohio, or in the alternative, all of its locations in Summit County, Ohio. However, in the event the Board finds the single Akron store unit to be appropriate, the Employer urges that such unit should not include the service building.

The Employer operates five retail stores in Ohio. The main store, a full line department store, is located in Akron, Ohio, and houses the Employer's

central administrative offices. The Employer's service building, a combination parking garage, and warehouse, customer service and repair center, is physically connected to the main store by a covered bridge that is used by customers and employees alike. Three of the Employer's stores are located in Stark County, Ohio, and two, including the Akron store, are in Summit County, Ohio. The three stores in Stark County are located in Canton, Ohio, and are 25 miles from the Akron store. The remaining store in Summit County is located in Fairlawn, Ohio, and is 5 miles from Akron and 31 miles from Canton.

The Employer's operation is marked by a high degree of central control and administration. Thus, sales promotion and advertising, billing and credit, purchasing and merchandising are all controlled from the central administrative offices located in the Akron store. The service building serves as a central warehouse for the five stores. Buyers located in Akron purchase merchandise for all stores, and when necessary transfer merchandise from store to store. They also establish prices and markdowns at each store and are required to visit each store at least twice a month. Frequent meetings of departmental sales personnel are held on a companywide basis. Accounting, auditing, payroll, and personnel relations are centrally controlled, and there are common conditions of employment in all stores. Wages, fringe benefits and seniority are determined centrally and in the same manner regardless of employee location. Major maintenance, security and most repair services are handled from Akron.

The above factors indicate that the Employer's operation is characterized by the high degree of centralization and uniformity commonly found in retail chains. However, it is well established that such factors are insufficient in themselves to rebut the presumption that a single store in a retail chain is an appropriate unit. In *Haag Drug Company, Incorporated*,² we stated:

. . . though chainwide uniformity may be advantageous to the employer administratively, it is not a sufficient reason in itself for denying the right of a separate, homogeneous group of employees, possessing a clear community of interest, to express their wishes concerning collective representation.

As pointed out, more significant than centralized administrative control is "whether or not the employees perform their day-to-day work under the immediate supervision of a local store manager who is involved in rating employee performance, or in performing a significant portion of the hiring and firing of the employees, and is personally involved with the daily matters which make up their grievances and routine problems." Other factors considered in determining whether or not the

¹The name of the Employer appears as amended at the hearing. The Employer is also known as "The A. Polsky Company" or "Polsky's."

²169 NLRB No. 111

presumptive appropriateness of a single-store unit has been overcome, include, *inter alia*, geographic separation of the stores, employee interchange and the employer's past bargaining history.

Upon a consideration of the entire record, we are not persuaded that the factors necessary to rebut the presumptive appropriateness of a single-store unit are present in this case.

The record reveals that the day-to-day operation of the branch stores is the responsibility of the branch store manager and his staff. Fred Brenner, the Fairlawn store manager and former store manager at Canton, testified that his job consists of "supervising the personnel assigned to this location, and the accomplishment of their designated functions, and in so doing in achieving planned objectives which have been designated by the management of the Company."³ Brenner testified further that it is the store manager's duty to determine whether certain company standards of performance are being maintained; to issue formal warnings if they are not; and that failing, to recommend discharge or transfer to a lesser position.⁴ Store managers can also suspend employees for cause and make recommendations as to whether they should be retained or discharged. Thus, it is quite clear that although the final determination with respect to discharge is vested in the central organization, the branch store manager plays a significant role in such determinations.

In addition, the record indicates that branch store managers are required to train all new employees, although in performing this function training material provided by the central organization is used. The store manager and his staff are also directly involved in the handling of employee grievances. Brenner stated that employees are encouraged to and do bring their grievances to him.

Branch store personnel have substantial authority in the hiring process. In hiring for the basic staff, the initial interview and decision to hire is made by the branch store personnel representative, although new employees are considered probationary employees for the first 60 days and do not achieve

permanent status until central personnel check their references and job performances. Further, it appears that branch store personnel have complete authority to hire "status three" employees (extras who are not part of the basic staff) so long as such hiring is within the store's budget allowance.

Branch store personnel also have the responsibility to evaluate employee performance. Specifically, these evaluations are made by the employee's immediate supervisor on standard forms provided by the Employer. The branch store personnel representative then utilizes these evaluations in making recommendations as to wage increases to Janet Marks, the vice president of personnel. Marks will then discuss each recommendation with the branch store's personnel representative before deciding whether to approve the wage increase. Thus, while the final determination with respect to wage increases must come from central personnel, the branch store personnel play an important role in these determinations.

