

Burroughs Corporation and Local 365, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Petitioner. Cases 29-UC-9 and 29-AC-5

September 19, 1968

**DECISION ON REVIEW AND ORDER
CLARIFYING AND AMENDING
CERTIFICATION**

BY CHAIRMAN McCULLOCH AND MEMBERS BROWN
AND ZAGORIA

On January 5, 1968, the Regional Director for Region 29 issued a Decision and Order in the above-entitled proceeding in which he dismissed the Petitioner's petitions for clarification and amendment of the unit for which its parent, the UAW, was certified on January 11, 1966. Thereafter, the Petitioner filed with the National Labor Relations Board exceptions and a supporting brief which have been treated as a timely request for review of the Regional Director's Decision on the grounds that he erred in his findings of fact and conclusions of law. The Employer filed a statement in opposition thereto.

By telegraphic order dated March 20, 1968, the Board granted the Petitioner's request for review.

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 considered the entire record in this case with respect to the issues under review and makes the following findings.

The Employer manufactures, sells, installs, and services business machines, data processing systems, and electronic computers. It has headquarters and Western and Eastern regional offices at Detroit, Michigan. It conducts its operations through district offices located throughout the United States. Each district office has branch offices reporting to it.

The Petitioner seeks clarification of a unit for which the UAW was certified in Case 29-RC-320. In that case, the UAW requested a unit of service

employees working out of the then New York City branch office and the Brooklyn branch office¹ of the Employer's New York district.² In the alternative, it indicated a willingness to accept single branch units. On November 19, 1965, the Regional Director issued a Decision and Direction of Elections in which he rejected the combined unit as inappropriate because of his conclusion that "the New York and Brooklyn offices share no community of interest with each other that they do not also share with the other branch offices in the New York district," and found appropriate single-branch units as alternatively sought. The Employer filed a request for review of that Decision on the ground that a unit finding less than district wide in scope was inappropriate. The UAW filed opposition to the request for review, asserting that although in its view the unit primarily sought was appropriate, the Regional Director's finding of two separate units was equally proper. The Board denied the Employer's request for review. The UAW lost the election in the Brooklyn branch unit. On January 11, 1966, it was certified as representative of a unit of "all field service engineers, including field engineers 1, 2, 3, and 4, sorter specialists, stock room clerks, shipping room clerks and receiving room clerks" at the 605 Third Avenue, New York City branch office of the Employer's New York district.

On February 5, 1966, the Employer advised the UAW that a new branch office would be opened at 110 Wall Street, New York City, and that approximately 86 of the 174 employees in the certified unit would be transferred to the new branch. On April 11, 1966, while negotiations with the Petitioner³ were in progress, the Employer opened the new branch, which was named the New York Financial branch office, assigning to it part of the geographical area formerly served by the Third Avenue office, which was renamed the New York Commercial branch office.⁴ On July 13, 1966, the Employer and the Petitioner executed a 1-year contract, effective July 1, 1966, confined to service employees of the New York Commercial branch office.

On February 13, 1967, the Employer established a new branch office in the Queens borough of New York City for the Queens segment of the New York Commercial branch, transferring to it the nine unit employees who serviced the accounts located in

¹ The Brooklyn branch office had just been created to administer the operations within a territory which was previously part of the New York City branch, and its 10 servicemen were transferees from that branch who, for the most part, continued to service the same accounts as they had serviced prior to their transfer.

² The New York district then had eight branch offices: New York City, Brooklyn, and Hempstead, New York; Elizabeth, Newark, and Paterson, New Jersey; and Bridgeport and New Haven, Connecticut.

³ The UAW had assigned to the Petitioner the right to bargain for the employees in the certified unit on behalf of the UAW and itself.

⁴ The UAW filed an 8(a)(5) charge in Case 2-CA-10932 on March 15, 1966, concerning the Employer's refusal to continue to bargain with respect to employees to be transferred to the new Wall Street branch as part of the certified unit. The Regional Director dismissed the charge and the General Counsel denied an appeal therefrom on July 19, 1966.

Queens. On June 16, 1967, after the Petitioner gave timely notice to terminate its 1-year contract, the Employer informed the Petitioner that it intended to create a new branch office in Westchester County, New York, for another segment of the Commercial branch and transfer to it the ten unit employees who serviced accounts located in that segment, which encompassed the Bronx borough of New York City and an adjoining portion of Westchester County. On June 22, 1967, the instant petitions were filed. The new Westchester branch office was opened on July 3, 1967. On September 29, 1967, a decertification petition was filed in Case 2-RD-702 by employees of the Commercial branch.

