

**Hot Shoppes, Inc.<sup>1</sup> and Joint Executive Board of the Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO, Petitioner. Case No. 5-RC-3071. February 10, 1961**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Thomas J. Walsh, hearing officer. 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.

2. The labor organization named below claims 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.

4. The Petitioner seeks to represent the employees of the Employer in a unit composed, with the usual exclusions, of all employees at the Employer's two operations at the Washington National Airport in the District of Columbia metropolitan area. The Employer takes the position that the unit sought is inappropriate and that the only appropriate unit is one composed, with the usual exclusions, of all employees of the Employer in the District of Columbia metropolitan area. The parties otherwise agree as to the composition of the unit.

Hot Shoppes, Inc., is a Delaware corporation engaged primarily in the retail sale of food in a chain of restaurants. The central offices of Hot Shoppes, Inc., are located in the District of Columbia area and it operates, through 60 wholly owned subsidiaries, establishments located in 11 States and in the District of Columbia. In the District of Columbia area, Hot Shoppes, Inc., operates 48 establishments through 39 subsidiaries.<sup>2</sup> At the Washington National Airport which is located in the State of Virginia just outside the District of Columbia, Hot Shoppes, Inc., through its wholly owned subsidiary, Hot Shoppes Food Service, Inc.,<sup>3</sup> operates two establish-

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<sup>1</sup> Although the Employer was named in the petition as Hot Shoppes Caterers, Inc., in its brief to the Board, Petitioner asked that the Board amend the petition if it found that another name would be more appropriate. As the record indicates that the employees sought herein are employed by Hot Shoppes, Inc., the name of the Employer is amended accordingly.

<sup>2</sup> In addition to the airport operations involved in the instant case, Hot Shoppes, Inc., through its subsidiaries in the District of Columbia area, operates public restaurants and cafeterias in Government and other buildings and two motor courts or motels.

<sup>3</sup> In view of the foregoing, and as the record indicates that the officers of the subsidiaries are, in general, the same persons who are the officers and directors of the parent corporation, we find that for unit purposes Hot Shoppes, Inc., and its subsidiaries con-

ments.<sup>4</sup> The subsidiary, Hot Shoppes Food Service, Inc., operates no establishments other than those at the Washington National Airport.

The Employer's airport operations involve primarily the preparation and supplying of cooked meals for various airlines companies. These meals are prepared, brought to the airport, and loaded on airplanes by employees of the Employer, and are served by airline personnel to passengers while in flight. In addition to these catering operations, Hot Shoppes Food Service, Inc., operates three cafeterias at the airport. The cafeterias are open to employees of the Employer but, so far as appears from the record, they are not open either to employees of the airlines or to the general public.<sup>5</sup>

The following classifications of employees are employed only at the Employer's Washington Airport operations: plane loaders (also known as flight attendants) who place the food on trays; packers who pack the trays in cartons which are later loaded on the airplanes; and the employees who operate trucks on the airfields. These drivers require special airport permits as well as Virginia drivers' licenses. The other classifications of employees at the Washington Airport are the same as the classifications at the Employer's other operations in the District of Columbia. These classifications include busboys, sandwich girls, salad girls, waitresses, dishwashers, cafeteria line attendants, storeroom clerks, and station attendants.

The operating head of the Washington National Airport operations is Paul Marriott, who is also a vice president of Hot Shoppes, Inc. Marriott reports to the executive vice president of Hot Shoppes, Inc., in the same manner as other operating heads of the Employer. Below Marriott in the Employer's hierarchy is a district manager, who in turn supervises the managers of each of the two Washington National Airport operations and the manager of a catering establishment operated by the Employer at Friendship Airport, near Baltimore, Maryland. Marriott does not supervise any other operations of Hot Shoppes in the District of Columbia area.<sup>6</sup> The employer employs seven district managers who supervise its other operations in the District of Columbia area. It does not appear from the record

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stitute a single employer. *Gibbs Oil Company, et al*, 120 NLRB 1783; *Hot Shoppes, Inc.*, 130 NLRB 144. Hot Shoppes, Inc., and Hot Shoppes Food Service, Inc., are sometimes referred to herein as the Employer.

