Davison-Paxon Company, a Division of R. H. Macy & Co., Inc. *and* Retail Clerks International Association, Local 1063, AFL–CIO, Petitioner. Case 10–RC–8097

August 20, 1970

DECISION AND DIRECTION OF ELECTION

BY MEMBERS FANNING, MCCULLOCH, AND JENKINS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Clyde R. Ray. 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, the Employer and the Petitioner filed briefs.

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, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes 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 regular and part-time selling and nonselling employees at the Employer's store located at 180 Peachtree Street, Atlanta, (downtown store) including employees of certain leased departments. The Employer contends that the appropriate unit must include, in addition to employees at its Peachtree store, employees at two other stores in the Atlanta metropolitan area at Lennox Square and Columbia Mall.

The Employer operates, as part of the Davison-Paxon Division, a total of 10 retail department stores throughout Georgia and South Carolina. The 3 stores in the greater Atlanta area are approximately 8 to 9 miles apart, and are some 75 to 225 miles distant from each of the other Davison branches. As the largest store in the Davison chain, the Peachtree store has 1700 employees, whereas the Lenox Square store has 700, and the Columbia Mall store 400.

There is a considerable degree of centralization over administrative matters for all 10 Davison stores. Thus, the corporate officers, headquartered in the Peachtree store, oversee the operations of the entire chain. All general policy determinations with regard to purchasing, merchandising, sales promotion, advertising, and employment practices issue from the Employer's central offices. Further, records relating to accounts, audits, and payroll are centrally maintained.

Because of their geographic proximity, a substantial degree of control is possible over the business and marketing operations of the three Atlanta stores. For example, buyers based in the Peachtree store are responsible for purchasing merchandise and maintaining sufficient quantities of stock for all 10 stores. Yet, the incidence of their visits to and contacts with the Atlanta suburban stores is much more frequent than with the out-of-town branches. Again, advertising, sales promotion, and window displays are all initially designed at the Peachtree store. However, advertisements appearing in the Atlanta newspapers apply to only the three in-town stores. Newspaper advertisements for the remaining seven stores are run on an individual basis. Similarly, window displays for the three Atlanta stores are closely coordinated whereas the out-of-town stores have greater discretion in such displays. Further, merchandise is frequently shifted among the 10 Davison stores, but the amount transferred between the Atlanta stores is 8 to 10 times greater than that shifted between them and the out-of town stores.

It is evident that the administrative operations of the Davison chain in general and the Atlanta stores in particular are highly centralized. Nevertheless, as we noted in *Haag Drug Company, Incorporated,*[1] centralized administrative control is characteristic of the retail chain business and is not in itself sufficient to rebut the presumptive appropriateness of a single-store unit. Rather, we recognized in that case that it is more significant if

> 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.

In determining whether the presumption favoring the single-store unit has been rebutted, we also consid-

[1] 169 NLRB No 111

er such factors as the geographic distance between the stores, the degree of employee interchange, and the employer's prior bargaining history.

In reviewing the entire record, we are convinced that the Employer has not overcome the presumptive appropriateness of the single-store unit.

There is ample evidence that, on a day-to-day basis, each store functions as a separate entity. Thus, each Davison branch has its own store manager, personnel manager, and department heads. Personnel policies, while centrally established, are implemented by the personnel office in each of the respective stores.[2] Hiring, too, is for the most part accomplished at the particular store where the applicant will be employed, although occasionally an applicant may be sent to another store where there is a known vacancy. Training is provided at the individual stores with some special training seminars held at the downtown store for groups of employees from each of the Atlanta branches. Employees are subject to discipline and discharge by their local supervisors. Only after the initial action has been taken does an employee have the right to appeal to the downtown personnel office. Employees with less than 5 years' employment with Davison may be discharged without prior approval of the division personnel director. Work and vacation schedules as well as arrangements for sick leave are scheduled and coordinated at the local level. An employee's work performance is evaluated by personnel at the individual store. Subsequently, the evaluation forms are reviewed by the central personnel office and returned to the appropriate branch. Merit raises may be granted on the basis of these evaluations.

