

Luoma's Foods, Inc., d/b/a Valu King¹ and Retail Store Employees Union, Local No. 880, Retail Clerks International Association, AFL-CIO,² Petitioner and Meat Cutters District Union 427, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, Petitioner. Cases 8-RC-8979 and 8-RC-9000

September 17, 1973

DECISION AND DIRECTION OF ELECTIONS

BY MEMBERS FANNING, KENNEDY, AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, in Case 8-RC-8979 by Retail Store Employees Union, Local No. 880, Retail Clerks International Association, AFL-CIO, hereinafter called Retail Clerks, and a petition duly filed in Case 8-RC-9000 by Meat Cutters District Union 427, Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO, hereinafter called Meat Cutters, the Acting Regional Director for Region 8 issued an Order Consolidating Cases and a Notice of Hearing on March 23, 1973. Thereafter on March 23 and 30 and April 11, 1973, a hearing was held before Hearing Officer Joseph C. D'Arrigo. 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, the Acting Regional Director for Region 8 transferred this case to the Board for decision. Thereafter, the Employer, Retail Clerks, and Meat Cutters filed briefs in support of their respective positions.

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. The rulings 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. Questions affecting commerce exist concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sec-

tion 2(6) and (7) of the Act.

Retail Clerks, Petitioner in Case 8-RC-8979, seeks a unit of all the full-time and regular part-time selling and nonselling employees at the Employer's Geneva, Ohio, store located at 755 South Broadway, excluding all the meat department employees and all the deli-bakery department employees along with those groups usually excluded, i.e., all office clerical employees, professional employees, guards and supervisors as defined in the Act. Meat Cutters, Petitioner in Case 8-RC-9000, seeks a unit of all employees employed in the meat department and deli-bakery department at the Employer's same facility, but excluding all other employees and all office clerical employees, professional employees, guards and supervisors as defined in the Act. The Employer's position is that the deli-bakery department employees have a closer community of interest with the employees in the unit sought by the Retail Clerks than with the employees in the unit sought by Meat Cutters and thus more appropriately belong in the unit sought by Retail Clerks.

The Employer's store employs about 42 people of whom 30 work in the grocery department, which includes produce and dairy; 6 work in the deli-bakery department; and 6 work in the meat department. The grocery department is supervised by Wayne Luoma, the owner and general manager of the Employer. The deli-bakery department's operations are coordinated by Estelle Malick who, the parties stipulated, is not a supervisor within the meaning of the Act. Luoma testified that Dick Beebe, the grocery manager, who, along with Luoma, oversees the grocery department, also handles employee problems in the deli-bakery department. The meat department is supervised by Paul Champion, a stipulated supervisor. Champion, however, exercises no supervisory authority over the deli-bakery department operations.

The deli-bakery department is located next to the meat department in the rear of the store. The two departments are covered with different color canopies, however, and the deli-bakery's cases extend out in the aisle further than the meat cases and the brick facing in the deli-bakery does not extend into the meat department. The uniforms which the two departments' employees wear are the same as to style but of different colors.

The duties of the six deli-bakery employees consist of baking, cooking, pricing and stocking items, filling the deli-bakery case, and waiting on customers. Baked goods account for approximately 80 percent of the department's sales. The sale of cold salads such as cole slaw, potato salad, and macaroni salad account for about 15 percent of the department's sales³ and

³ Most of these items are purchased already prepared and are simply

Continued

¹ The name of the Employer appears as amended at the hearing.

² The name of the Petitioner in Case 8-RC-8979 appears as amended at the hearing.

the balance is derived from the sale of hot foods such as barbecued spareribs, meat loaf, chicken, lasagana, stuffed peppers and cabbage, and kielbasi sauce, and the sale of party trays. Unlike the cold salads, which are usually preprepared, the barbecued spareribs and chicken are prepared by the deli-bakery employees⁴ as are the party trays. The deli-bakery department uses spareribs and chicken from the meat department for barbecuing and these items, along with the cold salads, are stored in the meat cooler in the meat department. About 60 percent of the deli-bakery employees' time is spent waiting on customers and the balance of their time is spent preparing foods as noted above.

