

Montgomery Ward & Co., Incorporated, Petitioner and Chauffeurs, Teamsters, and Helpers Local No. 414, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.
Case 25-UC-42

March 24, 1972

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS
AND KENNEDY

On September 10, 1971, the Petitioner filed a petition for unit clarification, seeking to exclude from the certified unit of "employees employed at the Employer's Warehouse located at 4033 North Clinton Street, Fort Wayne, Indiana," seven employees who had been physically transferred from this warehouse to the Employer's retail store located at 835 Northcrest, Fort Wayne, Indiana.

On November 23, 1971, a hearing was held before Hearing Officer Thomas M. Lucas for the purpose of taking testimony with respect to the issues raised by this petition. The parties appeared and participated at the hearing. On December 1, 1971, the Regional Director for Region 25 transferred the case to the National Labor Relations Board. Thereafter, the Petitioner filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding 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:

The Petitioner, Montgomery Ward & Co., Incorporated, is engaged in the sale and distribution of merchandise through two retail stores and a warehouse in Fort Wayne, Indiana.

In 1965, the Union was certified as the representative of employees employed at the Petitioner's warehouse located at 4033 North Clinton Street, Fort Wayne, Indiana. Thereafter, the parties entered into three successive collective-bargaining agreements, including the current one, which states in part that "the Union is recognized by the Company as the representative of all shipping, receiving, and warehousing employees, service clerks, service prep employees and merchandise prep employees employed at the Company's Fort Wayne, Indiana retail store warehouse, but excluding all other employees of the Company in Fort Wayne, Indiana . . ."

In December 1970, the Petitioner transferred eight employees from its warehouse to its Northcrest retail store. Prior to the transfer, these employees, classified as markers, pro clerk, receiving clerk, and head marker, received, unpacked, and marked the prices on certain "soft line" merchandise at the warehouse. These employees then repacked the merchandise so that it could be transported to the Northcrest retail store for storage and sale. The Petitioner, in order to eliminate this double handling of merchandise and achieve an annual saving of \$39,000, restructured its Northcrest retail store and transferred these employees and their equipment.

Following this relocation, the Petitioner refused to recognize the Union as the representative of these employees. Thereafter, the Union filed a grievance protesting this action. Since this grievance committee could reach no majority decision, this issue was submitted for arbitration. On July 8, 1971, Arbitrator James J. Willingham issued his decision, in which he found that the Petitioner had violated the collective-bargaining agreement covering the warehouse employees by its unilateral discontinuance of recognition of these employees.

In the instant case, the Petitioner seeks to clarify the unit by adding to the list of exclusions: "all employees of the company working at retail stores of the company in Fort Wayne, Indiana." The Petitioner contends that it is not obligated to recognize the Union as the representative of these transferred employees because the unit certified by the Board was limited to employees employed at the warehouse, and specifically excluded any employees who were employed at the retail stores. The Union contends that the arbitrator's award should be honored by the Board.

We disagree with the Petitioner's contention. The record shows that these employees continue to perform the same functions at the retail store as they had prior to their transfer from the warehouse. In addition, these employees are under the same supervision as they were at the warehouse. Based on these facts, we find that the Petitioner cannot, by this reorganization, unilaterally remove the transferred employees from the currently recognized warehouse unit.¹ Accordingly, based on our findings above, we shall dismiss the instant petition.

ORDER

It is hereby ordered that the petition for unit clarification be, and it hereby is, dismissed.

¹ See *McDonnell Douglas Astronautics Company*, 194 NLRB No 116; *S. D. Warren Co.*, 164 NLRB 489, *Martin-Burns Sportables, Inc.*, 129 NLRB 364, *Lapp Insulator Co, Inc.*, 150 NLRB 596.