

Frito-Lay, Inc. and Sales Drivers & Helpers, Local 274, of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 28-RC-1732

April 18, 1968

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND ZAGORIA

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Harroliese Brown, Hearing Officer. Following the hearing, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 28, this case was transferred to the Board for decision. The Employer and the Petitioner have filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

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 policies of the Act to assert jurisdiction herein.

2. The labor organization involved claims 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 Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The Employer manufactures and distributes throughout the United States various snack products. The Employer's administrative structure, for purposes of sales and distribution, is organized geographically, by zone, division, region, area, and district, in order of decreasing size. The Petitioner seeks to represent a unit limited to the route salesmen who work out of the Employer's Phoenix, Arizona, warehouse, which unit would embrace two out of three districts contained in area 8, encompassing most of the State of Arizona. The Employer maintains that the bidistrict unit might be appropriate, the appropriate unit should include all of the route salesmen in region IV, which covers

all of Arizona and the southern part of California. There is no bargaining history.

All route salesmen are engaged chiefly in obtaining merchandise from a warehouse, loading it onto their trucks, and distributing it to the customers on their routes. Route salesmen are directly supervised by district managers.

District managers train and direct route salesmen, prepare reports of sales and inventory, hold weekly sales meetings, and make calls on major accounts. They also assist route salesmen with difficult collections, display work, and complaints. When the services of the relief route salesman are insufficient to meet the demand, district managers relieve sick or vacationing route salesmen. District managers usually recommend the hiring and firing of route salesmen, but their recommendations require the approval of the area and regional managers.

The area manager generally supervises the district managers, attends weekly district sales meetings, and is responsible for making chainstore contracts. He exchanges trucks within the area to equalize their mileage. He also makes recommendations as to hiring or firing of route salesmen, and as to establishing or changing existing routes and district boundaries, although the regional manager usually makes the final decisions.

The regional manager, whose office is in San Diego, California, in addition to exercising the ultimate power of decision in the matters discussed above, sets up sales contests of various types, prepares annual sales quotas, and organizes the promotion of new products. He also travels throughout the region attending sales meetings and consulting with area and district managers.

The route salesmen, district managers, area managers, and regional manager are all paid on the basis of a guaranteed salary plus commission. Compensation and certain fringe benefits of route salesmen are determined at the division level, other fringe benefits are companywide.

The geographical boundaries of the Arizona districts in area 8, while contiguous, do not overlap, and, although there have been a few permanent transfers, there is no interchange of route salesmen among Districts. The route salesmen of the two districts petitioned for, however, operate out of a common central warehouse in Phoenix; and their managers share the same office and even the same desk, and frequently hold their weekly meetings with their route salesmen together on a joint basis. There are only two or three areawide meetings per year. The nearest warehouse to Phoenix out of which other route salesmen operate is in the third

remaining district in area 8, which is located in Tucson, approximately 120 miles away.

A region or areawide unit may well be, as the Employer suggests, appropriate. It does not follow, however, that either such unit is necessarily the only appropriate unit, especially where, as here, no union seeks to represent the route salesmen on either such basis. Similarly, a more limited unit of all route salesmen in a district might also be appropriate.¹ However, the Board indicated in the *Metropolitan Life* case² that a unit composed of two or more districts could be appropriate in circumstances such as those present here. Thus, the two-district unit requested by the Petitioner includes all of the route salesmen in geographically contiguous districts, who are engaged in the same work under the same working conditions; operate out of the only warehouse in the metropolitan area of Phoenix; and who have separate immediate supervision and are geographically separated from other route salesmen, with whom they do not interchange, by at least 120 miles. Accordingly, we

find that a unit composed of all route salesmen in the two districts who work out of the Phoenix warehouse is appropriate.³

The parties take no position on the unit placement of the area relief man. As he relieves only route drivers in these two districts working out of the Phoenix warehouse, we shall include him. Warehousemen are excluded in accord with the agreement of the parties.

5. Accordingly, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All route salesmen and the relief route salesman working out of the Phoenix, Arizona, warehouse; excluding all other employees, warehousemen, guards, watchmen, District Managers, and supervisors as defined in the Act.

[Text of Direction of Election⁴ omitted from publication.]

¹ See *Iroquois Telephone Corporation*, 169 NLRB 344, *Metropolitan Life Insurance Company (Woonsocket, R. I.)*, 156 NLRB 1408.

² *Metropolitan Life Insurance Company (Woonsocket, R. I.)*, *supra*, in which the Board stated, at 1415 "a unit composed of two or more district offices may also be appropriate if there is a reasonable degree of geographic coherence among the offices. If the offices are not too distant and their territories are either adjacent or in reasonable proximity to one another, then, in the absence of strong countervailing considerations, the conventional and well accepted criteria would justify such a grouping."

³ We find inapposite *Frito-Lay, Inc.*, Case 12-RC-1808, and *State Farm Mutual Automobile Insurance Company*, 158 NLRB 925, relied on by the Employer. Aside from other considerations, the units found inappropriate in those cases, unlike the unit here, were not justified on the basis of geo-

graphic or administrative structural coherence.

⁴ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 28 within 7 days after the date of this Decision and Direction of Election. The list may initially be used by the Regional Director to assist in determining an adequate showing of interest. The Regional Director shall make the list available to all parties to the election when he shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.