

W. C. DuComb West, a Division of W. C. DuComb Co., Inc., Employer-Petitioner¹ and DuComb West Employee Association. Case 7-RM-1112

December 20, 1978

DECISION AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election by the Regional Director for Region 7 on October 28, 1977, a representation election was conducted among a unit of employees² at the Employer's Wyandotte, Michigan, location on November 8, 1977. A majority of the valid ballots were cast for DuComb West Employee Association, and that labor organization was certified by the Regional Director for Region 7 as the representative of employees in that unit on November 16, 1977.

On March 24, 1978, the Regional Director for Region 7, *sua sponte*, issued an Order To Show Cause why the above certification should not be revoked, based on information purporting to show that the Employer had filed the representation petition in the face of a colorable claim that Teamsters Local 299, the Intervenor herein, may have represented these employees and that no party to the representation proceeding informed the Region of this claim. The Employer and the Intervenor submitted briefs and, on April 28, 1978, the Regional Director for Region 7 issued an order setting aside election, vacating certification, and dismissing petition. Pursuant to a request for review of the Regional Director's order, the Board, by telegraphic order dated July 13, 1978, granted the request for review,³ reinstated the representation petition, stayed the certification previously issued, and remanded the case for a hearing as to whether the Wyandotte facility (hereinafter called Wyandotte) was an accretion to the Employer's existing facility located in Detroit (hereinafter called Detroit). On August 11, 1978, a hearing on this matter was held before Hearing Officer Richard M. Whiteman. Thereafter, the Employer and the Intervenor submitted briefs. On September 1, 1978, the case was transferred to the Board for consideration.

Pursuant to the provisions of Section 3(b) of the

¹ The name of the Employer appears in the caption as amended at the hearing.

² According to the stipulation, the unit consisted of all full-time and regular part-time office, warehouse, and customer service employees employed by the Employer at its facility located at 4072 13th Street, Wyandotte, Michigan, but excluding outside salesmen, guards, supervisors as defined in the Act, and all other employees.

³ Chairman Fanning, dissenting, would have denied review.

National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer, a Michigan corporation engaged in the business of selling, warehousing, and shipping power transmission equipment at its Wyandotte, Michigan, facility, is engaged in commerce within the meaning of the Act and it will effectuate the purpose of the Act to assert jurisdiction herein.

2. The Union and the Intervenor are labor organizations claiming to represent certain employees of the Employer.

3. Prior to September 1977 the Employer operated solely out of its Detroit location. The Intervenor herein has represented the warehouse and the office clerical employees at this facility in separate units since approximately 1968 and 1972, respectively, and has negotiated collective-bargaining agreements on their behalf. Out of a total work force of approximately 55 at Detroit, approximately 45 employees are represented by the Intervenor. At all times material herein, the bargaining agreements executed between the Employer and the Intervenor have included a clause stating that the agreement shall cover all "employees in the classifications of work set forth herein and shall cover all accretions to or relocations of bargaining unit operations, including newly established or acquired warehousing, transportation or processing operations of the Employer." In September 1977 the Employer opened a second facility in Wyandotte, whose employees are the subject of the instant proceeding. The Intervenor contends that these warehouse and office clerical employees are accretions to the units of employees represented by it at the Employer's existing Detroit facility and that no question concerning representation has been raised by the instant petition. The Employer and the Union contend that no accretion has occurred and that the representation petition was properly filed and processed.

In determining whether there is an accretion to an existing unit, this Board has recently stated in *Bryan Infants Wear Company*,⁴ quoting from *Peter Kiewit Sons' Co.*,⁵ that:

[T]he following factors are particularly relevant: the bargaining history; the functional integration of operations; the differences in the types of work and the skills of employees; the extent of centralization of management and supervision, particularly in regard to labor relations, hiring, discipline, and control of day-to-day operations;

⁴ 235 NLRB 1305 (1978).

⁵ 231 NLRB 76 (1977).

and the extent of interchange and contact between the groups of employees.

Based on the evidence adduced at the hearing with respect to these factors and as set forth below, we conclude that the employees at Wyandotte are not an accretion to the existing units of employees at Detroit.

The Employer's Wyandotte operation was opened in September 1977, primarily in response to the failure of the Employer's Detroit facility to service adequately customers located in the vicinity of the new facility, located at least 16 miles south of the Detroit operation. Prior to that time, the Employer had discovered that sales to such customers had been falling off or were being terminated.

In preparation for the opening of the new facility, separate purchasing accounts were set up with suppliers, and items constituting approximately 50 percent of the inventory in the new facility were delivered there. Due to difficulties in establishing accounts with other suppliers, the remaining half of the inventory was transferred from the Detroit warehouse. At the time of the hearing, approximately 30 percent of the inventory at Wyandotte was still purchased by and delivered to Detroit and immediately routed to Wyandotte. The primary basis for such indirect delivery is the Employer's desire to avail itself of discounts for quantity orders placed with suppliers. As currently structured, approximately 50-55 percent of Wyandotte's inventory is not duplicative of the inventory at Detroit, in part due to the fact that a greater percentage of Wyandotte's customers are engaged in basic industry and typically need different equipment.

In order to staff the Wyandotte facility, three employees and a supervisor were transferred from Detroit. None of these individuals was represented by the Intervenor in the established units at the time of their transfer. At the time of the hearing, the number of employees actively employed at Wyandotte had increased to five, including two working part time.

There is no evidence that any collective bargaining has occurred with respect to the Wyandotte employees prior to the filing of the instant petition.⁶

With respect to the functional integration of the two facilities, there does appear to be some overlap of suppliers and customers at the two locations, but additional evidence indicates that separate accounts are maintained and that each location transacts business directly and independently with its suppliers and customers, except as otherwise indicated herein.

