

Safeway Stores, Incorporated¹ and Bakery and Confectionery Workers International Union of America, Local 345, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,¹ Petitioner. Case 31-RC-928

September 15, 1969

DECISION AND DIRECTION OF
ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND JENKINS

On September 20, 1968, Bakery and Confectionery Workers International Union of America, Local 345, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Petitioner, filed with Region 31 of the National Labor Relations Board a Petition for Certification of Representatives pursuant to Section 9(c) of the National Labor Relations Act, as amended. Subsequently, a hearing was held before Norman H. Greer, Hearing Officer, for the purpose of taking testimony with respect to the issues raised by the petition. Following the hearing and 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 National Labor Relations Board in Washington, D.C., for decision. Briefs have been timely filed by the Employer, the Petitioner, and the Intervenor.²

Pursuant to 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 they are free from prejudicial error. The rulings are hereby affirmed.

Upon the entire record in this case, including the briefs of the parties, 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 organizations involved claim to represent certain employees of the Employer.

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

The Petitioner seeks a craft severance election for all experienced and inexperienced bakers employed by the in-store bakeries maintained by the Employer

in four of its supermarkets located in the Las Vegas, Nevada, area. At the time of the hearing herein, there were about seven such bakers being sought by the Petitioner for its prospective bargaining unit.³ As already stated, these bakers are currently represented by the Intervenor under the terms of a labor agreement effective from December 1, 1965, until November 30, 1970.⁴ This contract also covers bakery clerks, and employees in the grocery, produce, and liquor departments, and snack bar. The meat department employees are separately represented by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, which is not a party to this proceeding.

The Petitioner contends that the bakers in question are journeymen bakers whom it traditionally represents and who perform skilled duties and constitute a craft unit entitled to severance under the criteria set forth in *Mallinckrodt Chemical Works, Uranium Division*, 162 NLRB 387. The Employer and the Intervenor urge, *inter alia*, that a proper construction of our *Mallinckrodt* decision dictates the dismissal of this petition because the bakers sought do not have special interests which separate them from the interests of other employees represented by the Intervenor, are now being effectively represented by the Retail Clerks, and the severance of the bakers would seriously affect the stability of the existing pattern of industrial relations. For the reasons discussed below, we agree with the Petitioner that the in-store bakers constitute an appropriate craft unit and that the petition for their severance from the existing unit represented by the Intervenor may be properly entertained under the *Mallinckrodt* criteria.

The in-store bakers sought to be represented by the Petitioner work in retail food supermarkets which are part of the Employer's district organization comprising 7 stores in Nevada and 2 stores in California. This district is one of the 17 districts within the Employer's Southern California Division, which comprises over 231 retail food markets. Within each of the above stores the Employer generally has a grocery department, a produce department, snack bar, liquor department, in-store bakery, and meat department, all under the supervision of the store manager.

The Employer recognized the Intervenor as the collective-bargaining agent for the bakers sought herein when it opened its first in-store bakery in the Las Vegas area in 1961. This was done on the basis of a card check. As the three other in-store bakeries were later opened, the bakers were covered by the existing contract. When the in-store bakeries were first established, they were designed to produce baked goods from frozen doughs shipped from the

¹Names appear as corrected at the hearing.

²Retail Clerks International Association, Local No 1536, AFL-CIO, herein referred to as Intervenor or Retail Clerks, was permitted to intervene at the hearing on the basis its bargaining agreement with the Employer covers the employees sought in the petition.

³The parties stipulated that bakery department managers, also sometimes called head bakers, be excluded from the unit as supervisors.

⁴The parties stipulated that this agreement does not constitute a bar to the petition.

Employer's wholesale bakery plant. As the Board majority noted in *Safeway Stores, Incorporated*, 137 NLRB 1741, involving stores in the Los Angeles area, the in-store bakers in 1961 did not exercise the "full gamut of skills usually associated with the bakers' trade, generally did not work from recipes, and did not measure and mix the basic ingredients." In addition to their baking functions, and as part of their regular duties, the in-store bakers also spent about 25 percent of their time in selling areas of the bakery department and had regular contacts with customers. Furthermore, all store employees worked under direct supervision of the store manager. Accordingly, the Board majority found that the bakers in question at that time neither were skilled craftsmen, nor did they otherwise enjoy a separate community of interests from other store employees.⁵

In 1963, the Employer converted its in-store bakeries to full-fledged hand bake shops capable of producing about 95 percent of their vendible items from primary ingredients, and the duties and skill requirements of bakers have markedly changed. The in-store bakers now are required to be able to, and do, mix and bake ingredients, according to recipes prepared by the Employer to produce breads, pastries and other baked goods; work from raw products to produce finished materials; decorate cakes, etc. Among the some 70 different types of products baked are bread, cake, doughnuts, Danish pastry, candies, sweet buns, cookies, and cupcakes. Although the bakers generally use the Employer's formulas, which must be carefully followed as to control and quality, some products, such as salt-free bread, have been devised by the bakers from their own knowledge. No frozen dough is any longer supplied or used. The bakers work at ovens, mixers, and fryers, and use rolling pins, bench scrapers, spatulas, spoons, decorating bags and tubes, and other tools of skilled journeymen bakers. Testimony adduced at the hearing indicated that a fully trained baker requires several years on-the-job training. The Employer has an established apprenticeship training program for bakers which last 2 years. At the end of the 2-year training period, the inexperienced bakers are advanced to the experienced baker classification.

