

**Rainbo Baking Company of Albuquerque and International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 28-RC-2067**

January 12, 1971

**DECISION AND DIRECTION OF ELECTION**

**BY CHAIRMAN MILLER AND MEMBERS FANNING AND JENKINS**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before William T. George, Jr., Hearing Officer of the National Labor Relations Board. Thereafter, the Regional Director for Region 28, having duly considered the matter, concluded that the record as presented to him precluded the possibility of his making an informed decision. The Regional Director ordered that the record herein be reopened to adduce additional evidence bearing on certain issues enumerated in his order reopening record and remanding proceeding for further hearing. Accordingly, a further hearing was held before Peter N. Maydanis, Hearing Officer of the Board. 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, this case was transferred to the Board for decision. Thereafter, the Employer filed a brief with the Board.

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

The Board has reviewed the Hearing Officers' rulings made at the hearings 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 purposes 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 Petitioner seeks to represent a unit of the Employer's unrepresented truck fleet mechanics and maintenance engineers.<sup>1</sup> The Employer contends that

the petition should be dismissed because a separate unit of its mechanics and engineers would be inappropriate inasmuch as its production employees are currently represented by the American Bakery & Confectionery Workers in a certified multiemployer unit.<sup>2</sup>

The Employer is a wholesale manufacturer and distributor of baked goods in the Albuquerque area. The bakery production process is a continuous operation primarily utilizing automated, precision machines. To insure that the flow of finished products is not interrupted, maintenance engineers are employed to constantly monitor the equipment and make any necessary adjustments or repairs. While production workers can make minor adjustments to the machines on which they are working, any task requiring special skills, tools, or know-how is performed by engineers. Maintenance engineers repair electronic circuits, adjust valves and settings, set the blades on slicing machines, and perform similar functions. The engineers also perform preventive plant and equipment maintenance.

Fleet mechanics service and repair the Employer's approximately 65 trucks. They do not adjust or repair any production machinery unless there is an emergency, in which case all employees are required to assist in getting the production process flowing again. When an engineer is on vacation, a mechanic performs his job; neither mechanics nor engineers perform production, truck loading, or delivery work. Mechanics repair the racks on which bread is stored during shipment and once a week one mechanic's entire day is occupied in sorting returned merchandise. The truck service department in which the mechanics work is not physically separated from the plant.

The Employer's bakery production process employees are currently represented by the American Bakery & Confectionery Workers. All collective-bargaining agreements between Albuquerque's large, mechanized wholesale bakeries, including the Employer, and the union representing their production employees have been negotiated on the employers' behalf by an employer association, the Baking Establishments of Albuquerque, New Mexico. Small bakeries which prepare bread by hand and have few employees are not association members.

The Employer's holiday, vacation, and sick leave policies are uniform for all employees, and the unrepresented employees' health care, life insurance, and welfare payment plans are comparable to those

would participate in an election to represent the Employer's maintenance engineers and/or fleet mechanics in separate units if the Board found such units appropriate

<sup>2</sup> The American Bakery & Confectionery Workers was notified by ordinary mail of the hearings herein but did not participate in the proceedings

<sup>1</sup> The unit requested by the Petitioner also allegedly encompasses "painters, bodymen, their helpers and/or apprentices" in the truck service department. However, the record herein fails to reveal that such job classifications exist at the Employer's establishment and, in fact, indicates that fleet mechanics paint and repair truck bodies. Accordingly, we shall consider the proposed unit limited to fleet mechanics and maintenance engineers. The Petitioner indicated at the second hearing herein that it

for the represented production workers. The production employees' supervision is separate from that of the engineers and mechanics; the two groups of three engineers and three mechanics each have separate supervision.

An established bargaining history on a multiemployer basis will determine the scope required for a unit of previously unrepresented employees if those employees are in excluded fringe classifications which otherwise lack homogeneity, cohesiveness, or separate identity, and are merely residual to the main body of employees in the established unit.<sup>3</sup> While a production and maintenance unit is inherently appropriate, a unit of previously unrepresented maintenance employees may also be appropriate where, as here, the maintenance employees have more skill than the organized production workers, do not interchange

<sup>3</sup> *Pacific Drive-In Theaters Corp.*, 167 NLRB 661. But such a history will not preclude the establishment of a single-employer unit of employees if that unit has internal homogeneity and cohesiveness. *Joseph E. Seagram & Sons, Inc.*, 101 NLRB 101; *Piggly Wiggly California Company*, 144 NLRB 708.

<sup>4</sup> *Myers Drum Company*, 165 NLRB 1060. We do not deem it significant that the maintenance employees in *Myers* had a separate shop whereas here the engineers perform their maintenance function throughout the plant and the mechanics work in a part of the plant reserved for trucks.

<sup>5</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their

with them, receive higher rates of pay than production workers, and are supervised apart from the production employees.<sup>4</sup> Since the maintenance employees herein have a separate identity, they do not constitute a residual group and the scope of the unit requested need not be multiemployer.

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

All truck fleet mechanics and maintenance engineers employed at the Employer's Albuquerque, New Mexico, baking plant, excluding production employees, drivers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Direction of election<sup>5</sup> omitted from publication.]

addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236; *NLRB v Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that 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 of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. 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.