

Pueblo International, Inc. d/b/a Supermercados Pueblo and Local 568, Amalgamated Meat Cutters and Butcher Workmen of Puerto Rico, AFL-CIO. Case 24-RC-4744

May 16, 1973

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS
AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Joseph M. Chandri of the National Labor Relations Board. Union de Empleados de los Supermercados Pueblo y Ramas Anexas (herein referred to as Intervenor) intervened on the basis of its collective-bargaining agreement covering the employees involved. Following the close of the hearing the Regional Director for Region 24 transferred this case to the Board for decision. The Employer and Petitioner 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 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:

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 the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The Petitioner seeks to sever a two-department group of meat and delicatessen employees from an established multistore unit composed of all nonsupervisory employees in the Employer's retail supermarket chain. The Employer and Intervenor contend that the petitioned-for unit is inappropriate.

The Employer's retail supermarket chain comprises 26 stores, 16 in the San Juan metropolitan area and 10 throughout the rural areas of the island, employing about 2,000 employees, substantially all of whom are in the overall unit currently represented by the Intervenor. Petitioner seeks to sever a unit of about 300 employees, 250 of whom are employed in the stores' meat departments and about 50 of whom are employed in the delicatessen departments. Only 9 of the

26 stores contain delicatessen departments. The remainder of the overall unit employees work in the produce, dairy, and grocery departments or serve in the "front end" as baggers, cashiers, and check cashing clerks.

The meat department includes a meat manager, meat cutter, and numerous clerks classified as scalers, wrappers, casemen, freezermen, and coolermen. Although meat department cutters and clerks receive both classroom and on-the-job training, there is no formal apprenticeship program. In the delicatessen department a cook and a number of delicatessen clerks prepare and sell food procured from the other departments.

Overall responsibility for the entire chain, including its sales and operational policies and functions, is vested in a senior vice president of sales and operations. A vice president of industrial relations acts as a consultant to him on labor-management matters. There is a central personnel office which formulates and implements all personnel policies and procedures and a central purchasing office and warehouse through which all merchandise is ordered and processed for sale.

For administrative purposes, the 26 stores are divided into three districts, each headed by a district manager. Each store has a supervisory staff composed of a store manager, an assistant store manager, and a separate manager for each department it contains. The store manager, who reports directly to his respective district manager, is responsible for overall operations of the store and general supervision of all store personnel. He shares these responsibilities with the assistant manager. The latter also serves as manager of the "front end." Each department is headed by a manager who is responsible for the scheduling and assigning of work, inventory control, the ordering of merchandise, and general supervision of personnel in his department.

Department managers may initiate personnel actions, such as promotion or discipline, involving employees in their departments. They make their recommendations to the store manager who, in turn, passes them on through the district manager to the central personnel office.

Despite separate job classifications and departmental assignments, virtually all store clerks perform, for the most part, substantially similar job tasks. Thus, all clerks, including those in the meat and delicatessen departments, do shelving, unloading, and inventory-taking tasks. While meat department employees are seldom called on to help out in other departments, other clerks are frequently assigned to assist in the meat department and/or in other departments as the need arises. The stores tend to present an integrated

posture to its customers. All employees are initially trained to tell each customer where each item in the store is located, and all employees for the most part can, and do, effectively function in each department temporarily, except at the level of meatcutter. For example, dairy department employees may cut ham for customers but the meat employees must tie the ham, or a dairy department sausage may be cut by a meat department employee. Employees of the dairy, delicatessen, and meat departments frequently use the same equipment. Employees of all the various departments work together in the display and sale of tie-in items, such as corned beef and cabbage, beans and frankfurters, etc. Employees, particularly those hired for rural area stores are frequently cross-trained in various departments so that any one of them can fill in for an absent employee or help out in case of other emergency. If a meatcutter working in one of the metropolitan area stores is absent, a meatcutter from another store is temporarily sent in as a replacement. In each of the rural stores, however, the store complement normally includes one other employee—usually the head cashier—who has been given special training in meatcutting for the purpose of temporarily taking over the meatcutter's job in the latter's absence.