<sup>4</sup> These two establishments are designated by the Employer as No. 24 and No. 25. No. 24 is located directly under the airport terminal and No. 25 includes operations at the airport hangar and at the annex building.

<sup>5</sup> There are restaurants at the Washington National Airport open to the public which are not owned or operated by the Employer.

<sup>6</sup> Paul Marriott is also president and operating head of Hot Shoppes Caterers, Inc., which is also a wholly owned subsidiary of Hot Shoppes, Inc. Hot Shoppes Caterers, Inc., operates the airline catering establishment at Friendship Airport, airline establishments in Chicago, Miami, Dallas, and New York City, and restaurant establishments in Florida. The Employer uses the name, Hot Shoppes Caterers, with respect to its operations at the Washington National Airport for sales, merchandise, and customer relationship purposes.

that the Employer has any administrative subdivision which corresponds to the entire District of Columbia metropolitan area.

For the period between April 2, 1959, through March 23, 1960, there were approximately 750 transfers of all types from one of the Employer's operations in the District of Columbia area to another of its operations. Of these 750 transfers, only 4 were from one of the airport establishments to a nonairport establishment. During the past 5 to 8 years, there were 202 transfers of all types involving the airport operations in the District of Columbia area. Of these 202 transfers, 51 involved transfers from one of the airport operations to the other airport operation.

All the operations of the Employer in the District of Columbia area are located within an area 13 miles square. All these operations, including the airport operation, are serviced by a central warehouse, a central bakery, and a central commissary. Wages for employees at the airport operations and at the commissary are 12 cents an hour higher than in the restaurants as the airport and commissary employees are covered by the Fair Labor Standards Act. However, employees at the airport and the commissary, unlike other employees, are required to pay for their own meals. The managers of the individual stores are authorized to hire and discharge employees and, in fact, they do approximately one-half of all the hiring. The individual managers also recommend wage increases, arrange transfers, and requisition supplies which are ordered by the Employer's central procurement office.

The employment office of Hot Shoppes, Inc., at its central offices in the District of Columbia metropolitan area, recruits and selects employees for all the District of Columbia operations, including those at the Washington National Airport,<sup>7</sup> as well as its operations throughout the United States. All procurement is handled through a central procurement office and is based on the requisitions of the individual store managers. The Employer's central personnel department, which includes an employment division, a safety division, a training division, an employee services division, and an employee relations division, handles the personnel work for employees throughout the United States. Personnel jackets on all employees are kept at the Employer's central executive offices. The Employer also maintains a central accounting and finance department, a central architecture and engineering department, and a central real estate department which service its operations throughout the United States. The central office establishes wage scales for all employees on the basis of the recommendations of the individual managers and it also sets the general standards for employee discharges. Checks for all employees are made out in the central offices and are delivered in bulk to the

<sup>7</sup>The record indicates that the employment office hires approximately 50 percent of the employees who are employed at the Washington National Airport.

individual establishments where they are distributed to employees. All employees throughout the United States have the same working conditions and the same benefits, such as vacations, holidays, sick leave, bonuses, insurance program, and credit union.

There is no collective-bargaining history as to the employees sought herein and no union seeks a unit broader than that sought in the petition. Neither of the parties contend that a unit composed of all employees of the Employer throughout the United States is appropriate.

In view of the foregoing, we find that the unit sought in the petition is appropriate. In so finding, we rely particularly on the following factors: (a) The airport operations are "functionally distinct" from the other operations of the employer in the District of Columbia area;<sup>8</sup> (b) several classifications of employees employed at the airport are not employed at the other operations in the District of Columbia metropolitan area;<sup>9</sup> (c) the employees sought herein are geographically separated from other employees of the Employer and are separately supervised;<sup>10</sup> (d) the extent of interchange of employees between the airport operations and other operations in the District of Columbia area is, compared to the interchange of the employees not involving airport operations, relatively limited;<sup>11</sup> (e) there is no administrative segment of the Employer which corresponds to the District of Columbia metropolitan area; (f) there is no history of collective bargaining for these employees in a broader unit than that sought in the petition; (g) no union is seeking a broader unit; and (h) the employees at the airport, unlike restaurant employees, are covered by the Fair Labor Standards Act and are paid 12 cents an hour more than restaurant employees.<sup>12</sup>

