

**B and T Foods, Inc. d/b/a Price Chopper and United Food and Commercial Workers International Union, AFL-CIO/CLC, District Local 340, Petitioner, Case 17-RC-9545**

19 July 1984

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer William R. Carter of the National Labor Relations Board. On 14 October 1983 the Regional Director for Region 17 issued his Decision and Direction of Election, finding Meat Department Manager Michael Thomas eligible to vote in the election. On 10 November 1983 the Board denied the Employer's request for review, stating that Thomas' eligibility could be best resolved by the challenge procedure. Thereafter, the election was conducted and the tally of ballots shows two votes for and one vote against the Petitioner, with one challenged ballot. Since the challenged ballot was sufficient to affect the results of the election, the Regional Director for Region 17, pursuant to Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, directed that the case be transferred to the Board for decision. Thereafter, the Employer filed a brief in support of its challenge to Thomas' ballot.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the rulings made by the hearing officer and finds that they are free from prejudicial error. The rulings 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 Petitioner is a labor organization claiming 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 following employees of the Employer 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 department employees employed by the Employer at its facility located at 811 W. 7th Street, Joplin, Missouri, but excluding all grocery employees, office clerical employees, guards and supervisors as defined in the Act.

The Employer operates a retail grocery store in Joplin, Missouri, known as Price Chopper. It challenges the ballot of Meat Department Manager Michael Thomas, contending that Thomas is a supervisor as defined by Section 2(11) of the Act. The record shows that, although Thomas spends anywhere from 60 to 90 percent of his time in cutting meat, he alone is responsible for the profitability of the meat department and does all buying and pricing, and selects the meats to be featured in the Employer's advertising. Unlike the other meat department employees, Thomas receives a fixed salary along with a bonus based on the store's profitability, does not get paid for overtime, and is not required to punch a timeclock. Thomas is responsible for training new employees and for directing employees as to the quantities of meat to be cut, wrapped, and put out for sale. While not possessing final authority in hiring, Thomas has made effective recommendations with regard to the hire or nonhire of job applicants. Thus, the Employer accepted Thomas' recommendation to hire Dee Osborne temporarily. In addition, the Employer accepted Thomas' recommendation that five applicants sent over by the Job Service receive no further consideration because, according to coworker Terry Cadewell, none of those applicants "seemed to be what [Thomas] was looking for." Accordingly, because Thomas possesses the authority, *inter alia*, to make effective recommendations with respect to hiring, we sustain the Employer's challenge to his ballot, and find that a certification of representative should be issued.

**CERTIFICATION OF REPRESENTATIVE**

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Food and Commercial Workers International Union, AFL-CIO/CLC, District Local 340 and that it is the exclusive collective-bargaining representative of the employees in the unit found appropriate.

All full-time and regular part-time department employees employed by the Employer at its facility located at 811 W. 7th Street, Joplin, Missouri, but excluding all grocery employees, office clerical employees, guards and supervisors as defined in the Act.