

Weber's Food Services, Inc. d/b/a Weber's I.G.A. and Retail Store Employees Union, Local 40, United Food and Commercial Workers International Union, AFL-CIO,¹ Petitioner. Case 7-RC-15278

August 23, 1979

DECISION ON REVIEW AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

On March 26, 1979, the Acting Regional Director for Region 7 issued a decision and direction of election in the above-entitled proceeding in which he found appropriate a unit of grocery employees at the Employer's two food stores, excluding meat department employees, as sought by the Petitioner. Thereafter, in accordance 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 on the ground that by failing to also exclude the bakery and delicatessen employees along with the meat department employees his decision is clearly erroneous on the record and a departure from established Board precedent. By telegraphic Order dated April 24, 1979, the 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 and makes the following findings:

The Employer, a Michigan corporation engaged in the retail sale of food products, operates two stores in Bridgeport, Michigan, one at 6077 Dixie Highway and the other, its main store, at 6370 Bridgeport Village Square. Each store consists of various departments such as meat, dairy, and produce and each is run by a manager and assistant manager. Also located at the Village Square store are the Employer's offices as well as two additional departments, bakery and delicatessen. As one enters the Village Square store, the Employer's offices are situated along the wall to the left, the meat department is at the back of the store, and the bakery and delicatessen departments are located next to each other on the right side of the store in the far corner. In the Employer's advertising it refers to the bakery and delicatessen as the

Country Kitchen. The Village Square store is open from 9 a.m. to 10 p.m. 6 days a week and from 9 a.m. to 6 p.m. on Sundays. Dixie Highway is only open 6 days a week from 9 a.m. to 9 p.m.

There are five employees in the Employer's meat departments at its two stores. These employees carve primal cuts of beef into smaller retail cuts, dissever poultry, fillet fish, and grind and slice meat. They are also responsible for the weighing, wrapping, and packaging of meat and stocking the open-shelf meat counter where customers make their selections. Wages in the meat department run from approximately \$3 to \$7.99 per hour. One meat department employee has 2-1/2 years' experience in the Employer's meat department, another has 1 year's experience; both had experience in meatcutting prior to their current employment. A third employee, who has been with the Employer for only about 6 months and came with limited experience, performs mostly wrapping and stocking duties.² Most meat department employees report for work at either 5 a.m. or 7 a.m. and work an 8-hour shift. One meat department employee works a late shift beginning about 1 p.m. or 3 p.m. and leaves around 8 p.m. or 8:30 p.m., except for Mondays and Tuesdays.

There are four employees in the Employer's delicatessen department. Each day these employees cook and prepare hot foods for display on the steamtable, as well as salads, desserts, sandwich meats, and cheeses for the cold and cheese cases. In preparing such foods delicatessen employees, like meat department employees, slice beef, cheese, and bulk lunch meat, grind liver and bologna, cut spareribs, and occasionally trim fat from meat. When a customer makes his selection food is then weighed, packaged, and marked. Delicatessen employees currently earn between \$3.20 and \$3.50 per hour. They were hired without delicatessen experience but were experienced in cooking and were subsequently trained in the operation of a delicatessen. According to the Employer it takes 5 to 8 months to train a delicatessen clerk proficiently. Three of the four delicatessen employees arrive for work early, one each at 7 a.m., 8 a.m., and 9 a.m., with the fourth employee arriving about 3 p.m. for the late shift.

The six employees in the Employer's bakery department are responsible for baking the products sold such as homemade breads and rolls, doughnuts, cakes, and pastries, decorating and icing the baked goods, and packaging the goods to customer order. The various bakery items are displayed in cases at the front of the bakery where there is also a plexiglass cake decorating cage where customers can watch as

¹ The name of the Petitioner, formerly Retail Store Employees Union, Local 40, Retail Clerks International Union, AFL-CIO, is amended to reflect the change resulting from the merger of Retail Clerks International Union and Amalgamated Meatcutters and Butcher Workmen of North America on June 7, 1979.

² However, according to the Employer's president, George E. Weber, one can learn the job of making retail cuts in 3 or 4 months or less.

bakery employees decorate cakes. Wages in the bakery department range from \$2.90 to \$7 per hour, with the department head at the top of the scale and full bakers receiving the next highest wage. However, the Employer currently does not have any skilled bakers, only apprentice bakers earning approximately \$4.40 per hour, finishers, and a counter worker who is still learning to finish. A journeyman baker can be trained in approximately 3 months, but to train an inexperienced person to be a baker would take 6 to 18 months. The bakery department employees who do the actual baking report for work at 5 a.m., the others begin at approximately 7 a.m. Except for Friday when one employee works until 9 p.m., all bakery employees are usually gone by 5:30 p.m.

The Employer's grocery employees including cashiers, stock clerks, and baggers earn from \$2.90 to \$4.50 per hour. The amount of time needed to train grocery employees is relatively short: 2 to 3 weeks for a cashier, 1 to 2 weeks for a stock clerk, and under 1 week for a bagger. Except for some stock clerks who begin stocking shelves at approximately 5 a.m. the grocery employees work staggered shifts during the hours that the Employer's stores are open. All of the Employer's employees receive the same benefits including insurance, workmen's compensation, holidays, and vacation and are subject to the same work rules.