Employee interchange is not extensive. On a short-term basis, a few employees are temporarily assigned from one of the Atlanta stores to another when special sales are scheduled, when assistance is needed to arrange displays, to help with inventory, update personnel records, take audits, or repair faulty equipment. On a permanent basis, among a total of 2,800 employees in the 3 Atlanta stores, only 54 permanent transfers were effected in a 15-month period.

In light of the factors discussed above, it is clear that there is substantial autonomy exercised at the individual store level and that the local store officials are integrally involved in those matters which affect the employees' working conditions. Therefore, in the absence of any bargaining history and 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 Peachtree store is appropriate.[3]

The parties entered into a number of eligibility stipulations pertaining to the employees working at the Peachtree store. They also agreed that the employees of all leased departments except for those in the Ski Shop, the Optical Department, and Santa Claus should be included in the unit because of the degree of control exercised by the Employer over these employees. They further stipulated that certain other employees are to be excluded as confidential employees, professional employees, guards, and supervisors. We find no reason to disturb the agreement of the parties as to any of these categories.

The following job classifications are in dispute:

(a) The Employer contends that employees in 10 positions which are titled supervisor or foreman, do not, in fact, exercise any meaningful supervisory control over other employees and should not be excluded from the unit. Petitioner takes a contrary position. The disputed classifications are as follows: foreman carpenter, foreman painter, gift wrap supervisor, mail order supervisor, platform receiving supervisors, supervisor of the employees' cafeteria, candy room supervisor, marking supervisor, and working supervisor porter.

In each case, the foreman or supervisor spends the bulk of the working day performing precisely the same tasks as the other employees in the department. They may relay routine instructions from the managers of their respective sections and oversee distribution of the work. In most cases, they receive pay in excess of that received by their coworkers, but information is lacking as to exact sums.

None of these employees makes recommendations as to wage increases for other employees. They are not authorized to hire, discharge, suspend, transfer, or discipline others. They all punch a timeclock, are hourly paid, and receive overtime.

It is clear that the employees in the positions listed above do not exercise independent authority. What little discretion they have is of the most routine nature. Accordingly, we find that they are not supervisors within the meaning of Section 2(2) of the Act and include them in the unit.

(b) The Employer further argues that the members of the teen board should be included in the unit. The teen board is composed of approximately 80 students selected from high schools in the Atlanta area to serve a 1-year term. After a training period which includes modeling instruction in July, they work in all three in-town stores as both saleswomen and models. Their peak activity occurs prior to the

[2] The vice president in charge of personnel for all Davison stores, also serves as personnel director for the Peachtree Store

[3] *The May Department Stores Company*, 175 NLRB No 97

opening of the school year and during Christmas and Easter vacations. They may also work on a intermittent basis on evenings and weekends but are not required to work a specific number of hours and are not discharged if unavailable to work when called.

They wear a costume and are concentrated primarily in the teen and women's fashion departments. Throughout their term on the teen board, they receive the minimum starting wage for sales people with no expectation of an increase. They do not earn vacation pay, do not receive paid holidays, and are not entitled to fringe benefits available to regular employees, other than discount privileges.

The record clearly establishes that the teen board members work on a intermittent, sporadic basis for a temporary period of time of fixed duration. Under these circumstances, we find that they do not share a sufficient community of interests with other sales personnel and therefore exclude them from the unit.[4]

(c) There are 8 employees in the salary office including 4 salary clerks, 1 budget clerk, and 3 machine operators, all of whom the Employer maintains should be excluded from the unit as confidential employees.

All eight employees are under the supervision of the salary office manager. Their duties primarily involve maintaining time and pay records and preparing paychecks and W-2 forms for all Davison employees. They also keep production records for sales personnel which are used both to determine if wage increases are merited and to provide statistical information for studies relating to labor relations policies.

