

ASHCRAFT'S MARKET, INC. and MEAT CUTTERS LOCAL 539, UNITED FOOD
AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, n1
PETITIONER, and RETAIL STORE EMPLOYEES UNION, LOCAL NO. 20, UNITED
FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, AFL-CIO, n2
PETITIONER

n1 Herein referred to as the Meat Cutters.

n2 Herein referred to as the Retail Store Employees Union.

Case 7-RC-15501, Case 7-RC-15493

NATIONAL LABOR RELATIONS BOARD

*246 N.L.R.B. 471; 1979 NLRB LEXIS 2023; 102 L.R.R.M. 1592; 1979-80 NLRB Dec.
(CCH) P16,522; 246 NLRB No. 68*

November 15, 1979

JUDGES: By Fanning, Chairman; Jenkins, Member; Penello, Member.

OPINION:

[1] DECISION AND DIRECTION OF ELECTION**

[*471] Upon separate petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a consolidated hearing was held on July 27, 1979, before Hearing Officer Katherine Porach of the National Labor Relations Board. On August 6, 1979, the Regional Director for Region 7 issued an order transferring the case to the Board. Subsequently, the Employer, the Meat Cutters, and the Retail Store Employees Union filed briefs with the Board. n3

n3 The Employer has requested oral argument. This request is hereby denied as the record and the briefs adequately present the issues and the positions of the parties.

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 reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial [****2**] error. The rulings are hereby affirmed.

Upon the entire record in these cases, 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 organizations involved claim to represent certain of the 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. In Case 7-RC-15501, the Meat Cutters seeks a unit of meat department employees at the Employer's Alma, Michigan, retail grocery store. In Case 7-RC-15493, the Retail Store Employees Union seeks a unit of all the Employer's nonsupervisory employees at the same store, excluding the meat department employees. The Employer contends that only an overall unit is appropriate. There is no prior bargaining history, and no labor organization seeks to represent the employees in a larger unit. n4

n4 At the hearing both Unions indicated that they would proceed with the election process should an overall unit be found appropriate.

[**3]

The Employer operates retail grocery stores in three different locations, but only the Alma, Michigan, store is involved in this proceeding. There are 46 employees at this location, 5 of whom work in the meat department.

The record discloses that because of the type of meat products handled by the Employer, the meat department employees do not utilize traditional meatcutting skills. The meat department receives no sides of beef. Instead, prepackaged and prepriced meats, which are merely unloaded from delivery trucks and placed on the shelf, account for two-thirds of the Employer's products. "Boxed beef," which arrives frozen and requires simple trimming and cutting into smaller pieces, constitutes the remaining one-third.

The record indicates that it is the Employer's policy to encourage interchange work between the meat department and other sections of the store. Once or twice each week meat employees work together with other employees unloading delivery trucks. On a daily basis the baggers from the front end of the store do substantial work in the meat area, such as stocking the display cases. Split shifts in meat and other departments have been regularly scheduled for three other [**4] employees, and once a week two employees from other sections are regularly scheduled to work in the meat department.

Store Manager Ferguson directly supervises all of the departments and makes all final decisions relating to work in each. Although there is a meat department head, the record indicates that 90 percent of his duties are routine. He does not have the authority to allow meat employees to leave early without the store manager's consent, and he prepares their working schedules n5 under the store manager's guidelines. Additionally, the meat department head cannot assign an employee to extra hours of work during the week without the consent of the store manager. The record discloses that there is also a meat supervisor responsible for meat operations in all three stores, but he visits each store only once or twice a week and does not exercise daily supervision.

n5 Essentially, the meat employees work during the same hours as employees in other departments. The only scheduling difference is that, pursuant to a policy initiated within the last 5 or 6 months, meat employees do not work on Sundays.

[**5]

Although the meat employees have a separate work area and wear uniforms which distinguish them from other employees, they are nonetheless subject to the Employer's system of uniform job and wage classifications. The job titles

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are student clerk, clerk, and department head, and these classifications are applicable [*472] in all departments of the store. Wages and increases are established in accordance with these classifications, and consequently a meat employee's wage is the same as that of an employee with the same job title in another department. Similarly, the record discloses that the Employer has established uniform policies with respect to vacations and other benefits.

Although the Board has often found in recent years that meat employees have a distinguishable community of interest, n6 many of the circumstances which have justified separate units are not present here. Thus, in *R-N Market, Inc.*, the Board noted the presence of two highly skilled meatcutters whose wages were the highest in the store. The Board emphasized that the separate interests of meat employees and other employees were underscored "by the fact that the Employer operates its meat department essentially [**6] on a cut-to-order basis rather than with the use of prepackaged or prewrapped meats." As noted, traditional meatcutting skills are not present here. The Employer does not operate an apprentice program, and employees are trained on the job.

n6 See, e.g., *R-N Market, Inc.*, 190 NLRB 292 (1971); *Allied Super Markets, Inc.*, 167 NLRB 361 (1967); *Big Y Supermarkets*, 161 NLRB 1263 (1966); *Priced-Less Discount Foods, Inc., d/b/a Payless*, 157 NLRB 1143 (1966); *Mock Road Super Duper, Inc.*, 156 NLRB 983 (1966).

Interchange in the Employer's facility is also more extensive than in *Big Y Supermarkets* and *R-N Market*, where employee interchange which occurred only during lunch hours, rush periods, and emergencies was found to be insubstantial. Additionally, the Employer's uniform wage and job classification system distinguishes its operations from those in *Priced-Less Discount [**7] Foods, Inc.* and *Big Y Supermarkets*, where meat employees received higher wages than employees in other departments. Finally, the separate daily supervision for meat employees found in *Mock Road Super Duper, Inc.* and *Priced-Less Discount Foods, Inc.* is not present in the Employer's facility.

Therefore, the circumstances of this case indicate that the meat employees do not have a separate community of interest, and we find, accordingly, that the following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees at the Employer's Alma, Michigan, facility, excluding the manager, guards, and supervisors as defined in the Act. n7

n7 The Retail Store Employees Union's original petition sought to include "lease and licensed departments" within the unit, but the petition was amended at the hearing to delete those departments.

[Direction of Election n8 and *Excelsior* footnote omitted from publication.] [**8]

n8 Either 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 and Direction of Election. *Independent Linen Service Company of Mississippi*, 122 NLRB 1002 (1959). Further, inasmuch as the unit found appropriate herein is larger than the units sought by Petitioners, the Direction of Election is conditioned upon a demonstration by either Petitioner, within 10 days from the date hereof, that it has an adequate showing of interest in the broader unit found appropriate.

Legal Topics:

246 N.L.R.B. 471, *472; 1979 NLRB LEXIS 2023, **8;
102 L.R.R.M. 1592; 1979-80 NLRB Dec. (CCH) P16,522

For related research and practice materials, see the following legal topics:

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Collective Bargaining & Labor Relations
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