The basic job duties of the three meatcutters and three meatwrappers in the meat department are to cut meat, to weigh, wrap, and price it, and to stock the meat cases.⁵ Meatwrappers also wait on customers, but less than 10 percent of their working time is devoted to doing so. The Employer's luncheon meats, including the commercially purchased prepackaged luncheon meats, are stored only in the meat department case and with the exception of the meat used in the party trays are sold only out of that department.⁶

The Employer's store is a 24-hour-a-day, 7-day-a-week operation. The meat department, however, works from 8 a.m. to 6 p.m. every day but Friday and Saturday when it closes at 9 p.m. The deli-bakery opens anywhere from midnight to 8 a.m. and remains open until 10 p.m. on Fridays, 8 p.m. on Saturdays, and 7 p.m. on the remaining days.⁷

Luoma testified that the wage rates of the deli-bakery and grocery employees are in the same range but that the deli-bakery's rates are lower than the meat department scale. Luoma did not testify specifically as to what the grocery department employees earn but testified that the deli-bakery employees make \$2.10 to \$3.50 per hour; the meatwrappers average \$3 per hour; and the meatcutters make from \$4.09 to \$5.26 per hour. The meat department employees possess certain skills incident to their jobs. Thus, the meatwrappers need to know the difference between the various cuts of roasts and steaks and the ways to cook meat and the meatcutters need a knowledge of

packaged and displayed by the deli-bakery employees.

⁴ The remainder of the hot items are purchased already prepared from outside sources.

⁵ The meat department employees handle only meat products.

⁶ Wayne Luoma testified that the deli-bakery employees have nothing to do with the slicing of luncheon meat. Cheryl Harting, a deli-bakery employee, testified, however, that she has, on occasion, sliced luncheon meat for customers and has stocked the meat case and, on one occasion, wrapped meat. Harting, however, works when no other meat department employee is present and testified that with regard to stocking the meat case, she was never specifically told this was her job. Luoma testified that the manager on duty stocks the case when no meat department employee is present.

⁷ In the summer of 1972, however, during the tourist season, the deli-bakery operated on a 24-hour basis.

the methods of cutting the various meats. There is no apprenticeship program for the meat department or, in fact, for any other department in the store. The record did not demonstrate that there are any skills the deli-bakery employees need to perform their jobs.

Deli-bakery employees are never transferred into the meat department when the meat department needs employees. Meat department employees likewise do not temporarily transfer into the deli-bakery to help out. There have been instances, however, of employee transfers from the grocery department into the deli-bakery,⁸ and while in the deli-bakery these employees performed the same work as the regular deli-bakery employees.⁹

Inventories are kept according to each department and although the chicken and spareribs used in the deli-bakery are ordered by the meat department's supervisor, this inventory is kept separately according to department and the transfer of these items to the deli-bakery is handled through an in-store transfer sheet.

All the store's employees receive a break in the morning and the afternoon. All employees punch the same timeclock and fringe benefits are the same for all employees.

Meat Cutters introduced at the hearing the collective-bargaining agreement between it and the Cleveland Food Industry through which it attempted to show that delicatessen and meat department employees in the area of the agreement¹⁰ are represented by Meat Cutters.¹¹ Paul Gaunter, Meat Cutters business representative, testified to various stores in the area where Meat Cutters represent deli-operations which also do baking. Gaunter did not know whether the Meat Cutters had ever been certified by the Board at any of the various operations about which he testified.

There is no history of bargaining at the Employer's store.

The Board has traditionally found, in appropriate circumstances, that a separate unit of meat department employees in a retail store and a separate unit of employees in the remaining departments of the

⁸ Luoma listed two cashiers who transferred in on a temporary basis in the summer of 1972 and one employee who divided her time between the grocery and the deli-bakery until she finally asked, and was allowed, to work full time in the deli-bakery.

⁹ Grocery department employees may clean up in the deli-bakery area and stack the inventory for the deli-bakery. Deli-bakery employees may help in the unloading of merchandise and, when they do, they work with the grocery department employees.

¹⁰ The area covered by the agreement includes the location in which the Employer's store is situated.

