

Sears, Roebuck and Co., Employer-Petitioner and International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 95, Local Lodge No. 1178, Petitioner and Retail Clerks Union, Local #1532 Retail Clerks International Association, AFL-CIO, Petitioner and General Truck Drivers, Warehousemen & Helpers Union, Local No. 980, Petitioner. Cases 20-RM-1305, 20-RC-9493, 20-RC-9496, and 20-RC-9518

September 24, 1971

SUPPLEMENTAL DECISION, ORDER,
AND DIRECTION OF ELECTION

BY MEMBERS FANNING, JENKINS, AND
KENNEDY

On June 22, 1971, the National Labor Relations Board issued a Decision and Order dismissing the petitions filed by the Unions in the above-entitled cases.¹ Thereafter, on July 12, 1971, a Motion for Reconsideration was filed by the Retail Clerks Union. The Employer filed a Reply to this Motion for Reconsideration, and the Retail Clerks filed a Reply thereto.

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 proceeding to a three-member panel.

Upon consideration of the Petitioner Retail Clerks motion, the Employer's reply, and the entire record, the Board makes the following supplemental findings:

(1) 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.

As noted, the Board initially dismissed the petitions filed by the three Unions on the ground that, on the facts of this record, an overall unit was the appropriate unit and the three units sought were not. At the hearing held in these cases the three unions indicated that, although they were seeking elections in the three units sought in the respective petitions, should the Board find an overall unit appropriate, they would then reassess their positions. In its Motion for Reconsideration the Petitioner Retail Clerks requests an election in the overall unit.

(2) In the initial Decision in this case, the Board stated that the employees of the service station, warehouse, store dock area, and retail store at the

Employer's Santa Rosa, California, location constitute a homogeneous grouping whose common supervision, uniform working conditions, and overlapping job functions within the framework of a substantially integrated set of operations require that they all be included together in a single bargaining unit. The Board now must consider the unit placement of certain categories whose inclusion in or exclusion from this unit is arguable.

Part-time employees: The total nonsupervisory work complement of the Employer averages 150 full-time and 110 part-time employees. Most of the part-time employees are assigned to the store. The full-time salespersons are paid on a commission basis as are part-time salespersons in the shoe department and men's clothing. The other part-time employees seem to be paid on an hourly basis. Although the eligibility requirements differ, both full-time and part-time employees receive holiday pay and vacation pay. Part-time employees must have worked 320 hours in the prior 16 weeks to receive holiday pay and 780 hours in a 12 month period to receive vacation pay, whereas the time requirements for full-time employees are different. As do the full-time employees, the part-time personnel are eligible for employee discounts on the date of hire, they perform the same work as the employees they are working with, and they are subject to the same supervision. Despite the differences in method of payment and eligibility for vacation and holiday pay, we find that the regular part-time employees have a sufficient community of interest for inclusion in the unit herein found appropriate.

The Petitioner, however, urges that only those regular part-time employees who meet the Employer's eligibility requirements for vacation and holiday pay should be included in the unit, i.e., those who average 15 hours per week for the 16 weeks prior to the eligibility date. From January 2, 1970, to May 9, 1970, 107 part-time employees worked an *average* of 21.3 hours per week, and from May 29, 1970, through August 22, 1970, 117 part-time employees worked an *average* of 12.5 hours. There is also testimony that only three to five employees work less than 9 hours on a regular basis.

Under these circumstances we see no reason to deviate from the eligibility standards which the Board has followed in other similar cases.² Accordingly, we find that, except for those whose exclusion is required by established Board policy, such as temporary or casual employees, any part-time employee who

then seeking to represent that unit. As the Board noted in its decision, the Employer, however, did not abandon its position that the overall unit is the only appropriate unit.

² *Allied Stores of Ohio, Inc.*, 175 NLRB No. 162; *The M O'Neil Company*, 175 NLRB No. 97; *G C Murphy Company*, 171 NLRB No. 45; and *S. G. Tilden, Incorporated*, 129 NLRB 1096

¹ 191 NLRB No. 84. The Board dismissed these petitions on the ground that each petition sought only a segment of the overall unit which the Board found appropriate. All employees of the service station, warehouse, stock dock area, and retail store at the Employer's Santa Rosa, California, location. The Board also granted the Employer's request to withdraw its petition for an election in the overall unit as no labor organization was

regularly averaged 4 hours or more per week for the last quarter prior to the eligibility date has a sufficient community of interest for inclusion. Any employee meeting this requirement will be included in the unit and will be eligible to vote.

Personnel clerical: The Petitioner would have the Board exclude the "assistant to the personnel manager." Besides a part-time employee assigned to timekeeping, there are only two persons in the personnel department, the personnel manager and a "personnel clerical," who is also referred to as an "assistant." We assume that the Petitioner is referring to the latter as the "assistant to the personnel manager." The personnel clerical interviews applicants for employment, makes notations on applications which may result in the applicant's rejection, and grades tests given to the applicants. She also posts records on the employees' history cards, fills out insurance papers, coordinates the part-time employees to the schedules turned in by the division managers, and does other clerical and typing work related to the functions of the personnel office. We find that the personnel clerical (or assistant) acts in a confidential and managerial capacity and shall therefore exclude her from the unit.³

Secretary to the store manager and assistant store manager: The same person serves as secretary to both these officials. The Petitioner urges that she be excluded as a confidential employee. On the state of the record we are unable to determine whether or not she acts in a confidential capacity to persons who formulate, determine, and effectuate labor policies, and we shall, accordingly, permit her to vote subject to challenge.

Accordingly, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular full-time and part-time employees at

³ *Hotel Employers Association of San Francisco*, 159 NLRB 143 at 151

⁴ In 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 Co.*, 394 U S 759 Accordingly, it is hereby directed that an election eligibility list,

the Employer's Santa Rosa, California, location including those of the service station, warehouse, store dock area, and retail store but excluding the personnel clerical (or assistant), professional employees, casual employees, temporary employees, guards, confidential employees, managerial employees, and supervisors as defined by the Act.

(3) The Employer opposes an election in the overall unit which the Board has found appropriate and has requested the Board to make a determination as to the showing of interest by the Retail Clerks in the larger unit. The showing of interest is a matter of administrative determination not litigable by the parties. We are, however, administratively advised that the Retail Clerks has submitted an adequate showing in the expanded unit in which we are directing an election.

(4) The Petitioner Retail Clerks has stated in its brief that the International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 95, Local Lodge No. 1178, Petitioner in Case 20-RC-9493, and General Truck Drivers, Warehousemen & Helpers Union, Local No. 980, Petitioner in Case 20-RC-9518, have informed it that they have no objection to the Retail Clerks proceeding to an election in the overall unit and do not desire to appear on the ballot.

We shall, accordingly, leave them off the ballot. If, however, they do wish in fact to participate in the election, we shall consider them as intervenors and they may appear on the ballot upon giving prompt notice to the Regional Director that they wish to do so.

ORDER

It is hereby ordered that the dismissal of the petition in Case 20-RC-9496, previously ordered, is vacated and the petition reinstated.

[Direction of Election⁴ omitted from publication.]

containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 20 within 7 days of the date of this 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.