

McCoy Co. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 775, Petitioner. *Case No. 27-RC-2717. March 2, 1965*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer F. T. Frisbey. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Briefs were filed by both the Employer and Petitioner.

Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Brown and Jenkins].

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim to represent certain employees of the Employer.¹

3. A question affecting 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. The Employer is engaged in the sale, distribution, and service of heavy duty construction equipment at Commerce City, a suburb of Denver, Colorado, and at three branches, which are located in Colorado at distances of about 110 to 338 miles from Commerce City. The Petitioner seeks a unit of warehousemen, partsmen, parts countermen, pickup and delivery drivers, and shipping and receiving clerks in the parts department at the Employer's Commerce City operation; it indicated in its brief, filed after the hearing, that it is willing to include such employees at the Employer's three branch locations if the Board should require their inclusion in the appropriate unit. The Employer contends that the unit should include the parts-department employees at the branch operations, and the field-service mechanics at all the operations. The Intervenor, which represents a unit of construction equipment mechanics at Commerce City and the three branches,² also urged

¹ International Union of Operating Engineers, Local No. 9, AFL-CIO, was permitted to intervene on the basis of a showing of interest.

² The contract between the Employer and the Intervenor covers a unit of construction-equipment mechanics, welders, and yard employees at all the Employer's operations, excluding field-service mechanics and all other employees. There is no evidence that this unit is based upon a Board certification.

a companywide unit of parts-department employees, including field-service mechanics, but indicated a willingness to represent any unit found appropriate. There is no bargaining history covering the employees sought by the Petitioner.

The Commerce City and branch establishments perform basically the same operations. Each location has a parts department, a sales department, and a service department. Overall supervision is maintained at Commerce City, and the branches submit their payrolls to Commerce City, where the paychecks are prepared. Parts and supplies are distributed to the branches from Commerce City, where the parts inventory is controlled through an electronic system. All the Employer's employees have the same insurance and other employment benefits.

There is, however, separate local management at each branch, including departmental managers who direct the employees in their departments, and possess the authority to hire subject to Commerce City approval, and to discharge if the situation requires it. While it appears that there are some transfers between locations, the record does not establish the frequency of such transfers, nor whether they are permanent or temporary.

It thus appears that, while some centralized control is maintained by Commerce City over all the branches, there also exists a considerable degree of autonomy in the day-to-day operations of each establishment. Therefore, although, as indicated above, there are some factors supporting a statewide unit, the appropriateness of such a unit does not establish the inappropriateness of a smaller unit.³ Accordingly, upon the entire record, particularly in view of the considerable distance separating Commerce City from each of the branch operations, the lack of any showing of substantial interchange among the parts-department employees at the different operations, the separate supervision at each location, and the absence of any determinative bargaining history, we find that a unit confined to employees at Commerce City is appropriate.⁴

The parties, while in disagreement as to the scope of the unit, do not dispute the basic appropriateness of a unit of parts-department employees. They disagree as to the unit placement of the field-service mechanics, whose inclusion is urged by the Employer and Intervenor but opposed by the Petitioner.

³ *Montgomery Ward & Co., Incorporated*, 150 NLRB 596

⁴ *Amarillo Hardware Company, Inc., et al.*, 148 NLRB 48; *P. Ballantine & Sons*, 141 NLRB 1103; *N L R B. v. Schull Steel Products, Inc.*, 340 F. 2d 568 (C.A. 5).

The parts-department employees are engaged in loading, unloading, selling, and delivering parts, and are not required to be mechanics, whereas the field-service mechanics, who are not in the parts department but in the service department, are required to be mechanics. The duties of the field-service mechanics, who travel considerably, include selling machines and parts, and repairing and adjusting the machines in accord with the Employer's warranty thereon. They also do sales promotion of the Employer's products. Furthermore, the field-service mechanics work under different supervision, receive substantially higher wages and do not interchange with parts-department employees. Accordingly, we find that the work and the employment interests of the field-service mechanics differ substantially from those of the parts-department employees, and we shall therefore exclude the field-service mechanics from the parts-department unit.⁵

The parties stipulated to the supervisory status of a number of individuals, including Varela, the warehouse manager. They were in dispute, however, as to Walter Johnson, the warehouse leadman, who the Petitioner contends, contrary to the Employer and the Intervenor, is a supervisor. Johnson trains new men; and he assigns work, including truck driving, to warehouse employees. He was, on at least one occasion, consulted concerning a layoff, and his recommendation was effective. In addition, he substitutes for Varela, who is the parts-exchange manager as well as the warehouse manager, when Varela is absent which Johnson estimated was about 20 to 25 percent of the time. Accordingly, we find that Johnson is a supervisor within the meaning of the Act, and we shall therefore exclude him from the unit.⁶

Accordingly, we find that the following unit is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All warehousemen,⁷ partsmen, parts countermen, pickup and delivery drivers, and shipping and receiving clerks at the Employer's Commerce City, Colorado, operation, excluding salesmen, field-service mechanics, office clerical employees, professional employees, guards, watchmen, all other employees, the warehouse leadman, and all other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

⁵ *The Woodman Company, Inc.*, 119 NLRB 1784, 1787.

⁶ See *The Powers Regulator Company*, 149 NLRB 1185.

⁷ Tom Whitmill, a used-parts warehouseman, who is engaged under the supervision of the sales department in salvaging and storing parts of used machines, is included in the unit in accord with a stipulation of the parties