

GREAT DAY, INC. Employer and RETAIL STORE EMPLOYEES UNION,
LOCAL NO. 20, UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, AFL-CIO n1 Petitioner

n1 On June 7, 1979, the Retail Clerks International Union and the Amalgamated Meatcutters and Butcher Workmen of North America merged to form the United Food and Commercial Workers International Union, AFL-CIO. The name of the Petitioner herein, formerly Retail Store Employees Union, Local No. 20, Retail Clerks International Union, AFL-CIO, has been amended to reflect this change.

Case 7-RC-15332

NATIONAL LABOR RELATIONS BOARD

248 N.L.R.B. 527; 1980 NLRB LEXIS 673; 103 L.R.R.M. 1451; 1980 NLRB Dec. (CCH) P16,864; 248 NLRB No. 79

March 17, 1980

JUDGES: By John H. Fanning, Chairman; Howard Jenkins, J., Member; John A. Penello, Member

OPINION:

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DECISION ON REVIEW

[*527] On April 24, 1979, the Regional Director for Region 7 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate a storewide unit at the Employer's retail grocery store, but excluding the meat department employees.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer timely filed a request for review of the Regional Director's decision with respect to his exclusion of full-time n2 meat department employees. By telegraphic order dated May 22, 1979, the Board granted the Employer's request for review.

n2 The Regional Director included in the unit two dual-function employees who work approximately 25 percent of their hours in the meat department.

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 Board has considered the entire record in this case, including the Employer's brief on review, [**2] and makes the following findings:

The Employer is a Michigan corporation engaged in the operation of two retail food markets, including the market in the summer resort community of Cedar Springs, Michigan, which is involved in this proceeding. There is no bargaining history.

As found by the Regional Director, the subject store employs approximately 70 employees in 6 departments. He found the individuals designated as "department heads" to be employees and eligible voters, inasmuch as the Employer's president and its store manager together oversee the operations of the entire store and retain full supervisory authority to hire, fire, grant increases, and schedule work hours and vacations over all store employees. All of the hourly rated employees occupy one of five job and wage classifications, have identical benefits, are subject to the same work rules, and share common lunch and break periods and facilities.

The meat department is physically situated in the center of the rear wall of the store between the produce and dairy departments and adjacent to a portion of the grocery department. It is staffed with a department head, a lead journeyman clerk, two journeyman clerks, [**3] and the dual-function employees, classified as journeyman clerk and general store clerk, respectively. Only the department head has had any prior meat department experience; at least three others were transferred into the department from cashier or store cleanup type jobs. All inexperienced department employees receive approximately 1 month of on-the-job training in their meat department duties.

To a large extent, such duties consist of weighing, cutting and packaging meat, some of which arrives as "boxed beef" which is already in primal cuts and needs only to be sawed into smaller cut for individual sales. n3

n3 Although not set forth in the Regional Director's decision, the record evidence reveals that about 75 percent of meat department duties do not involve traditional meatcutting skills, and consist of unloading trucks and unpacking cases of meat products; stocking display cases with prepackaged and prepriced chickens and coldcuts; traying, weighing, pricing, and wrapping of such items as bologna and sausage which arrive in bulk form; and feeding meat into the patty-making machine which grinds and stamps out meat patties.

Meat department employees give assistance to, [**4] and receive the same from, employees in their departments during especially busy periods. n4 The grocery department lead journeyman clerk regularly fills the meat cases and cuts meat for customers during certain store hours when no meat department employees are scheduled to work. Additionally, meat department and dairy department employees work together in unloading freezer truck deliveries one or more times a week. Further, job descriptions of general store clerk, journeyman clerk, and lead journeyman clerk require a degree of familiarity with all departments and those employees are in fact rotated into every department in accordance with the job description requirements.

n4 The Regional Director failed to note the record testimony indicating that, during the busy summer tourist season, the two dual-function employees worked expanded hours in the meat department, and that a third individual named Mary divided her summer work hours between the meat and produce departments.