¹¹ The relevant provision of the agreement, article 1, in relevant part states that:

Specifically, although only the Employer's store meat departments in the aforementioned counties are covered by this Agreement, the Employer recognizes that the Union has work and collective bargaining jurisdiction over the Employer's store delicatessen operations, store prepared and/or hot food's operations. . . .

store are appropriate units.¹² Here, Meat Cutters desires to represent a unit of the Employer's deli-bakery as well as meat department employees and Retail Clerks, agreeing with Meat Cutters' request, wishes to represent a unit of employees in the remaining departments. In the circumstances of this case, however, we find inappropriate the unit requested by Meat Cutters since we conclude that the deli-bakery employees appropriately belong in a unit with grocery, produce, and dairy employees than with the employees in the meat department.

We note, first of all, that the overwhelming percentage of the deli-bakery employees' workday is spent in the preparation of nonmeat items such as bakery items and cold salads. The deli-bakery employees handle meat products no more than 5 percent of their workday and meat department employees handle nothing but meat products all day. The deli-bakery and the meat department are separately supervised. However, the deli-bakery and grocery employees have the same immediate supervision. The deli-bakery employees do not possess the skills of meat department employees. Unlike the meat department employees, the deli-bakery employees spend the greater portion of their day waiting on customers as do the other grocery personnel. Further, the interchange that exists in the store is between the deli-bakery and jobs in the grocery department. While the deli-bakery and meat department are adjacent to each other and the deli-bakery employees at times go to the meat cooler in the meat department thus allowing for some contact with the meat department's employees, we note that the Employer has tried to make the departments visually distinct and outfits the departments' employees in different-colored uniforms. In view of the differing job functions, separate supervision, difference in job skills, and lack of interchange between the deli-bakery employees and the meat department employees, we find a unit of deli-bakery and meat department employees to be inappropriate.¹³ Rather, we find that the deli-bakery employees' duties, functions, and interests are such as to make appropriate a unit consisting of the deli-bakery employees and the grocery employees of the store excluding the meat department.¹⁴ We will therefore direct separate elections in which the meat department employees will vote whether or not they desire to be represented by Meat Cutters and the grocery and deli-bakery employees will vote whether or not

they desire to be represented by Retail Clerks.¹⁵

We therefore find that the following unit is appropriate in Case 8-RC-8979:

All full-time and regular part-time selling and nonselling employees employed in the grocery, produce, dairy and deli-bakery departments at the Luoma's Foods, Inc., d/b/a Valu King store located at 755 South Broadway, Geneva, Ohio, excluding all employees in the meat department, all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

In Case 8-RC-9000, we find that the following unit is appropriate:

All full-time and regular part-time employees employed in the meat department at the Luoma's Foods, Inc., d/b/a Valu King store located at 755 South Broadway, Geneva, Ohio, excluding all grocery, produce, dairy and deli-bakery department employees, all office clerical employees, and all professional employees, guards and supervisors as defined in the Act.

The eligibility of various employees is at issue. The Employer contends that Dick Beebe, Bill Jenner, Ray Mundie, and Kevin Pengal are supervisors should be excluded from any unit found appropriate. At the hearing, both Retail Clerks and Meat Cutters took the position that these four were not supervisors.¹⁶ The two unions contend that Helen Luoma, the mother of Wayne Luoma, should be excluded because her familial relationship gives her a special status which aligns her interests with management. The Unions would exclude Harold Miller because of his familial relationship with Wayne Luoma and because of the alleged sporadic nature of his employment. Finally, the Unions would also exclude Ralph Sadowski because of the alleged sporadic nature of his employment. The Employer would include Helen Luoma, Miller, and Sadowski in any units found appropriate.

Wayne Luoma testified that he is responsible for

¹⁵ We do not deem this a situation where the deli-bakery employees should be permitted to vote whether they wish either Meat Cutters or Retail Clerks as their representative, or whether they wish to remain unrepresented, since we have determined on the facts that the deli-bakery employees do not have a sufficient community of interest with the employees in the meat department to warrant their possible representation in such a unit. Cf. *The Kroger Company, Atlanta Division*, 202 NLRB No. 117, and *The Kroger Co.*, 201 NLRB No. 138, where the Board found on different facts that delicatessen employees might be properly represented in either a Retail Clerks or Meat Cutters unit.