The delicatessen and bakery employees regularly help out in each other's departments during breaks and the lunch hour. In particular, the delicatessen employees work the bakery counter at night after 5:30 when no bakery employees are scheduled to work. Delicatessen employees also work in the meat department as wrappers and slicers when the amount of work or employee absence so require, averaging once or twice a month. Meat department employees also help the employees in the delicatessen. Until about October 1978 this occurred twice a week but now occurs approximately twice a month. On rare occasions the head checker also helps wrap in the meat department, and on extremely rare occasions a delicatessen employee will help bag. As for permanent transfers, two meat department employees were transferred at their request to the delicatessen department, and one delicatessen employee formerly worked in the bakery. One grocery employee, a cashier, also transferred to the delicatessen.

The Employer's president has primary responsibility for the meat, bakery, and delicatessen departments including interviewing, hiring, and discipline; he also prepares the departmental sales and labor reports for each of these departments. The store manager is in charge of the other departments, although on two occasions the Employer's president hired de-

partment heads for a grocery department who is responsible for the grocery labor reports.

Meat, bakery, and delicatessen employees all wear white uniforms, and, in accordance with state law requirements, they also wear aprons and headgear. Stock employees usually wear dress pants with a white shirt and tie, and cashiers wear gold and brown smocks with the store name printed thereon. Forty percent of the grocery employees are part-time employees, whereas only 10 to 15 percent of the meat, delicatessen, and bakery employees work less than full time due to training and skill involved. Meat and delicatessen employees wrap and package their products in similar fashion, have their own separate supply storage area in the meat department, and use identical wrap stands and interchangeable slicing equipment. Also, 50 percent of the products sold in the delicatessen (the meats and cheeses), are also sold in the meat department. Further, the delicatessen department obtains most of its daily meat needs from the meat department, and although delicatessen employees also obtain items from the grocery department too, the delicatessen department's needs in this area are greatly limited in comparison to its meat requirements. For some meat products, the meat and delicatessen departments have common suppliers. These products, like all of the Employer's meat items, are delivered to the store at a separate door from the grocery products. In addition, meat, delicatessen, and bakery employees, unlike grocery employees, have considerable customer contact in dealing with customers over the counter and filling special orders. There is no history of collective bargaining between the parties.³

In the retail grocery industry the Board has long recognized the traditional differences between meat and grocery employees, particularly in such areas as wages, skill, and training and, therefore, generally excludes meat department employees from an overall unit of grocery employees. *Quality Markets, Inc.*, 129 NLRB 904 (1960); *Mock Road Super Duper, Inc.*, 156 NLRB 983 (1966); *Allied Super Market, Inc.*, 167 NLRB 361, 363 (1967); *C & E Stores, Inc.*, 229 NLRB 1259 (1977). Here, as the Petitioner does not seek to represent the meat employees, in view of the insubstantial interchange, the differences in skill, training, and job functions, and the fact that there is no contrary bargaining history we see no reason to depart from the general rule and, therefore, find the Acting Regional Director properly excluded the meat department employees from the grocery unit.

Given the exclusion of the meat department from

³ The Petitioner's agent testified, however, that in the nine-county geographical area it serves the Petitioner represents grocery employees at 10 to 12 other locations in units which exclude meat department employees.

the storewide unit as requested by the Petitioner we find, contrary to the Acting Regional Director, that the bakery and delicatessen employees may not be included in the overall unit, for their community of interest is more closely identified with the meat department employees than with the grocery employees, the principal group in the storewide unit. Thus, unlike the grocery employees, bakery, delicatessen, and meat department employees are skilled, require substantial training, primarily work different hours, are separately supervised, wear uniforms required by state health regulations, and have substantial customer contact. Moreover, the delicatessen and meat departments are operationally integrated; the bakery and meat employees receive substantially higher wages; and there is considerable temporary interchange between the three departments.

Consequently, based on the foregoing facts, we find that the community of interest of the bakery and delicatessen employees is so clearly identified with meat department employees as to require their exclusion from the overall unit. *Primrose Super Market of Malden*, 178 NLRB 566 (1969).⁴ Accordingly, the unit found appropriate by the Acting Regional Director is

⁴ *Priced-Less Discount Foods, Inc., d/b/a Payless*, 157 NLRB 1143 (1966); *Seaway Food Town, Inc.*, 171 NLRB 729 (1968); and *Ideal Super Markets, et*

amended so as to exclude delicatessen and bakery department employees.⁵

ORDER

It is hereby ordered that this case be remanded to the Regional Director for Region 7 and that said Regional Director open and count the ballots of employees in the unit and issue the appropriate certification. The ballots of the delicatessen and bakery employees shall remain unopened.

at., 171 NLRB 1 (1968), where the Board found that delicatessen employees have a greater community of interest with grocery than with meat department employees, are factually distinguishable. In *Payless*, delicatessen and grocery employees had the same supervisor, like working conditions, and were functionally integrated; in *Seaway*, the delicatessen department was geographically separate from the meat department, delicatessen employees possessed no journeyman skills, had common supervision with grocery employees, and did not interchange with meat employees; in *Ideal*, delicatessen and grocery employees had similar skills, hours, and supervision. Also, unlike the instant case, although the employers in *Ideal* and *Seaway* also employed bakery employees, no issue was raised as to their community of interest with other employees.

⁵ The unit, as amended herein, is described as:

All full-time and regular part-time employees employed by the Employer at its stores located at 6077 Dixie Highway and 6370 Bridgeport Village Square Drive, Bridgeport, Michigan; but excluding meat department employees, bakery employees, delicatessen employees, guards and supervisors as defined in the Act.