Angeli's Super Valu[1] ***and*** **Retail Store Employees Union Local No. 214, chartered by the Retail Clerks International Association, AFL–CIO, Petitioner.** Case 30–RC–1627

May 24, 1972

DECISION AND DIRECTION OF ELECTION

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Kenneth N. Rock. 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. The Employer and the Petitioner have filed 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 authority in this proceeding 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, the Board finds:[2]

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purpose of the Act to assert jurisdiction herein.
2. The labor organization involved claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
4. The Petitioner seeks to represent a unit of all employees of the Employer at its Marquette, Michigan, store. The Employer contends that the appropriate unit must include, in addition to employees at its Marquette store, employees at its other two stores, located in Iron River and Menominee, Michigan, and urges that the instant petition be dismissed.

There is no history of collective bargaining involving any of these stores. Angeli's Super Valu, a trade style name, consists of Alfred Angeli, Inc., a Michigan corporation, its wholly owned subsidiary Angeli Marquette, Inc., a Michigan corporation, and separately incorporated Angeli Menominee, Inc., a Michigan corporation. The stock of Alfred Angeli, Inc., is held by five brothers and two sisters of the Angeli family. The stock of Angeli Menominee, Inc., is held by the same five Angeli brothers. The Employer's three retail food stores located in Marquette, Iron River, and Menominee, Michigan, are operated by the following corporations, respectively: Angeli Marquette, Inc., Alfred Angeli, Inc., and Angeli Menominee, Inc. The approximate distance between the stores is: Marquette to Iron River, 92 miles; Marquette to Menominee, 100 miles; and Iron River to Menominee, 117 miles.

The Employer has its central office in Iron River where Libero, eldest of the Angeli brothers and the Employer's principal operating officer, resides. As is common in retail chain operations, and particularly in food chains, there is a considerable degree of centralized administration in the functioning of the Employer's three stores. Thus, the merchandise is largely the same in all stores; the price structure appears to be substantially identical; and the layout of all stores is, insofar as possible, the same. However, there are local price and merchandise variations based on local economic and ethnic differences. Also, it is the Employer's policy to meet local competition and to make some of its purchases from local suppliers.[3] Furthermore, the Marquette and Menominee stores are open 24 hours per day, which is not true of the Iron River store.

Personnel and financial records relating to each of the stores are maintained separately in the central office. Each store is treated as a distinct unit with an obligation to stand on its own in terms of profit and loss. Tax statements relating to the Marquette store are prepared by a CPA firm which does not prepare such statements for either of the other stores.

In *Haag Drug Company, Incorporated,*[4] we reaffirmed the policy that:

> . . . a single store in a retail chain, like single locations in multilocation enterprises in other industries, is *presumptively* an appropriate unit for bargaining. . . . The employees in a single retail outlet form a homogenous, identifiable, and distinct group, physically separated from the employees in the other outlets of the chain; they generally perform related functions under immediate supervision apart from employees at other locations; and their work functions, though parallel to, are nonetheless separate from, the

[1] Name as amended at the hearing

[2] The Employer has requested oral argument This request is hereby denied as the record and briefs adequately present the issues and positions of the parties

[3] The bulk of the merchandise is purchased from Super Valu Stores, Inc The ordering and the billing for this merchandise is done by and to the local stores Super Valu Stores, Inc , also supplies the Employer with a number of services, which include preparing its weekly payroll

[4] 169 NLRB 877

> functions of employees in the other outlets, and thus their problems and grievances are peculiarly their own and not necessarily shared with employees in the other outlets. [Footnote omitted.]

In the *Haag* case, we recognized that retail chain operations nearly always involve a high degree of centralization, especially in the areas of recordkeeping, merchandising, administration, and labor relations policy. However, we found more significance in the fact that:

> . . . 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 grievance and routine problems.[5]

Two-thirds of the approximately 65 employees at the Marquette store are regular part-time employees. The record shows that local store managers have full authority to hire and fire part-time employees. Although the decision to hire or fire a full-time employee is made by the central office, local store supervisory personnel participate in the training, evaluation, discipline, and handling of grievances involving these employees.

Employee interchange and transfer among the stores is minimal. The record contains reference to approximately 14 instances of nonsupervisory transfer and interchange among the stores during a period of almost 30 months preceding the hearing in this matter. Several of these instances occurred when employees moved to Marquette, primarily to attend college.

Although wage rates are adjusted annually by the central office and employees in each job classification appear to be given a uniform increase irrespective of the store in which they are working, the wage rates vary among the three stores because of differing economic conditions in the geographic area in which each store is located. There are also differences in the amount of sick leave and vacation given at the various stores. Furthermore, the Employer's profit-sharing plan appears to be partially based on the profits of the particular store where the employee works.

Upon the foregoing, and the entire record herein, it is clear that there is significant authority exercised at the individual store level with respect to the hiring and firing of employees; their training, discipline, and evaluation; and the day-to-day handling of their grievances and routine problems. We also find significant the wage rate and fringe benefit differences among the stores, the absence of any bargaining history, the minimal interchange or transfer of employees, and the geographic separation of the three stores. Therefore, in order to accord to employees the fullest freedom in exercising those rights guaranteed by the Act, we hereby find that a unit limited to the employees of the Marquette store is appropriate.

The supervisory status of the department managers[6] is in dispute. The Employer contends they are supervisors and should be excluded from the unit. Petitioner contends their duties are essentially ministerial and would include them in the unit. The record shows that these individuals cannot hire or fire. However, they do interview and make preliminary recommendations concerning applicants and make discharge recommendations which initiate consideration of such action and investigation by the store manager. They are responsible for the operation of their department and independently direct and schedule the work therein. They participate in the training, evaluation and discipline of employees within their department and can grant time off to these employees.

The managers of the meat and produce departments are hourly paid and earn 15 percent and 29 percent more, respectively, than the next highest paid person in the department. The bakery department manager is salaried and earns 42 percent more than the next highest paid person in the department. In addition, these individuals may earn a bonus which is not available to employees in their departments.

On the basis of the foregoing and the entire record herein, we find these department managers are supervisors and shall exclude them from the unit.

There is also disagreement concerning the eligibility of two part-time employees who are sons of Leonard Angeli, one of the family members that hold the stock of Alfred Angeli, Inc., and Angeli Menominee, Inc.[7] The Petitioner would exclude them; the Employer would include them. They are high school students and reside with their father. Unlike other part-time employees who are also high school students, they do not work on a fixed schedule and they are paid less than these employees. We exclude these two individuals from the unit because of their family relationship to one of the corporate owners.

[5] *Id* at 878

[6] Normally, there are managers in each of the following departments meat, bakery, produce, and grocery At the time of the hearing in this matter there was no grocery department manager at the Marquette store The record indicates that the duties, responsibilities, and authority of all department managers are the same

[7] In addition, Leonard Angeli was the regular full-time manager of the Marquette store until September 1971 and continues in this capacity on a part-time basis

Foam Rubber City 2 of Florida, Inc, d/b/a/ Scandia, 167 NLRB 623. In addition, they also appear to enjoy special privileges because, unlike the other part-time employees who are high school students, they do not work on a fixed schedule.

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

All full-time[8] and regular part-time employees of the Employer's Marquette, Michigan, store, including the bookkeeper, but excluding department managers, watchmen, guards, and supervisors as defined in the Act.

[Direction of Election[9] omitted from publication.]

[8] In accord with the agreement of the parties, we include Gary Baldwin and Thomas Pascoe and the job classification of bookkeepers

[9] 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, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 30 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