In addition to the substantial amount of local authority vested in the branch store manager and his staff, there are other factors which support the presumption that a unit limited to the employees at the Akron store is appropriate. Thus, the Akron store is geographically separated from the other stores, serves a different economic area and maintains different store hours. The record also indicates that employee interchange among the stores has been minimal. During a 3-year period there have been only 123 permanent transfers among the 5 stores and service building which have a total complement of approximately 1,560 employees.⁵ Moreover, although temporary transfers have occurred during special sales events, it appears that such sales are held infrequently and only involve two or three employees at a time.⁶ Further, no established bargaining relationship would be disturbed by finding the petitioned-for store appropriate.⁷

Upon consideration of the entire record, including particularly the substantial degree of authority exercised by the store manager and his supervisory staff in the day-to-day operations; the minimal amount of employee interchange, the geographic separation of the stores, and the absence of any conclusive bargaining history, we conclude that a unit confined to the employees of the Akron store is appropriate herein.

³The Employer attempted to establish that direct supervision over the branch store sales personnel is exercised by the buyers who are part of the central organization. The record indicates that the buyers are required to visit the stores at least twice a month and during these visits they do have contact with sales personnel. However, according to Brenner's testimony, the buyer's primary function is to provide the sales personnel with the merchandise and the information necessary to sell it effectively. Brenner specifically pointed out that the day-to-day supervision of the sales personnel is handled by the branch store sales manager and that any changes or improvements that the buyer deems necessary must be directed through the sales manager. Richard Missbach, the senior vice president of merchandising and sales promotion also testified that the day-to-day supervision of the sales personnel is the sales manager's responsibility.

⁴Brenner testified that his recommendations are not necessarily followed and that on occasion although he has recommended discharge, the central organization has advised him to use the particular person in a lesser position. However such testimony does not serve to support the Employer's contention that Brenner's recommendations are ineffective but shows conversely that they are effective because some disciplinary action is taken as a result of Brenner's recommendations.

⁵Of these 123 transfers, 50 occurred when the Fairlawn store was opened in 1965.

⁶Although there was testimony to the effect that employees have also been temporarily transferred for specialized training, the record is inconclusive as to the frequency of such transfers.

⁷We do not deem of any controlling significance the fact that the Employer has recognized two small groups of employees; one unit limited to employees located at the Akron and Fairlawn stores, and another unit limited to employees located in the service building, and furthermore we note that the Petitioner's unit request specifically excludes such employees.

As previously noted, the Petitioner included in its unit request those employees employed in the service building who are not presently represented by another labor organization. The Employer objects to including the service building employees. It argues that their inclusion would be based solely on extent of organization. In this connection, it contends that there is no difference between the community of interest shared among the service building employees and Akron store employees and that which exists between the service building employees and those working at the other stores. We do not agree.

In terms of geographic location, the service building is connected to the Akron store by a two-level bridge. The upper level is used to transfer goods between the buildings by means of a conveyor system; the lower level is used by both customers and employees to cross between the buildings. Included among the employees who regularly use this bridge are the mail girl, the display department employees, the mechanics, furniture preparation men, radio and television repair men, markers, the appliance repair man, and sales employees needing merchandise from the service building for waiting customers. The record also shows that service building employees use the Akron store cafeteria; that personnel problems relating to the service building are handled by the personnel representative located in the Akron store; and that the service building employees employed in the addressograph department are supervised by the credit manager who has his office in the Akron store. Although for the most part service building employees perform jobs which relate to the entire chain, this is not true of the service performed by the parking attendants which relates solely to the Akron store. In addition, the Employer maintains warehousing facilities in both buildings, and part of the Akron store's retail operation is housed in the service building by the maintenance of a lawn and garden shop for part of the year and on those occasions when special warehouse sales are held.

In light of the foregoing considerations and the record as a whole, it is our view that the service building employees have a greater community of interest with the Akron store employees than with the employees located at the other stores and as such, we shall include these employees in the Akron store unit.

The Petitioner and Employer entered into a number of eligibility stipulations pertaining to the employees working in the Akron store and the service building. They agreed that the degree of control exercised by the Employer over the employees of three leased departments, Selegman & Latz of Akron, Inc., Joseph Cirino, and Poly-Foto,⁸ is such that these employees should be included in the unit. They also agreed that the employees of all other leased departments should be excluded. They stipulated further that certain other employees are

to be excluded as confidential employees, professional employees, employees presently covered by collective-bargaining agreements, guards and supervisors; and that certain other employees are to be included in the unit. Upon examination, we find no reason to disturb the agreement of the parties as to any of these categories.

The Employer contends that the following employees are not supervisors and should be included in the unit, the Petitioner takes the contrary position.

