

PDQ Institutional Foods, Inc., Employer-Petitioner and Teamsters Local Nos. 524 and 839, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 19 RM-1531 and 19-UC-225

August 9, 1979

DECISION ON REVIEW AND ORDER

BY CHAIRMAN FANNING AND MEMBERS MURPHY AND TRUESDALE

On October 20, 1978, the Acting Regional Director for Region 19 issued a Decision and Direction of Election and Order in this proceeding, directing a self-determination election among those salespersons and buyers employed by PDQ Institutional Foods, Inc.,¹ who were previously employed by Continental National, Inc. The Acting Regional Director found that these employees do not constitute an accretion to the overall unit of the Employer's employees, jointly represented by Teamsters Locals Nos. 524 and 839, Affiliated with the International Brotherhood of Teamsters, Chauffeurs Warehousemen and Helpers of America, as a result of the Employer's acquisition of Continental and ordered that the Employer's petition for unit clarification be dismissed. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, Local 524 filed a timely request for review of the Acting Regional Director's decision on the grounds, *inter alia*, that it raised a substantial question of law and policy and contained clearly erroneous and prejudicial factual findings. The Employer filed a brief in response to the request for review.

By telegraphic order dated November 28, 1978, the Board granted Local 524's request for review. Thereafter, on February 9, 1979, the Board, by telegraphic order, remanded the case to the Regional Director for purposes of reopening the hearing to take further evidence as specified in said order. The Board further ordered that following the close of the hearing, the Regional Director transfer the case to the Board for decision.

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, including that of the reopened hearing

¹ Hereinafter called PDQ or the Employer.

with respect to the issues under review,² and makes the following findings:³

The Employer is a State of Washington corporation engaged in wholesaling food and nonfood products to various commercial institutions. Local 524 has represented in one unit all of the Employer's employees, with certain exclusions, for more than 23 years; Local 839 has been a joint representative of these employees for the last 12 of those years. In September 1978, the Employer purchased the assets of Continental National, Inc. (herein called Continental), a corporation engaged in operations similar to the Employer's. The Employer hired substantially all of Continental's employees, including Continental's 6 drivers, 13 warehousemen, 9 salespersons, and 3 buyers. Prior to this acquisition, Local 524 had represented Continental's drivers and warehousemen. That unit specifically excluded salespersons and buyers. After the acquisition of Continental, the Employer and the Unions mutually agreed to include the newly hired former Continental drivers and warehousemen in the existing unit of the Employer's drivers, warehousemen, and salespersons.⁴ However, the parties have been unable to agree on the unit status of the former Continental salespersons, which prompted the filing of the instant petitions.⁵

The Employer, at the hearing and in its brief, took the position that the Board should direct a self-determination election, at the very least among the former Continental salespersons but preferably among all salespersons. Local 524 contends that the former Continental salespersons constitute an accretion to the overall unit jointly represented by the two Unions.⁶ For the reasons stated below, we find, contrary to the Acting Regional Director, that the former Continental salespersons constitute an accretion to the existing unit.

² None of the parties filed a brief on review.

³ Local 839 was provided proper notice but has not participated at any stage in this proceeding.

⁴ At the time of the acquisition of Continental, there were approximately 12 drivers, 13 warehousemen, and 11 salespersons in the Employer's unit. At the initial hearing the Employer attempted to establish that its salespersons were treated somewhat differently under the PDQ-Union contracts than were other unit employees, and it introduced into evidence a 1975 agreement between it and the Unions whereby the parties agreed to treat salespersons separately during 1977 negotiations. However, this agreement was never implemented. Thus, the record clearly reveals, and we find, that the PDQ salespersons have historically been included in one overall bargaining unit and that no separate sales unit existed.

⁵ At the remanded hearing the parties stipulated that all buyers are excluded from the bargaining unit. Accordingly, we find that all buyers currently employed by the Employer are not included in the unit.

⁶ We note that the Employer filed both petitions herein. In its UC petition, the Employer sought a determination by the Board whether the former Continental salespersons should be accreted to the unit, and in its brief it stated that it seeks such a ruling, before it bargains as to these employees, partly to protect itself from a possible unfair labor practice charge.

We note that the original hearing occurred shortly after the Employer acquired the Continental operation. At that hearing the Employer testified that its operations were soon to be integrated. The Board remanded for further hearing to clarify certain areas and in order to ascertain the status of the anticipated integration. Now having reviewed the entire record, we find, contrary to the Acting Regional Director, that the former Continental salespersons do not possess a separate community of interest, warranting a separate election. Based on the record before him, the Acting Regional Director found that the former Continental salespersons marketed different products than did PDQ salespersons; processed their orders in a different manner; had a separate office location in Pasco, Washington, whereas PDQ salespersons were headquartered in Yakima, Washington; continued to fill their orders from inventory maintained in Continental's old warehouse; had a different vehicle policy (they used their own vehicles, whereas PDQ salespersons were assigned company cars); and had separate immediate supervision. The Acting Regional Director also relied on the fact that the number of new salespersons (9) almost equaled the number of salespersons in the existing unit (11).

The current record discloses that most of the differences between the two groups of salespersons upon which the Acting Regional Director relied in failing to find an accretion no longer exist or at least have diminished significantly. Thus, the record reveals that the former Continental salespersons have been substantially integrated into the Employer's preexisting work force. There is now only one sales manager to whom all salespersons report; no salespersons report to the old Continental facility;⁷ all former salespersons are either processing their orders in the same manner as the original PDQ salespersons or will be within a very short time; approximately one-half of

⁷ Some report to the Employer's Yakima facility and the remainder are headquartered outside Yakima and basically work out of their homes.

the original PDQ salespersons now use their own vehicles, as do all former Continental salespersons; there is basically no difference in the product line sold by the two groups of salespersons; and compensation is the same for both groups of salespersons except for some fringe benefits, which are different apparently because the Employer has not applied the collective-bargaining agreement to the former Continental salespersons.

Moreover, because of our finding that the Unions and the Employer have historically bargained in one overall unit, the Acting Regional Director's reliance on the fact that the number of former Continental salespersons almost equals the number of salespersons already in the unit is misplaced. The relevant consideration here, for purposes of determining whether an accretion is warranted, is whether the 9 former Continental salespersons should be accreted to the existing overall unit of approximately 55 employees.⁸

In view of the foregoing, we conclude that the former Continental salespersons do not have an identity separate and distinct from the unit employees sufficient to raise a question concerning representation. Rather, we find that these employees have been integrated into the Employer's operations and constitute an accretion to the overall unit of the Employer's employees.

ORDER

It is hereby ordered that the Acting Regional Director's Decision and Direction of Election and Order be vacated and that the Employer's petition in Case 19-RM-1531 be dismissed.

IT IS FURTHER ORDERED that the Employer's petition in Case 19-UC-225 be reinstated and that the existing unit be clarified to include those salespersons working for the Employer who formerly were employed by Continental National, Inc.

⁸ Cf. *Renaissance Center Partnership*, 239 NLRB 1247 (1979).