Each of the in-store bakeries is headed by a bakery department manager who supervises bakers and the bakery sales clerks who sell the baked goods.⁶ In each store the bakeshop is part of the back store area not frequented by the public. The bakery sales area is part of the supermarket open to the public and is adjacent to the bakeshop area. The bakery sales clerks wrap, package and box the various products baked, as an adjunct to displaying and selling it in the sales area. While the record shows that the bakery clerks spend considerable time in the bakery shop area, the bakery clerks

perform no baking functions and their work is entirely related to sales. Similarly, the bakers have only rare contact with customers. When no bakery sales clerks are on duty, sales counters are serviced by snackbar or other sales clerks from other departments.

Although the bakers receive the same fringe benefits provided other employees in the Intervenor's bargaining unit, the bakers perform their duties at unusual hours, including the very early morning hours while the sales part of the market is closed at most of the stores. Bakers and other store employees have separate and distinct lines of seniority.

From the above, and on the basis of the entire record, we are satisfied that the bakers sought herein by the Petitioner are skilled journeymen performing the skills of their craft and have a community of interest sufficiently separate and distinct from that of other employees to constitute them a separate appropriate unit, if they so desire. Further, although they have heretofore been included in a broader unit there has been only a short bargaining history and when the Employer changed its method of baking operations in 1963 their separate community of interest distinguishing them from other employees in the bargaining unit became substantial and apparent.⁷

Moreover, we find insufficient basis to support the contentions of the Employer and the Intervenor that a severance of the proposed unit of in-store bakers would be disruptive of the pattern of bargaining or otherwise seriously affect the stability of industrial relations. The Petitioner is a labor organization which has traditionally represented units of journeymen bakers and, in fact, currently represents the in-store bakers of another employer in 3 stores in this same Las Vegas area. Moreover, the record further shows that retail supermarkets of other employers in Southern California have contracts with affiliates of the Petitioner covering in-store bakers, and that the Petitioner's affiliates also represents in-store bakers in some of the Employer's stores located in cities in Northern California and in certain instances in Oregon. Significantly, we note that the Employer's meat department employees are separately represented, and that the parties make no contention that such separate representation has been disruptive of the stability of labor relations.

In view of the foregoing, we conclude that the Petitioner's proposed unit constitutes an identifiable group of craft bakers who are engaged in the skills of their trade and who perform functions that are different from and not integrated with those of other in-store employees. We further conclude that the bargaining history of their inclusion in the broader unit does not militate against their severance, particularly in view of the recent changes in the

⁵Member Fanning dissented. In his view, the experience and job duties of that group of bakers made them appropriate as a craft unit, a departmental unit, or, in that case, a residual unit.

⁶The Petitioner is not seeking to represent the bakery sales clerks.
⁷See *Jay Kav Metal Specialties Corp.*, 163 NLRB 719, *Buddy L Corp.*, 167 NLRB No 113, cf. *Pervel Industries*, 163 NLRB 1037.

Employer's method of baking and the changed job requirements. Additionally, it appears to us that the history and pattern of collective bargaining in the industry is inconclusive, favoring neither the Petitioner's nor the Intervenor's position herein, and that it cannot be found that the establishment of a separate unit of in-store bakers would disturb industrial stability insofar as the Employer's labor relations are concerned. In the circumstances, we conclude that the experienced and inexperienced bakers employed by the in-store bakeries maintained by the Employer in four of its supermarkets located in the Las Vegas, Nevada, area may constitute a separate unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act, if they so desire, and that an election among the employees in this voting group should be held to determine their wishes.

Accordingly, we shall make no final unit finding, at this time, but, as provided below, shall direct an election among those in the following voting group:

All experienced bakers and inexperienced bakers employed by the Employer in its operations in Las Vegas and Henderson, Nevada; excluding all other employees and all supervisors as defined in the Act.

If a majority of the employees in the voting group vote in favor of Bakery and Confectionery Workers International Union of America, Local 345, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, they will constitute an appropriate unit and an appropriate certification will issue. If they vote in favor of Retail Clerks International Association, Local No. 1536, AFL-CIO, they will remain part of the existing unit and a Certification of Results will issue.

[Direction of Election* omitted from publication.]

*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 addresses which may be used to communicate with them *Excelsior Underwear Inc.*, 156 NLRB 1236, *NLRB v Wyman-Gordon Company*, 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 31 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.