Fringe benefits are identical for all the stores' employees. All receive breaks of the same number and duration, share the same facilities, work the same hours, and punch the same timeclock. Produce, meat, and delicatessen employees, as well as cashiers, are provided uniforms or smocks. The Employer maintains uniform wage rates for similarly classified employees throughout the chain. All employees, wherever located, are subject to common rules and policies as established by the Employer's central office.

Seniority is defined by the contract as the total uninterrupted period of employment in the overall unit. Meatcutters, receiving clerks, office clerks, chief cashiers, cashiers, and baggers are classified separately for seniority purposes. The rest of the unit is grouped together in one category and no distinction is drawn between meat clerks, produce clerks, dairy clerks, delicatessen clerks, warehouse clerks, and grocery clerks. Thus, for example, a produce clerk can bump a meat clerk in the event of a layoff.

An evaluation of the bargaining history of the employees reveals a long established wall-to-wall bargaining pattern, with no previous attempts to organize the employees on any other basis. Thus, Intervenor, whose name was formerly the Happy Bunch Club, has been the certified and recognized representative of a wall-to-wall unit of all employees of the Employer in Puerto Rico since 1957. Its representative status was initially established when, under the name of Happy

Bunch Club, it intervened in a petition filed by another union and won a Board election held November 19, 1957, among the employees of the three stores then owned by the Employer. It acquired a new Board certification on October 30, 1958, after an election, for 2 additional stores which the Employer had by then added to its chain. Since that date, the employees of the 21 other stores later established by the Employer (of the 26 now in the total chain) have been accreted to the unit under the provisions of successive contracts. The most recent contract between the parties was executed September 1, 1972, at a time when the Petitioner's appeal from the Regional Director's decision was pending.

The Board has, in proper circumstances, found that separate units of meat department and other retail food store employees are appropriate in the absence of any contrary bargaining history.¹ However, the Board is reluctant to change existing bargaining units supported by an established bargaining history. In this regard, it has held that a bargaining history spanning 22 months is substantial, if not controlling.²

In the circumstances here, we find no basis for disturbing the parties' 15-year history of peaceful collective bargaining in a single overall unit, which unit is clearly appropriate.³ All employees, regardless of department, are similarly supervised, have the same working conditions, and enjoy the same fringe benefits. In addition, all employees, except meatcutters, not only perform like functions but are regularly shifted from one department to another as the need arises. Indeed, all employees, excepting meat cutters, are specially cross-trained to function in various departments. Although meatcutters, as a class, are now on a separate seniority list, the other employees Petitioner seeks, i.e., the meat and delicatessen clerks, are grouped together for seniority purposes with all other clerks. Job bidding and layoff retention rights are thus now enjoyed by all the clerks throughout the overall unit.

In view of the foregoing—the functional interrelation of the work and the common interests and supervision of all the employees, the centralized control of the Employer's labor relations policies, the stabilized pattern of interwoven seniority rights and privileges within the overall unit, and the long amicable bargaining history in the overall unit—we find that the employees who work in the meat and delicatessen departments do not constitute a separate appropriate

¹ *Buckeye Village Market, Inc.*, 175 NLRB 271, 272, and cases there cited at fn 6; *Hy-Vee Food Stores, Inc.*, 176 NLRB 54, 60; *Primrose Super Market of Malden, Inc.*, 178 NLRB 566, 568, see also *Super Valu Stores, Inc.*, 179 NLRB 469

² *Buckeye Village Market, Inc.*, *supra*

³ *Id.*

unit for purposes of collective bargaining.⁴ Accordingly, the petition must be dismissed.⁵

⁴ *Buckeye Village Market, Inc., supra.*

⁵ Having found, for the reasons set forth above, that the unit requested by the Petitioner is not appropriate for collective-bargaining purposes in the circumstances here, it follows, *a fortiori*, that it is also not an appropriate unit

ORDER

It is hereby ordered that the instant petition be, and the same hereby is, dismissed.

for severance under the criteria delineated in *Malinckrodt Chemical Works, Uranium Division*, 162 NLRB 387, 397.