Accordingly, we find that the following employees of the Employer constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act: All food, beverage, and maintenance employees, dishroom and line supervisors,<sup>13</sup> dispatchers,

<sup>8</sup> See *Chock Full O'Nuts*, 118 NLRB 156.

<sup>9</sup> See *Wm. R. Whittaker Co., Ltd.*, 117 NLRB 339.

<sup>10</sup> See *Temco Aircraft Corporation*, 121 NLRB 1085.

<sup>11</sup> See *Goldblatt Bros., Inc.*, 118 NLRB 643.

<sup>12</sup> The fact that the citywide or countrywide unit may also be appropriate does not militate against the finding here that the smaller unit is appropriate, where, as here, factors support its appropriateness and no union seeks the more comprehensive unit *Interstate Co., Glass House Restaurants, Indiana Toll Road*, 125 NLRB 101, relied on by the Employer, in which the Board found appropriate a single unit of employees in a chain of restaurants, is distinguishable in that there, unlike here, the parties were in essential agreement that a divisionwide unit would be appropriate and the overall unit corresponded to an administrative segment of the employer's operations. *The Interstate Company*, 118 NLRB 746, also relied on by the Employer, is also inapposite, as there all employees worked in establishments engaged in the retail sale of food, while here, the employees sought are engaged in a different function from the other employees of the Employer.

<sup>13</sup> The record indicates that the line supervisors have no authority to hire, discharge, or discipline employees and, unlike most supervisory employees, are paid by the hour. Neither of the parties contends that they are supervisors. Accordingly, we find that they are not supervisors within the meaning of the Act, and include them in the unit.

switchboard operators, mechanics, helpers, cashiers, truckdrivers, hallmen, laundry employees, porters, and station attendants at the Employer's establishments at the Washington National Airport, near Washington, D.C., excluding office clerical employees, guards, and all other managers and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS, dissenting:

I do not agree that a unit composed of employees at the Employer's facilities at Washington National Airport is an appropriate unit for the purposes of collective bargaining.

The Employer is engaged in the food service industry. Within the District of Columbia metropolitan area are located its central executive offices, various centralized supply facilities, 46 Hot Shoppes restaurants and cafeterias, and 17 pantryhouse outlets selling food for off-premises consumption. Eight of the area cafeterias, located in hospitals and Government buildings, are institutional and do not serve the general public. The airline catering facility and the employee cafeterias located at the Washington National Airport are only a part of the Employer's complex of operations in, and adjacent to, the District of Columbia.

From its central office in Washington, D.C., the Employer establishes management policies and directs programs that are applied uniformly throughout its entire system, including all the Hot Shoppes' facilities located in the District of Columbia metropolitan area. The District of Columbia personnel department maintains all personnel records, prepares and disburses all payrolls, and initiates and carries out the employee training, employee services, safety, suggestion system, job classification and wage administration, and industrial relations programs for every facet of the employer's operations. Accounting, financial, procurement, advertising, real estate, and architectural and engineering activities for the District of Columbia metropolitan area and the entire chain are also exclusively performed by the Washington central offices.

Personnel for the National Airport facilities, as well as for all other locations within the District of Columbia metropolitan area, are recruited, interviewed, and hired by the District of Columbia central offices. Employee terminations within that area are monitored by the central personnel department. All the Employer's local establishments, including those at the airport, utilize a central common warehouse, bakery, commissary, printing plant, advertising, customer complaint, and menu planning departments. All District of Columbia metropolitan area facilities use the same requisition system, and receive deliveries from centralized supply facilities by means of a fleet

of Employer owned and operated trucks, whose drivers assist in loading and unloading at the various locations. Employees within the metropolitan area wear identical, interchangeable work clothes and uniforms bearing the Hot Shoppes' name, which are received from the same laundry on a daily basis.