The Regional Director found no basis for reconsidering his earlier decision in Case 29-RC-320. He also concluded that as each new branch was established, it achieved the same degree of autonomy within the district as the existing branches had, and that, therefore, the service employees attached to the new branches are no longer part of the certified unit. The Petitioner argues that experience since the UAW's certification has demonstrated that the Regional Director erred in rejecting its request for a citywide unit combining the New York City and Brooklyn branches, and that such unit remains appropriate today despite the Employer's subsequent creation of three new branches from segments of the certified unit.

In view of the Petitioner's failure to seek review of the Regional Director's determination in Case 29-RC-320 that the unit which it primarily sought was inappropriate, its willingness to participate in elections in single-branch units, and the fact that it lost the election in the Brooklyn branch unit, we believe it is precluded at this time from obtaining reconsideration of such earlier decision for the purpose of including the Brooklyn branch service employees in the certified unit without a self-determination election. We therefore affirm the Regional Director's denial of such request for reconsideration. However, we find merit in the Petitioner's contention that the service employees assigned to new branch offices carved out of the certified unit remain part of such unit, and that the request for clarification should be granted to this extent.

As found by the Regional Director in his earlier decision, each branch generally has a branch

manager, a branch field engineering manager, salesmen, office personnel, sales representatives, sales trainees, one or more group field engineering supervisors, field engineers, stockroom clerks, and shipping and receiving employees. Personnel and labor policies are controlled by the district office. The district manager determines the budget for each of the branches under him and takes final action on all branch personnel matters on the basis of recommendations of the branch managers. Branch managers resolve minor grievances of their employees.

At the time of the UAW's certification, the employees assigned to both the New York City and Brooklyn branch offices served all customers located in New York City, including an adjacent portion of Westchester County. When the three new branches were carved out of the certified unit, virtually the only change made affecting the community of interest shared by unit employees was the designation of a separate branch manager and field branch manager for each of the new branch offices.⁵ In all other respects their duties and work relationships remained unchanged. After transfer to the new branch office, the service employees continued to service the same accounts under the same immediate group supervisor. As before, service employees continued to have minimal contact with the branch office, most of their contacts being by telephone or mail. Parts and supplies are normally shipped to their homes or picked up by them at the branch office. They mail reports to both the branch office and Detroit headquarters. Their group supervisors⁶ report to the field branch manager who in turn reports to the district field engineering manager. Although the frequency of temporary interchange is not clear, it appears to occur when needed for periods ranging from a few hours to a few weeks. One service employee transferred to the Westchester branch office testified that some customers are serviced by more than one branch because of the different items of equipment involved.

Upon the foregoing facts, and as the scope of the certified unit was basically citywide, except for the area served by the Brooklyn branch office which, as above indicated, the UAW in 1965 accepted as an appropriate single-branch unit, we are unable to agree with the Regional Director's conclusion that the service employees transferred to the new

⁵ It appears also that the Financial branch office, like the Commercial branch office, has a shop, and that one or more service employees may work in the shop. It is not clear from the record whether or not the Queens and Westchester branch offices have a shop.

⁶ Before the creation of the Brooklyn branch office in 1965, there were 15 groups in the New York City branch. The Brooklyn, Queens, and

Westchester branches each has one group of service employees. The groups are set up on various bases. One, perhaps the principal basis, is geography (the location of the customers), another is the size of the account (a number of men servicing a specific account may be deemed large enough to constitute separate group), a third is the type of equipment being serviced (certain types of equipment require specialized skills).

branch offices are no longer part of the certified unit. On the contrary, we find that the administrative and other changes entailed in the establishment of the new branch offices did not substantially impair the community of interest shared by the transferred service employees with those who remained attached to the New York Commercial branch office.⁷

⁷ The cases of *The Youngstown Sheet and Tube Company*, 132 NLRB 682, and *General Electric Company*, 123 NLRB 1193, relied on by the Re-

Accordingly, it is hereby ordered that the certification issued to the UAW in Case 29-RC-320 be, and it hereby is, clarified and amended to reflect the facts that the New York City branch has been renamed the New York Commercial branch, and that the service employees assigned to the New York Financial, Queens, and Westchester branches of the Employer's New York District are included in the certified unit.

gional Director in support of his contrary finding, are clearly distinguishable on their facts