¹⁶ In its brief, Retail Clerks now agrees that Beebe is a supervisor. However, Meat Cutters had not indicated it has changed its position as regards Beebe and so we will consider his eligibility, *infra*.

¹² See, e.g., *The Great Atlantic & Pacific Tea Company, Inc.*, 132 NLRB 744; *Bruno's Food Store, Incorporated*, 131 NLRB 1023.

¹³ *Ideal Super Markets*, 171 NLRB 1; *Unishops of Clarkins, Inc.*, 171 NLRB 1435.

¹⁴ *Priced-Less Discount Foods, Inc., d/b/a Payless*, 157 NLRB 1143; *Seaway Food Town, Inc.*, 171 NLRB 729.

the entire operation of the store. He makes all personnel decisions which affect employees and it is he who does the actual hiring, firing, and disciplining of all the employees. Luoma stated that his supervisory hierarchy is as follows:

Luoma—General Manager
 Beebe—Grocery Manager—Days
 Jenner—Grocery Manager—Evenings
 Mundie—Night Manager
 Pengal—Day Manager
 Champion—Head Meat Cutter¹⁷

Beebe, Jenner, Mundie, and Pengal all have access to the store office but none keeps or maintains any personnel records regarding any employee. There are four sets of keys to the store. Luoma and Beebe each have a set, the third set is held by the head cashier, whom the parties stipulated is not a supervisor, and the fourth set rotates to the highest ranking person in the store at the time. All of the four alleged supervisors have authority to approve customer checks but this is done according to a preestablished policy from which they may not deviate.

Dick Beebe—Luoma testified that Beebe is second in command and that he and Beebe alternate their working hours to cover the store from 8 a.m. to midnight 5 days a week. Luoma testified that 60 percent of Beebe's time is spent performing work identical to that of other grocery employees; 15–20 percent of his time is spent telling other employees what to do; and the balance of his time is spent in related clerical work in the office. Beebe is salaried and does not punch a timeclock or receive overtime. When Beebe is on duty, he oversees the operation of the entire store with the exception of the meat department. Beebe can assign jobs and has also scheduled employees for overtime.¹⁸ He has granted employees time off for sickness and has Luoma's approval to handle employee problems should they arise. Although Luoma does all the actual hiring, Beebe does interview applicants for jobs and makes recommendations to Luoma which Luoma states he considers very seriously. According to Ray Mundie, he has seen only Luoma and Beebe in the gold coats which he stated are emblematic of management.

On the basis of the foregoing, we find Beebe to be a supervisor and shall exclude him.

Bill Jenner—Luoma testified that Jenner's supervisory authority is identical to Beebe's. Jenner is salaried and does not punch a timeclock or receive overtime. Luoma testified that at those times when he or Beebe is not in the store and Jenner is present, it

is Jenner's duty to oversee all the store's operations. There are three such nights when Jenner is responsible for the store's operations. These are the nights when stock for the store is delivered and there are approximately 10 employees present whom Jenner directs in the unloading and stocking of merchandise. Like Beebe, Jenner spends 60 percent of his time in work identical to that of unit employees, 15–20 percent of his time in directing employees, and the balance doing clerical work. Luoma testified that he "quite often" asks Jenner's opinion on how a new employee is working out¹⁹ and that Jenner does make recommendations as to the hire and fire of employees. Luoma stated that he discharged employee Frank Gillette on Jenner's recommendation. Jenner had hired two employees with Luoma's approval since the Unions had filed their petitions.

We conclude that Jenner is a supervisor who should be excluded. *Inter alia*, we rely on the facts that he responsibly directs the work of some 10 employees three nights a week at a time when he is the highest ranking person in the store and that he has effectively recommended the firing of at least 1 individual.

Ray Mundie—Mundie is classified as the Employer's "Night Manager." He earns \$2.85 per hour, punches a timeclock, and is paid for working overtime. Mundie's rate of pay is lower than that of certain of the higher paid nonsupervisory personnel. Mundie works from midnight to 8 a.m. three nights a week, and is the highest ranking employee in the store at that time. On the other two nights, Bill Jenner is also present and directs Mundie and the other employees in their jobs.