Similarly, the record contains references to other regular and recurring personnel shortages, including vacations and sick days, in the meat and other departments and to the specific individuals who were regularly called upon to fill in during such times.

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On these facts, the Regional Director concluded that the meat department employees have a sufficiently separate community of interest from grocery employees to warrant their separate representation, relying essentially on his findings that meat department employees work in a separate area performing tasks relating to preparation and sale of [*528] meat under the separate direction of the meat department head, and they do not interchange with other employees except in emergencies. Accordingly, he found this case to be like those in which the Board has excluded meat departments from grocery store units where only grocery employees are sought. n5 We disagree.

n5 *R-N Market, Inc.*, 190 NLRB 292 (1971); *Mock Road Super Duper, Inc.*, 156 NLRB 983 (1966); *Big Y Supermarkets*, 161 NLRB 1263 (1966); *Klapp's Packerhouse Market*, 226 NLRB 363 (1976).

Contrary to the Regional Director, the evidence with respect to meat department employee duties does not show them to possess or exercise traditional meatcutting skills which would distinguish them from grocery employees, as was the case in *R-N Market, Inc.* where the employer's meat department was on a "cut-to-order basis" rather [**6] than using prepackaged meats. Likewise, the Regional Director's conclusion that employee interchange occurred primarily during emergencies is not supported by the record which, as previously noted, described numerous incidents of regular and recurring interchange, particularly during the busy summer season, in addition to the Employer's normal rotational training program built in to three different job classification descriptions. Such interchange as shown on this record appears to be quite substantial, unlike the small degree of interchange relied upon by the Board in *Big Y Supermarkets and R-N Market, supra*.

Unlike the Regional Director, we do not deem it significant that meat department employees receive direction from their department head, in view of his finding that department heads lack any supervisory authority and the fact that each of the other five department heads or lead persons similarly give separate directions to their department personnel.

In view of the foregoing the evidence that the meat department employees enjoy the same uniform job and wage classifications as are applicable in all departments, as well as all other benefits and working conditions, [**7] we find that the meat department employees do not have a separate community of interest. n6 Therefore, on the facts of this case, we conclude that a storewide unit, including the meat department employees, as contended by the Employer, is appropriate herein. n7

n6 See *Ashcraft's Market, Inc.*, 246 NLRB No. 68 (1979).

In view of our disposition herein, we find it unnecessary to pass on the Employer's contention that the merger of the Retail Clerks International Union with the Amalgamated Meat Cutters and Butcher Workmen supports its position for inclusion of the meat department in a storewide unit.

n7 The unit, as amended herein, is described as follows:

All full-time and regular part-time employees, including meat department employees, department heads and lead journeyman clerks employed by the Employer at its store located at 4175 17-mile Road, Cedar Springs, Michigan, but excluding the store manager, guards, and supervisors as defined in the Act.

Accordingly, we hereby remand the case to the Regional Director for the purpose of conducting an election pursuant to his Decision and Direction of Election, as modified herein, n8 except that the payroll period for determining [**8] eligibility shall be that ending immediately before the issuance of this Decision on Review. n9

n8 The Petitioner shall be permitted to withdraw its petition without prejudice upon written notice to the Regional Director for Region 7 within 10 days from the date of this Decision on Review. *Independent Linen Service Company of Mississippi*, 122 NLRB 1002 (1959). Further, inasmuch as the unit found appropriate herein

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is larger than the unit sought by the Petitioner, the holding of an election will be conditioned upon a demonstration by the Petitioner, within 10 days from the date hereof, that it has an adequate showing of interest in the broader unit found appropriate.

n9 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 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). 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 7 within 7 days of the date of this Decision on Review. This list may initially be used by the Regional Director to assist in determining an adequate showing of interest. The Regional Director shall make the list available to all parties to the election when he shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established. 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.

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Legal Topics:

For related research and practice materials, see the following legal topics:
Labor & Employment Law Collective Bargaining & Labor Relations Judicial Review