

**Yaohan of California, Inc.<sup>1</sup> and United Food and Commercial Workers Union, Local 1288, United Food and Commercial Workers International Union, AFL-CIO,<sup>2</sup> Petitioner. Case 32-RC-922**

September 24, 1980

**DECISION ON REVIEW AND  
DIRECTION OF ELECTION**

**BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND TRUESDALE**

On February 20, 1980, the Acting Regional Director for Region 32 issued a Decision and Direction of Election in the above-entitled proceeding in which he found that the petitioned-for unit of grocery employees is an appropriate unit for the purposes of collective bargaining. In so doing, the Acting Regional Director rejected the Employer's position that only a storewide unit is appropriate. Thereafter, in accord with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Acting Regional Director's decision, and the Petitioner filed a brief in opposition thereto. By telegraphic order dated March 28, 1980, the National Labor Relations Board granted the Employer's request for review.

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 with respect to the issue under review and makes the following findings:

The Employer operates a retail grocery store in Fresno, California. It employs approximately 37 employees in eight functional areas of the store: meat department, fish department, delicatessen, produce department, grocery department, check-out, snackbar, and office. There is no history of collective bargaining. The Acting Regional Director found appropriate a unit of grocery employees, including stock clerks, courtesy clerks, checkers, produce clerks, and custodian, but excluding meat, fish, and delicatessen department employees, snackbar employees, confidential employees, guards and supervisors as defined in the Act.<sup>3</sup>

<sup>1</sup> The name of the Employer is as it appears in the petition and the notice of representation hearing. The Acting Regional Director's decision and the telegraphic order herein referred to the Employer as "Yaohan."

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

<sup>3</sup> As the record does not show what functions the bookkeeper performs, the Acting Regional Director made no determination as to her unit placement but allowed her to vote subject to challenge.

Two butchers and two clerks work in the meat department. The butchers work exclusively with boxed or pre-cut beef, pork, and chicken; they do not handle sides or quarters of beef. The boxed beef requires cutting and trimming for display and preparation of special orders but does not require the exercise of more difficult butchering tasks. The Employer has no apprenticeship or formal training program. The meat clerks primarily take customer orders, weigh and wrap products, and arrange meat displays in the grocery area. They spend approximately 20 percent of their time assisting in the fish and delicatessen departments; meat department employees do not generally substitute in other departments.

There are four clerks in the fish department who perform over-the-counter sales, display fish, and take and wrap customer orders. About 30 percent of the fish sold is cut to order, primarily by the supervisor. The fish department clerks spend approximately 20 percent of their time substituting for meat and delicatessen clerks; they do not help in the grocery department. There are four clerks in the delicatessen department who are engaged in over-the-counter sales and the preparation of food sold both in the delicatessen and in the snackbar. Some of the supplies are from the grocery area. One clerk divides her day between the delicatessen department and the snackbar. The clerks spend approximately 20 percent of their time working in the meat and fish departments. In preparation for the store's opening, delicatessen clerks assisted in the grocery area; they have not done so since.

There are four waitresses, one cook, and a part-time dishwasher in the snackbar. As indicated above, one of the waitresses splits her time with the delicatessen department. Waitresses are prohibited from receiving tips. A separate accounting system is used for the snackbar, and a separate cash register is used for customer purchases. Some of the food served in the snackbar is prepared by the delicatessen department. Other than the dual-function waitress, there is no interchange of employees between the snackbar and other departments.

Included in the unit found appropriate by the Acting Regional Director are two produce clerks, four stock clerks, five checkers, three courtesy clerks, and the custodian. The two produce clerks work in the general grocery area and are responsible for displaying the produce, assisting customers, and keeping the produce area clean. They do not work in any other departments of the store. The four stock clerks in the grocery department stock, mark, and display grocery products. The record does not show if they work outside their department, but it does show that they do not work in

the excluded departments. The checkers operate the cash registers, and the courtesy clerks sack groceries and deliver groceries to customers' cars. The record does not show how much time, if any, they work outside their department. The custodian works throughout the store.

The Employer's general manager is in overall charge of the store and has primary authority to hire and fire employees, to schedule hours, and to authorize overtime. In addition, there are four supervisors respectively in charge of the following employees: (1) meat, fish, delicatessen, and produce employees; (2) grocery department employees; (3) checkout area and snackbar employees; and (4) office and accounting employees.

The Acting Regional Director found that the meat department employees lacked a sufficient community of interest with the grocery employees on the basis of the physical separation of their work area, their differently colored uniforms, their performance of different tasks and skills, and their minimum contact and absence of interchange with grocery employees. The Acting Regional Director, in excluding the fish and delicatessen department employees, found that their interests were more closely aligned with the meat department employees than with the grocery employees based on the proximity of their departments, their common supervision, the interchange of employees among the three departments, the similarity of their uniforms, and some similarity of skills in the meat and fish departments. In excluding the snackbar employees, the Acting Regional Director relied on their separate work area and their lack of interchange with grocery employees. He also noted the contact between snackbar employees and delicatessen employees and the assignment of the dual-function waitress.

As is evident, determination of whether the grocery employees constitute a separate appropriate bargaining unit depends ultimately on whether the meat department employees possess a separate and distinct community of interest. The Board has often found in recent years that meat department employees of grocery stores have a distinguishable community of interest,<sup>4</sup> but it has done so on the

basis of both their separate identity (e.g., separate work areas, etc.) and their special skills. Thus, in *R-N Market, Inc.*, the Board emphasized that the separate interests of the meat department employees were underscored by the fact that the employer operated a custom cut system which "requires the services of two highly skilled meatcutters." Here, however, the meat department employees do not exercise the highly skilled specialized tasks traditionally performed by butchers and meatcutters, but work with boxed meats requiring significantly less specialized skill. The traditional skilled work is instead performed by the meat distributor at its packing house.

For the foregoing reasons we find that the meat department employees do not exercise the traditional meatcutting skills indicative of a separate community of interest and accordingly should be included in the unit of grocery employees. *Ashcraft's Market, Inc.*, 246 NLRB No. 68 (1979). As the other departments were excluded on the basis of the alignment of their interests with the meat department, the employees in these departments shall also be included in the unit. Accordingly, we find the following employees 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 employees of the Employer's retail food store in Fresno, California, including meat, fish, and delicatessen department employees, snack bar employees, produce clerks, stock clerks, checkers, courtesy clerks, and custodian; excluding all confidential employees, guards, and supervisors as defined in the Act.

#### DIRECTION

It is hereby directed that, as part of the investigation to ascertain a representative for the purposes of collective bargaining among certain employees employed by Yaohan of California, Inc., in the appropriate unit, the Regional Director for Region 32 shall, at a date to be determined by him, open and count the impounded ballots and, thereafter prepare and cause to be served on the parties a tally of ballots, upon the basis of which he shall take such further action as he deems appropriate.

<sup>4</sup> See, e.g., *Buehler's Food Markets, Incorporated*, 232 NLRB 785 (1977); *R-N Market, Inc.*, 190 NLRB 292 (1971); *Allied Super Markets, Inc.*, *Allied Discount Foods Division*, 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).