

Holthouse Furniture Corp. and Chauffeurs, Teamsters, Warehousemen and Helpers Local Union No. 135, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 25-RC-6978

May 21, 1979

DECISION AND DIRECTION TO OPEN AND COUNT CHALLENGED BALLOTS

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND TRUESDALE

Pursuant to a stipulation upon consent election executed by the parties and approved by the Regional Director for Region 25 of the National Labor Relations Board, an election by secret ballot was conducted in the above-entitled proceeding on October 27, 1978, under the direction and supervision of said Regional Director. Upon the conclusion of the election, a tally of ballots was furnished the parties in accordance with the Board's Rules and Regulations, Series 8, as amended.

The tally of ballots shows that of approximately 14 eligible voters, six votes were cast for and four against the Petitioner. There were four challenged ballots and no void ballots. The challenged ballots were sufficient in number to affect the results of the election. No objections to conduct of the election or to conduct affecting the results of the election were filed.

Pursuant to Section 102.69(d) of the Board's Rules and Regulations, the Regional Director for Region 25, on November 14, 1978, issued a report entitled "Report on Challenged Ballots, Order Directing Hearing, and Notice of Hearing," directing that a hearing be held for the purpose of receiving evidence to resolve the issues raised by the challenged ballots.

On December 5 and 6, 1978, a hearing was held before Hearing Officer Richard J. Simon. On March 22, 1979, the Hearing Officer issued his report on challenged ballots and recommendations wherein he recommended that the challenges to the ballots of Jeffrey Holthouse, Jerry Holthouse, David Schroeder, and Albert Jones be overruled. The Petitioner filed timely exceptions and a supporting brief wherein it excepted to the Hearing Officer's recommendations that the challenges to the ballots of these four individuals be overruled. The Employer filed a reply brief.

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.

Upon the entire record in this case the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. 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 truckdrivers and warehousemen, including carpet and furniture service workers employed by the Employer at its 5980 National Road East, Richmond, Indiana, facility; but excluding all office clerical employees, all receptionists, all salesmen, all buyers, all professional employees, all guards and supervisors as defined in the Act.

The Board has reviewed the rulings made by the Hearing Officer at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the record, including the Hearing Officer's report and recommendations on challenged ballots, the Petitioner's exceptions and brief, and the Employer's reply brief in response to the Petitioner's exceptions. For the reasons set forth below, we find merit in the Petitioner's exceptions to the Hearing Officer's recommendations that the challenges to the ballots of Jeffrey Holthouse and Jerry Holthouse be overruled. We shall therefore sustain the challenges to the ballots of these individuals. We further find, in agreement with the Hearing Officer, that the challenges to the ballots of David Schroeder and Albert Jones should be overruled. We shall therefore order that their ballots be opened and counted.

The ballots of Jeffrey Holthouse and Jerry Holthouse were challenged on the basis that these individuals were relatives of members of management, and that they did not work with sufficient regularity to be included in the unit.

Jerry Holthouse is the son of S. L. Holthouse, one of the Employer's two vice presidents, who is active in the day-to-day management of the Employer's operations. Jeffrey Holthouse is the son of Thomas Holthouse, who serves as a buyer for the Employer.

S. L. Holthouse and Thomas Holthouse are members of the Employer's board of directors. The remaining members of the board of directors at times material to this proceeding were Siegfried J. Holthouse,¹ father of S. L. Holthouse; G. Howard Holthouse, father of Thomas Holthouse; Flora Holthouse, sister-in-law of Siegfried J. Holthouse and G. Howard

¹ Siegfried J. Holthouse died on December 3, 1978, 2 days prior to the commencement of the hearing.

Holthouse; and Jack Edwards, son-in-law of Flora Holthouse. As of the day of the election, Siegfried J. Holthouse served as the Employer's president, G. Howard Holthouse served as secretary-treasurer, and Flora Holthouse served as vice president.

Of approximately 3,544 shares of stock outstanding, the members of the board of directors and the wives of board members Siegfried J. Holthouse, G. Howard Holthouse, and Jack Edwards own approximately 1,340 shares.² An additional 827 shares are owned by other sons and daughters of Siegfried J. Holthouse, G. Howard Holthouse, and Flora Holthouse,³ and approximately 374 shares are owned by grandsons and granddaughters of Siegfried J. Holthouse, G. Howard Holthouse, and Flora Holthouse.⁴ The record does not reflect whether the members of the board of directors are authorized to vote any shares not personally held by them. Nor does the record reflect who owns or who is authorized to vote the remaining shares.

Jeffrey Holthouse and Jerry Holthouse are high school students who are employed in the Employer's warehouse on a part-time basis.⁵ They live at the homes of their respective parents. As reflected herein, they each own a small number of shares of stock of the Employer.

Ronald Holthouse, the Employer's controller, testified that Jeffrey Holthouse, Jerry Holthouse, and Allen Edwards⁶ perform their work under a common schedule. He testified that he had personally arranged their work schedules on several occasions in the past and in doing so had taken into consideration "any special activities or any special vacation request that they might have."⁷ He testified that during the school year these three individuals work hours that generally range from 5 to 9 p.m., Monday through Friday; from noon to 6 p.m. on Saturday; and from 12:30 to 5 p.m. on Sunday. In addition, the record reflects that they work in rotation, making it possible for each of

them to avoid working more than one shift or work period during a weekend.