(1) *Head PBX operator*: The PBX department is the Employer's central telephone system. Five telephone operators including the head PBX operator work in this department. The head PBX operator spends about 90 percent of her time working alongside the other operators on the automatic switchboard. The remainder of her time is spent checking phone bills, observing other operators and relieving them during rest periods. It is her function to see that the work of the department is being performed pursuant to the instructions she receives from the vice president of operations, Joseph Marks. She has no authority to reward or discipline any operator. Although she has trained operators, generally this function is performed by a representative of the telephone company. On occasion, she might express her opinion to Marks concerning an operator's performance; however Marks will always investigate the situation himself independently before making any decision. As the record fails to disclose that the head PBX operator exercises any discretion in performing her duties, we find that she is not a supervisor within the meaning of the Act. Accordingly, we shall include her in the unit.

(2) *The billing controller*: The occupant of this position spends 80 percent of her time performing the routine work of the billing department. The remainder of her time is spent as the department's manager. There are approximately 15 employees in the department. As department manager, she reviews the time records of employees, consults with her immediate supervisor in the adjustment of employee grievances, and aids in the scheduling of employee vacations. The record further shows that she can grant a change in an employee's working schedule; that she maintains a list of "on call" employees and can decide independently which "on call" employee will be given available work; that on occasion she has made independent decisions as to the need for "on call" employees; and that she is in charge of the day-to-day operation of the department. In view of these facts, we find that the billing controller in the performance of her duties exercises independent judgment and responsibility directs the employees in her department, and is

⁸Selegman & Latz of Akron, Inc., appeared at the hearing and joined in the stipulation as to its employees. Joseph Cirino and Poly-Foto were duly served with the Board's Notice of Representation Hearing and Order Rescheduling Hearing but did not appear.

therefore a supervisor within the meaning of the Act; we shall accordingly exclude her from the unit.

(3) *Auditing controller:* The sales audit department audits the sales figures from each store department. The department includes three or four regular employees and a number of part-time employees that varies depending on the time of the year. The auditing controller spends approximately 80 percent of her time performing the routine work of the department. The remainder of her time is spent scheduling hours, training, and checking the work of the employees. While the record shows that her recommendations as to hiring, discharge, and pay increases are independently reviewed by her immediate supervisor, it shows further that she has the authority to adjust minor grievances and disciplinary problems; to assign work; to schedule vacations subject to review; and upon receipt of the authorization for extra help, to select the particular "on call" employee that will work. Moreover, she is the only on-the-scene person with any authority in the department and she attends supervisory meetings together with stipulated supervisors. In the above circumstances, we find that the auditing controller possesses sufficient authority to be considered a supervisor within the meaning of the Act; accordingly we shall exclude her from the unit.

(4) *Head housekeeper:* This individual spends 60 to 70 percent of his time cleaning the store. The remainder of his time is spent assisting his immediate supervisor, the supervisor of housekeeping, in checking on the quality and performance of the work performed by the 17 porters and maids who work in the housekeeping department. In performing these latter duties, the head housekeeper orders work redone, assigns work to others, and makes reports to the supervisor of housekeeping concerning employee performance and infractions of company rules. He receives approximately 50 cents an hour more than the next highest paid person in the department. Each Saturday and during 4 weeks of the year when the supervisor of housekeeping is on vacation, the head housekeeper is the sole person in charge of the housekeeping department. In view of the foregoing and particularly in view of the fact that the head housekeeper regularly is in sole charge of the department, we find that he is a supervisor within the meaning of the Act; and shall exclude him from the unit.

(5) *Assistant display manager:* There are approximately 12 employees working in the display department. It is their job to construct displays of merchandise in the sales areas and windows of the store. The assistant display manager spends approximately 70 percent of his time performing

this work. He spends the remainder of his time assisting the display manager in directing the work of the department, a function which the Petitioner claims is sufficient to make him a supervisor. However, as the record does not clearly indicate the extent and nature of such direction, we shall allow the assistant display manager to vote subject to challenge.

Status Three Employees

The Employer considers "Status three" employees as "extras" and not a part of the basic staff. Included in this category are probationary employees, students, Social Security annuitants, regular part time employees working less than 10 hours a week and all other employees who are on an "on call" basis. Although the parties are in agreement that some "Status three" employees should be included in the unit, they are in disagreement as to the standard to be applied for eligibility of these employees. Upon examination we find that, except for those whose exclusion is required by established Board policy, such as temporary and casual employees, any "Status three" employee who regularly averages 4 hours or more per week for the last quarter prior to the eligibility date has a sufficient community of interest for inclusion in the unit. Accordingly, any employee meeting this requirement shall be eligible to vote.

Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of the Act: All regular selling and nonselling employees at the Employer's Akron, Ohio store and service building, including employees of Selegman & Latz of Akron, Inc., Joseph Cirino, and Poly-Foto, and all qualified "Status three" employees, but excluding professional employees, casual employees, temporary employees, seasonal employees, guards, confidential employees, supervisors as defined by the Act, and employees represented by other labor organizations.

[Direction of Election⁹ omitted from publication.]

⁹In order to assure 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; *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759, decided April 23, 1969. Accordingly, it is hereby directed that 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 8 within 7 days of 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.