It is well settled that employees who handle business and financial records, including those which concern labor relations, are not confidential employees where they act in a relatively minor clerical capacity, have a minimum of discretion, and do not assist or act in a confidential capacity to persons who determine and effectuate labor relations policies.[5] Applying these standards to the present case, we find that these employees have no more than routine discretion. Although they may indirectly supply raw data used subsequently by the Employer's officers in formulating labor relations policies, they are not consulted nor do they assist in shaping the policies. Accordingly we find that they are not confidential employees and include them in the unit.

(d) The Employer, in contradistinction to Petitioner, takes the position that three employees classified as accountants are neither supervisory, confidential, nor professional employees and should be included in the unit.

The three employees in dispute do general accounting work involving profit and loss statements; they reconcile bank accounts and review and study budgets, expense accounts, and bills of vendors. If questions arise with regard to their work, they refer these to their supervisor. None of them is a certified public accountant, and the Employer does not require that they have a college degree or specialized training.

They have executive classification numbers, attend meetings of supervisors, are paid biweekly, and do not punch a timeclock. However, testimony was submitted that they do not have authority and cannot effectively recommend that any employee be hired, discharged, rewarded, or disciplined, nor do they transmit instructions or direct other employees in the performance of their work.

Based on all of the above, we find that the employee accountants do not exercise supervisory functions nor are they professionals as defined by the Act. We also cannot find they are confidential employees; for the information to which they have access, some of which may be of a confidential nature, relates to business matters rather than to labor relations policies.[6] As the accountants share a community of interests with other clerical employees stipulated by the parties to be included in the unit, we find that they too should be included.

(e) The Employer contends that certain employees who work on an irregular basis should also be included in the unit. There are 2 categories of such employees: seasonal employees who work 90 days or less a year, generally during peak selling seasons; and extra (non-selling) and contingent (selling) employees who are on call to work for indefinite periods of time. Employees in these latter categories may work as little as 71/2 hours in a 6-month period and still be carried as contingents or extras. They perform the same work as regular employees and are under the same supervision. They may be eligible for certain fringe benefits such as paid holidays, meal allowances, discount privileges, and leaves of absence. They are not eligible, however, for disability and life insurance, paid vacations, or the profit-sharing plan.

The Employer was unable to furnish precise information as to the work schedules of employees in these categories. Therefore, in accordance with a formula applied by the Board in recent cases,[7] we find that, with the exception of certain employees whose exclusion is required by established Board policy such

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[4] See *Crest Wine and Spirits, Ltd*, 168 NLRB No 99

[5] See *Columbia Steel and Shafting Company*, 132 NLRB 1536, *Vulcanized Rubber and Plastics Company, Inc*, 129 NLRB 1256

[6] See, e g, *Swift and Company*, 129 NLRB 1391

[7] *The May Department Stores Company*, 175 NLRB No 97, *Allied Stores of Ohio, Inc.*, 175 NLRB No 168

as temporary or seasonal employees, any contingent or extra 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 and may vote in the election.

Accordingly, we find that the following employees of the Employer at its store at 180 Peachtree Street, Atlanta, Georgia, constitute an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act:

> All regular full-time and part-time selling and nonselling employees of the Employer at its store located at 180 Peachtree Street, Atlanta, Georgia,[8] including lease departments whose employees are controlled by the Employer for the purposes of the Act,[9] salary clerks, budget clerk, machine operators, accountants, and qualified contingent and extra employees, but excluding professional employees, seasonal employees, casual employees, Teen Board members, guards, confidential employees, and supervisors as defined in the Act.

[Direction of election[10] omitted from publication.]

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[8] Included are the foreman carpenter, foreman painter, gift wrap supervisor, mail order supervisor, platform receiving supervisors, supervisor of the employees' cafeteria, candy room supervisor, marking supervisor, and working supervisor porter As we have found above, the individuals having these titles are not supervisors as defined in the Act

[9] Except for the beauty salon, the parties stipulated as to which leased departments should be included in the unit Subsequently, in its brief to the Board, the Petitioner expressed agreement with the Employer that the beauty salon should be included in the unit Accordingly, the employees of this leased department will be deemed so included and eligible to vote

[10] 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 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 10 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