⁶ We note, however, that the Intervenor and the Employer executed a previously negotiated contract covering the warehouse employees at Detroit on November 14, 1977.

In filling the orders of its customers, the Wyandotte facility is not always able to fill the customer's order from its own inventory. The percentage of orders affected in this manner has decreased from about 75 percent at the start of 1978 to 40 percent at the time of the hearing in August 1978. In order to complete the customer's orders, Wyandotte acquires roughly half of the needed items from its suppliers and approximately half from the inventory at Detroit. Consequently, about 20 percent of the orders placed with Wyandotte are filled, at least in part, with inventory from Detroit. Usually someone from Wyandotte picks up the needed items from Detroit and delivers it to the customer, although infrequently a Detroit driver either delivers it to Wyandotte or, on an emergency basis, delivers the items directly to the customer. The evidence indicates, however, that such direct delivery by a Detroit driver to a Wyandotte customer occurs in filling about 2-2-1/2 percent of Wyandotte's orders.

In transferring inventory between Detroit and Wyandotte, deliveries are made several times a week, involving drivers from both facilities, and printed transfer forms are utilized to account for the transactions. In view of the maintenance of separate inventories, the formalized nature of the transfers between the two facilities, and the separate relations with respect to customers and suppliers, we conclude that no significant functional intergreation exists between the two facilities.

We also find that there is a minimal degree of interchange and contact between the two groups of employees. No employees represented by the Intervenor have been transferred from Detroit to Wyandotte,⁷ and, in the 11 months Wyandotte was in operation prior to the time of the hearing, only one employee was transferred from Wyandotte to Detroit. This transfer was on a permanent basis and was not covered by any formalized job-bidding procedure. In transferring inventories between locations, drivers from each facility come in contact with employees from the other facility, but as this contact does not appear to differ from that involved in making deliveries of inventory to customers, such contact is not significant.

Although as a whole the job classifications and functions are identical at each facility, the distribution of such work and the exercise of related skills is significantly different at the two locations. At Detroit, warehouse and clerical workers perform limited functions within a single classification,⁸ whereas, at

⁷ Robert E. Tusset, who had previously been a warehouse employee at Detroit, was a nonunit management trainee at the time of his transfer to Wyandotte in September 1977.

⁸ The one exception to this is that drivers at Detroit spend 20-25 percent of their time pulling and packing orders, a warehouse function.

Wyandotte, the employees, although formally occupying a single classification, typically spend a significant part of their working time performing functions in all other classifications. Furthermore, due to Wyandotte's need to establish a market for its products at the new location, the employees there frequently are given leeway to depart from established list prices when making quotations for prospective customers. While such overlap of functions and greater degree of discretion is attributable in part to the smaller size of Wyandotte and the frequent absence of its manager, it remains that individual employees at Wyandotte perform more varied tasks and need to possess a greater range of skills.

Finally it does not appear that the two facilities at Detroit and Wyandotte are centrally managed and supervised. Since its opening, Howard Norris has been manager at Wyandotte and is in control of its day-to-day operations. He interviews job applicants and has the authority to hire, fire, or lay off employees. He also schedules, assigns work, and grants time off to employees in his charge. In addition he may discipline them by verbal or written warnings and can promote or grant them raises. While all employees at Wyandotte handle customer complaints, Norris is able to resolve complaints of a major nature.

Although some of the terms and conditions of employees at the two facilities are identical or similar, such as insurance and retirement plans, and vacation, holiday, and sick days, additional evidence shows significant differences. As previously noted, employees at Wyandotte are separately supervised and perform more varied functions. Full-time employees are salaried and participate in a profit-sharing plan, but are not directly compensated for overtime. Detroit employees are paid hourly and are not involved in profit sharing. Hours of employment also vary between the two locations.

While we note that the two operations are centralized for the purposes of certain accounting functions such as invoicing, bill paying, and banking, and that master personnel files are maintained in Detroit for Wyandotte employees, this evidence does not counterbalance the showing that in all other respects the Wyandotte facility operates with a substantial degree of autonomy from the larger Detroit operation.

For the reasons stated above, we find that the employees located at Wyandotte do not constitute an accretion to the existing units located at Detroit. Furthermore, as the Intervenor at no time presented the Employer with proof that it had acquired majority status at the Wyandotte facility, we find that the accretion clauses in the bargaining agreements for the Detroit employees did not obligate the Employer to recognize the Intervenor as the representative of employees at Wyandotte. *Houston Division of the Kroger Co.*, 219 NLRB 388 (1975).⁹ See also *Ringsby Truck Lines, Incorporated*, 211 NLRB 280 (1974). Accordingly, a question of 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 view of the above, we find that 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 office, warehouse, and customer service employees employed by the Employer at its facility located at 4072 13th Street, Wyandotte, Michigan, but excluding outside salesmen, guards, supervisors as defined in the Act, and all other employees.

Accordingly, as a majority of the valid ballots cast by employees in the above unit in the November 8, 1977, election were cast for DuComb West Employee Association and that labor organization was certified by the Regional Director for Region 7 as the representative of employees in that unit, we shall order that the stay of this certification previously issued by us be withdrawn.

ORDER

It is hereby ordered that the stay of the certification of DuComb West Employee Association as the bargaining representative of employees in the appropriate unit is hereby withdrawn and that such certification be, and it hereby is, in full force and effect.

⁹ For the reasons stated in his dissent in *Houston Division of the Kroger Company*, *supra*, Member Penello finds that the accretion clauses, as worded, would not have obligated the Employer to recognize the Intervenor, regardless of the Intervenor's ability to show its majority status.