Ronald Holthouse stated that during the summer months two of these three employees "generally" work from 8 a.m. to 5 p.m. "or a regular shift," Monday through Friday, while the third works from 5 to 9 p.m., Monday through Friday. As during the school year, they rotate their workdays, thereby dividing evening work. The record reflects that the hours of full-time employees normally begin during the period from 7 to 8 a.m. and end during the period from 3:30 to 5 p.m. each day, Monday through Saturday.⁸

Employee Marvin Vance gave uncontradicted testimony that on one occasion Jerry Holthouse arranged to switch his scheduled workday with another part-time employee so that he could attend a concert. While the Employer introduced records which showed that on one occasion Vance worked on his regularly scheduled day off and was off duty on a regularly scheduled workday during the same workweek, there is no showing in the record that this change occurred for Vance's personal convenience. Vance further gave uncontroverted testimony that Jerry Holthouse and Jeffrey Holthouse have lunch with their fathers about two or three times per week while they are at work during the summer months.

The record shows that Jeffrey Holthouse, Jerry Holthouse, and Allen Edwards work under the same supervision and perform the same functions as do other warehouse employees who are admittedly within the unit.

Upon consideration of the record herein, we find that the interests of Jeffrey Holthouse and Jerry Holthouse are more closely allied with those of management than with those of their fellow employees. They are related to persons who, collectively, own at least 70 percent of the outstanding stock of the Employer.⁹ They are, in addition to being stockholders themselves, closely related to certain officers, members of the board of directors, and persons actively engaged in the day-to-day management of the Employer's operations who, in turn, are closely related to other officers and directors of the Company.¹⁰ Furthermore, they live at home with their parents and have social contact with their fathers at work. It also appears that they frequently perform work in the warehouse when no full-time employees or other part-time employees are present. In these circumstances, we find that they do not share a community of interest with other employees. Furthermore, we find that they enjoy a special status as result of their relationships to members

² S. L. Holthouse owns 121.5 shares, and Thomas Holthouse and his wife, Joy, own 103.5 shares. The combined total referred to in this group includes the stock owned by Siegfried J. Holthouse at the time of his death.

³ Of these shares, 95.5 are held jointly by Ronald Holthouse, son of G. Howard Holthouse, and his wife, Regina.

⁴ Jeffrey Holthouse, grandson of G. Howard Holthouse, owns 21 shares, and Jerry Holthouse, grandson of Siegfried J. Holthouse, owns 12 shares.

⁵ While there was testimony that they worked on a full-time basis during the summer, the Employer's records showed that they rarely worked as many hours as regular full-time employees during the summer months of 1978.

⁶ Allen Edwards is the son of Jack and Marcia Edwards. Marcia Edwards is the daughter of Flora Holthouse and is a stockholder. Allen Edwards is a high school student who works for the Employer on a basis similar to that of Jeffrey Holthouse and Jerry Holthouse. The record does not indicate whether he voted in the election. In addition to being a member of the Employer's board of directors, Jack Edwards serves as assistant store supervisor for certain of the Employer's retail stores.

⁷ As part-time employees who are attending high school, Jeffrey Holthouse, Jerry Holthouse, and Allen Edwards do not receive paid vacations as do other part-time employees and full-time employees within the unit.

⁸ The Employer's time records indicate that there are fewer full-time employees working on Saturday and Monday than on Tuesday through Friday.

⁹ In his reply brief, Employer's counsel states, "Admittedly, 75 per cent of the corporate stock is held by individuals who can trace their ancestry to a common great grandfather."

¹⁰ Cf. *Parisoff Drive-In Market, Inc.*, 201 NLRB 813 (1973).

of management.¹¹ They are in the unique position of being able to adjust their regularly scheduled hours for their own personal convenience. We shall therefore sustain the challenges to their ballots.¹²

As we have adopted the Hearing Officer's recommendation that the challenges to the ballots of David Schroeder and Albert Jones be overruled, and because their ballots may affect the results of the election, we shall order the Regional Director to open

and count the ballots of Schroeder and Jones and to cause to be served on the parties a revised tally of ballots including therein the count of said ballots.

ORDER

It is hereby ordered that the Regional Director for Region 25 shall, pursuant to the Board's Rules and Regulations, within 10 days from the date of this Order, open and count the ballots of David Schroeder and Albert Jones, prepare and cause to be served on the parties a revised tally of ballots, and issue an appropriate certification based on the revised tally of ballots.

¹¹ Cf. *Novi American, Inc.*,—*Atlanta*, 234 NLRB 421 (1978).

¹² Member Truesdale agrees that the challenges to the ballots of Jeffrey Holthouse and Jerry Holthouse should be sustained for the reasons given but would also sustain the challenges for the reasons set forth in his dissent in *Tops Club, Inc.*, 238 NLRB 928 (1978).