

**Almacs Inc.¹ and Local 1325, Retail Clerks
International Association, AFL-CIO, Petitioner.
Case 1-RC-10425**

June 13, 1969

**DECISION AND DIRECTION OF
ELECTION**

**BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND ZAGORIA**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Francis V. Paone, Hearing Officer. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 1, this case was transferred to the National Labor Relations Board for decision. Thereafter, the Petitioner and Intervenor² filed timely briefs.

Pursuant to the provisions of Section 3(b) of the Act, as amended, the 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. They are hereby affirmed.

Upon the entire record in this case, including the briefs filed herein, the Board finds:

1. The Employer is a Rhode Island corporation engaged in the retail sale of food products. It operates several stores in Massachusetts and Rhode Island. Employer has an annual volume of sales in excess of \$500,000. It receives from outside the State of Rhode Island products valued in excess of \$50,000. It also receives from outside the Commonwealth of Massachusetts products valued in excess of \$50,000.

We find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organizations involved claim 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.

Both the Petitioner and the joint Intervenor have current collective-bargaining agreements covering multistore units in the Employer's chain.³ Intervenor

contends primarily that the Fairhaven, Massachusetts, store, which is the store involved in this proceeding, is an accretion to its units and that Intervenor Local 2's contract⁴ is a bar to this proceeding. Petitioner asserts that any accretion would be to its unit. Alternatively, if the Board finds no accretion, each seeks to add the employees of the Fairhaven store to its multistore unit by Board election. Although the Employer asserted that the Fairhaven employees come under Intervenor Local 328's contract unit by accretion, the Employer declined to present evidence in support of this contention, indicating its intent to abide by the decision of the Board.

Petitioner's current agreement covers two stores in New Bedford, Massachusetts. The first New Bedford store has been represented by Petitioner since 1958. A second New Bedford store was opened in late 1968 and added to the Petitioner's contract unit by agreement of the parties. Petitioner's collective-bargaining agreement, having a term from July 31, 1967 to July 31, 1970, extends recognition to the Petitioner's exclusive bargaining representative status for "all [the Employer's] employees covered by this agreement in its store or (future) stores in the New Bedford Area."

The Intervenor's current contracts, together, cover all the Employer's other stores. The Intervenor has represented certain employees of Employer on a multistore unit basis since 1952. The current Local 328 contract, executed September 22, 1967, has a term running from May 8, 1967, to April 11, 1970. In it the Employer recognizes Local 328 as exclusive representative of "all store employees of the Company, excluding the Company's stores located in New Bedford and Bellingham, Massachusetts. . . ." The contract with Local 2, executed on the same date and having a term running from July 8, 1967, to April 11, 1970, extends recognition for "all store employees in all stores of the Company, excluding the Company's store or stores located in New Bedford, Massachusetts, and Rhode Island. . . ."

The Employer's administrative office and warehouse at East Providence, Rhode Island, is centrally located in relation to the geographic boundaries of the chain. There it maintains payroll and personnel records, screens employees hired initially by local store managers, passes on promotions initiated by store managers, and determines labor policies. Final decisions with respect to transfers of employees from one store to another and changes from part-time to full-time status are also made at the central office. There is no evidence of temporary interchange of employees between stores. It was estimated that there were

¹The name of the Employer appears as amended at the hearing.

²Local Unions 328 and 2, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, jointly intervened in this case. At the hearing, they declined, through their attorney, to assert any interest other than a joint interest. Accordingly, we herein treat the two Locals as joint Intervenor.

³While the precise number of stores in the chain is not specified, it appears from the record that Employer has 9 stores in Massachusetts and 16 or 17 in Rhode Island.

⁴Each local of the joint Intervenor has a separate collective-bargaining agreement with the Employer roughly corresponding to its local jurisdiction.

between 100 and 200 personnel adjustments made throughout the chain employing approximately 1,900 employees during the past year. This includes permanent transfers of employees and supervisory personnel between stores, and adjustments in working hours from part to full-time status.⁵ Other administrative functions handled at Providence include choice and assignment of store managers, choice and purchase of merchandise, advertising, banking, and pricing policies.

The Employer delegates to the store manager important responsibilities and significant autonomy in the operation of his store. Thus, the store manager hires both full-time and part-time employees subject to investigation and final approval by the central office, and effectively recommends pay increases, promotions and discharges. He schedules employee hours, checks time cards, establishes vacation schedules, handles customer complaints, is accountable for cashing of customers' personal checks, has the key to the store and the combination to the safe, and is in charge of the day-to-day operations of the store. The manager purchases approximately 15 percent of the merchandise he stocks, primarily perishables and produce from authorized vendors, and supervises the setting up of displays in his store.

The Fairhaven store was opened in January 1969, with new equipment. Employees to staff the store were hired from the immediate vicinity. Although Fairhaven is adjacent to New Bedford, and is within the New Bedford metropolitan area, the store is approximately 6 miles from the New Bedford stores. Other stores of the Employer are located distances ranging approximately 20 to 40 miles from Fairhaven.

The facts set forth above demonstrate, and we find, that the Fairhaven store is not an accretion to any of the existing multistore units.⁶ In reaching this conclusion, we rely particularly on the fact that Fairhaven does not comprise, with any of the existing units, a functionally integrated subdivision of the Employer's operation; that the store has separate immediate supervision; and that its employees who were recruited locally and live within the immediate community, are not subject to substantial temporary interchange with those in other stores. Accordingly, we find no bar to the conduct of an election herein.⁷

4. The following employees of the Employer may constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: All full time and regular part-time

employees of the Employer's Fairhaven, Massachusetts, store, excluding all supervisors and guards as defined in the Act. However, as the participating unions seek to represent these employees as part of their respective existing multistore units, which are also appropriate, we shall direct a self-determination election in the above voting group. If a majority of the employees in the voting group cast their ballots for the Petitioner, they will be taken to have indicated their desire to be included in the existing multistore unit in the New Bedford area currently represented by the Petitioner, and the Regional Director is instructed to issue a certification to this effect. In the event that a majority of the valid ballots are cast for the joint Intervenor, the employees will be deemed to have indicated their desire to be represented jointly by Amalgamated Meat Cutters' Local 328 and Local 2 in a separate, single-store unit.⁸ In this event, the Regional Director will issue a certification to that effect. If the majority of the employees in the voting group cast their ballots for neither of the above-named labor organizations, they will be taken to have indicated their desire to be unrepresented by any labor organization on the ballot, and the Regional Director will issue a Certification of Results of Election.

[Direction of Election⁹ omitted from publication.]

employees at Fairhaven, 30 are part-time employees who attend local high schools.

⁵See *Spartans, Inc.*, 173 NLRB No. 186.

⁶See *Warehouse Markets, Inc.*, 174 NLRB No. 70; *Super Markets General Corporation, d/b/a Shop-Rite*, 170 NLRB No. 61; *Anheuser-Busch, Inc.*, 170 NLRB No. 5; *Beacon Photo Service, Inc.*, 163 NLRB No. 98.

⁷If within 5 days after the issuance of this Decision and Direction of Election either joint Intervenor in writing to the Regional Director requests leave to withdraw from the ballot, the Regional Director is authorized to grant such request and to revise the ballot accordingly, and in the event that a majority of the employees in the voting group cast their ballots for the Intervenor remaining on the ballot, they will be taken to have indicated their desire to be represented by the remaining Intervenor in the existing multistore unit represented by that Intervenor and the Regional Director is directed to issue a certification to that effect.

⁸In 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. 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 1 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.

⁹A substantial percentage of the employee complement is part-time, consisting of virtually all students. As an example it appears that of the 52