

Plumbing Distributors, Inc., Employer-Petitioner and Brotherhood of Teamsters and Auto Truck Drivers, Local Union No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

Dalziel Supply Company and Brotherhood of Teamsters and Auto Truck Drivers, Local Union No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 32-RM-108 and 32-UC-18

March 13, 1980

DECISION ON REVIEW AND ORDER

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

On May 22, 1979, Plumbing Distributors, Inc., herein PDI, filed an election petition in Case 32-RM-108 alleging that Brotherhood of Teamsters and Auto Truck Drivers, Local Union No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein Local 70, had claimed to represent the one truckdriver and two warehousemen employed at its facility in Fremont, California. On July 19, 1979, Local 70 filed the petition in Case 32-UC-18, alleging that PDI and Dalziel Supply Company, herein Dalziel, are a single employer and that the one truckdriver employed at PDI's Fremont facility constitutes an accretion to the unit of truckdrivers it represents at a Dalziel facility in Union City, California. On July 31, 1979, the Acting Regional Director for Region 32, following a hearing, issued a Decision and Order, appended hereto [omitted from publication], in which he found that Dalziel and PDI are a single employer and that the Fremont truckdriver constitutes an accretion to the truckdriver unit at Union City. The Acting Regional Director also found that two warehousemen employed at Fremont are an accretion to a unit of warehousemen at the Union City facility represented by the Intervenor, Teamsters Union Local 853, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein Local 853.¹ The Acting Regional Director, therefore, dismissed the petition in Case 32-RM-108.

Thereafter, Dalziel and PDI filed a timely request for review, alleging that each is a separate employer and that the truckdriver and warehousemen at PDI's Fremont facility do not constitute accretions to the units represented by Locals 70 and

853 at Dalziel's Union City facility. On September 12, 1979, the Board granted review of the Acting Regional Director's decision only with respect to the accretion issue. All parties filed briefs on 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 proceeding with respect to the issue under review, including the briefs on review, and hereby makes the following findings:

Dalziel, a California corporation, retails, wholesales, and warehouses plumbing supplies at nine facilities in northern California. Through its membership in the Northern California Suppliers Association, Dalziel is party to collective-bargaining agreements covering eight of its facilities with various Teamsters locals having territorial jurisdiction over the location of a particular facility. Each of Dalziel's unionized facilities has two units; a truckdriver unit and a warehouse unit. As stated above, those units at Dalziel's Union City facility are represented, respectively, by Locals 70 and 853, both of which have territorial jurisdiction of Alameda County, California.

In August 1978, Dalziel opened a second facility within the territorial jurisdiction of Locals 70 and 853 at Fremont. It serves as a central warehouse by which Dalziel can take advantage of discounts for large-volume purchases of stock as well as house slow-moving stock. Edward Smith, a manager of another Dalziel facility, became manager at Fremont and both a truckdriver and a truckdriver-warehouseman were hired. In February 1979, PDI was incorporated and assumed operation of the Fremont facility. However, the operations did not change except that a second warehouseman was hired.

The Fremont facility operates as a "captive" warehouse for Dalziel. It receives and stores merchandise ordered for, and by, Dalziel's other nine facilities and delivers only to those facilities. Like all Dalziel's facilities, the labor relations and operations of the Fremont facility are under the ultimate control of Alec Dalziel, owner of Dalziel. Further, as the Acting Regional Director found, the skills, job classifications, and job duties of the Fremont employees are essentially identical to those of the truckdrivers and warehousemen employed at all Dalziel facilities, including those at Union City, located 5 miles away.

Based on the common ownership, control, and labor relations of Dalziel and PDI, the integration of operation between the Fremont and Dalziel fa-

¹ At the hearing, Local 853 was permitted to intervene on the basis of a recently expired contract covering the warehousemen unit at the Union City facility.

cilities, and the similarity of skills, job classifications, and duties between the Fremont employees and their Dalziel counterparts, the Acting Regional Director concluded that the Fremont truckdriver and warehousemen constitute separate accretions to the existing truckdriver and warehouse units at Union City. We disagree.

The Fremont facility is 5 miles from the Union City facility and performs no work previously performed at any Dalziel facility. Although Alec Dalziel sets and ultimately controls its labor relations, the day-to-day supervision of the Fremont employees is conducted by Smith, who has the power to hire and fire. In addition, there is no job interchange between the Fremont employees and those at other facilities and their only job contact occurs during pick-ups and deliveries. Finally, the Fremont employees receive the wages and benefits received by the employees at the one nonunionized Dalziel facility. Thus, despite the ultimate common control and operation of the Fremont and Dalziel facilities, the Fremont facility constitutes a separate appropriate unit. As such, the Fremont facility is not an accretion to units at Union City or any other Dalziel facility.

Contrary to the contentions of Local 70 and Local 853, their contracts with Dalziel covering the Union City facility do not dictate a different result. While Local 70 is recognized as the exclusive representative of "all employees" covered by its agreement and Local 853 is recognized as the exclusive representative for the "employees employed in the classifications set forth" in its agreement, it is undisputed that, currently, both Locals only represent employees at Union City rather than employees at all Dalziel facilities. Further, neither

contract explicitly grants recognition to the Union for any new operations established within its territorial jurisdiction and, while the record indicates that other Teamster locals currently represent all Dalziel facilities within their particular territorial jurisdiction, there is nothing to indicate that recognition was extended to any facility because of any contractual commitment. In any event, the Fremont facility is a new operation which would constitute a separate appropriate unit and the Board had held that contract clauses purporting to encompass such new operations are valid only when a majority of the employees affected desire representation.²

Since the Fremont facility is not an accretion to the units at Union City we shall dismiss the petition in Case 32-UC-18. Further, since the record reveals that the representational claims of Locals 70 and 853 regarding the Fremont facility are based on their contention that the Fremont driver and warehousemen constitute accretions to the Union City units, we shall also dismiss the petition in Case 32-RM-108. A claim of accretion does not raise a question concerning representation within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.³

ORDER

It is hereby ordered that the petitions in Case 32-UC-18 and Case 32-RM-108 be, and they hereby are, dismissed.

² *Melbet Jewelry*, 180 NLRB 107 (1969).

³ *Woolwich Inc.*, 185 NLRB 783 (1970).