The Washington National Airport is located not more than 4 miles from the heart of the Washington, D.C., downtown area. It is readily accessible by public transportation or private automobile from all other parts of the District of Columbia metropolitan area. All of the Employer's facilities in and around the District of Columbia, including those at the National Airport, fall within a recognized established labor market and trading area. The greatest distance between any two operations is 16 miles, and all Employer's facilities fall within a very limited area bounded by lines 3 miles beyond the District boundary lines. In addition to the airport facilities, the Employer has 10 other establishments located in the Virginia segment of the metropolitan area. Most of these are further removed from the District line than is the airport.

All Hot Shoppes' employees within the metropolitan area have the same vacation, insurance, holiday, sick leave, bonus, and credit union privileges and benefits. Working conditions are uniform and job classifications are standardized for Hot Shoppes' employees within the metropolitan area. The Employer's airport facilities employ 13 classifications of employees that are common to its other establishments within the metropolitan area. The Employer pays uniform wages throughout the area for comparable work. Such minor deviations in the wage structure as do exist encompass the central commissary and warehouse as well as the airport facilities.

During the 5- to 8-year period prior to this case, there were 151 transfers of rank-and-file employees to and from the airport facilities and the Employer's other establishments within the District of Columbia metropolitan area. At a minimum this figures to 20 transfers per year—a figure that goes a long way toward establishing the existence of a mutuality of interest between employees working at the airport and other Hot Shoppes' employees within the geographic area.

The facts recited above impel a conclusion that a District of Columbia metropolitan area unit, including the airport facilities as a component part, is the only appropriate unit for purposes of collective bargaining. In reaching this conclusion, I rely particularly upon such demonstrated factors as: (a) the very high degree of *centralized control* over all important management and personnel policies and functions; (b) the *administrative and operational integration* of Hot Shoppes' various District of Columbia area operations, and partic-

ularly the close and intimate relationship of those at the airport with other establishments and facilities within the metropolitan area; (c) the *standardization and uniformity* of conditions of employment within the metropolitan area; (d) the *proximity* of the airport facilities to all other of Employer's establishment within the area; and (e) the substantial *interchange of employees* between the airport facilities and the balance of the Employer's operations within the metropolitan area.

My colleagues seek here to rationalize their unit finding upon the principal ground that operations at the National Airport are "functionally distinct." With this finding I cannot agree. Food preparation and handling is the common connecting link that runs through the entire chain of the Employer's operations within the District of Columbia metropolitan area. I see no functional or any other realistic distinction to be drawn from the fact that in one instance the diner may be physically located in his automobile in a drive-in type establishment, in another he may be seated at a table in a conventional type restaurant, in still another he may be at a group-sized table in an employee cafeteria, and in a fourth case, he may be struggling with a food tray while airborne. The employees who prepared and handled the food to the point of service must fairly in each instance be said to have performed the same basic functions.

An alleged geographical separation of the airport employees from other Hot Shoppes establishments within the metropolitan area is asserted as an additional basis for my colleagues' unit position. Proximity, or the lack thereof, is a relative concept. Here, it is apparent that all of the Employer's District of Columbia operations fall within a very limited metropolitan area. In the factual context of this case, emphasis upon an asserted separation of employees is completely unwarranted.

The majority's decision to cut up the overall District of Columbia metropolitan area unit, and carve out a separate National Airport unit, necessarily makes the Union's "extent of organization" the decisive factor in this case. This fact cannot be obscured by a routine recital of certain of the Board's traditional criteria for unit formulation, for those criteria do not comport to the facts of this case.

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**Hot Shoppes, Inc. and Chicago Truckdrivers, Chauffeurs and Helpers Union of Chicago and Vicinity (Independent), Petitioner.** *Case No. 13-RC-7143. February 10, 1961*

#### DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Albert Kleen, hearing officer. 130 NLRB No. 23.