Mundie has the authority to approve customer checks, can make change from the office, can grant refunds, and is responsible for verifying voids on cash register tapes, but these are also the duties of the head cashier who is not a supervisor. He is in charge of the merchandise inventory and is also in charge of ordering the store's frozen food items and for seeing that the frozen food stock is kept up but other admittedly nonsupervisory employees also are in charge of ordering various items.

Under all the circumstances, we conclude that Mundie is not a supervisor and will include him in the appropriate unit. While Mundie is the highest ranking employee in the Employer's store on three nights, the record shows that at those times Mundie has a list of items to perform which has been given to him by Luoma. Mundie carries out those duties and during this time does not responsibly direct the few other employees present. His duties generally are shared by other admittedly nonsupervisory personnel and thus

¹⁷ The parties stipulated that Champion is a supervisor and should be excluded from any unit found appropriate.

¹⁸ In addition, he reviews the scheduling of employees' work hours with Luoma.

¹⁹ Retail Clerks claims that Luoma asks others about the performance of employees and that this is done in a casual vein.

we will include him in the unit.²⁰

Kevin Pengal—Pengal is classified as the Employer's "Day Manager." He is paid \$2.85 per hour, punches a timeclock, and is paid for working overtime. Like Mundie, his rate of pay is lower than certain of the higher paid nonsupervisory personnel. Pengal's general duties are the same as those of Mundie.²¹

Pengal is in charge of the bread department and is responsible for ordering all the bread for the department.²² Although Luoma testified that Pengal is the highest ranking employee in the store for the greater portion of his worktime, a comparison of the various most recent schedules of Luoma, Beebe, Jenner, and Pengal indicates that Pengal works at times when at least one of these three men is present.

Luoma occasionally gives Pengal a list of things to do. The list also contains instructions for the stockboys and Pengal relays the instructions to the stockboys. Since he is more experienced than most of the stockboys, they often ask him how to stock merchandise. Pengal has granted overtime on one occasion but this was with the prior approval of Luoma. Although Pengal has asked employees to report for work in an emergency, he has done so at the direction of others.

We conclude that Pengal is not a supervisor and we will include him in the appropriate unit. Pengal's work duties are of a routine nature and any instructions he may give the stockboys are based not on his position but on his greater experience. Moreover, to the extent the record demonstrates that Pengal exercises some degree of direction over the stockboys, this direction is of a ministerial nature and does not require the use of independent judgment.²³

Helen Luoma—Employed as a meatwrapper, she is the mother of Wayne Luoma, the Employer's general manager and owner. She is the sole beneficiary of her late husband's estate and, under the terms of his will, is due payment for his 50 percent share of the business from her son, Wayne. Her rate of pay and conditions

of employment are the same as the other meatwrapers.

In view of the close family ownership of the corporation and the active day-to-day management of the corporation by Helen Luoma's son, we find that the interests of Helen Luoma are substantially different from those of the other employees and we shall exclude her from the unit.²⁴

Harold Miller—Miller is the husband of Wayne Luoma's sister-in-law. He was hired in May 1972 as a part-time stock clerk. At the time of the hearing in this proceeding, Miller has not averaged 4 hours of work a week for the year at the Employer's store because he had not worked for the entire summer of 1972 due to his commitment to his full-time job elsewhere. Miller receives the same rate of pay and fringe benefits as other part-time employees. Although Luoma testified that Miller has been on a "regular" schedule since January 1973, he also noted that Miller is called when he is needed and has the option to refuse work because of other commitments. Miller worked at least 12 hours during the month of March 1973.

In these circumstances, since we cannot now determine Miller's eligibility as an on-call employee, we shall allow Miller to vote subject to challenge.²⁵

Ralph Sadowski—Sadowski is employed as a part-time night stock clerk. His wages and work duties are the same as other night stock clerks and Luoma stated he averaged 10 or 12 hours a week when he worked. It is unclear from the record however whether the 10 to 12 hours of work that Sadowski performed and to which Luoma alluded refers to that period of time when Sadowski was a "pretty regular" employee, i.e., until January 1, 1973; or refers to his work hours at the time of the hearing. Since Luoma stated that Sadowski may skip a couple of weeks in his work, we conclude that even if the 10 to 12 hours referred to Sadowski's most recent work schedule we could not determine whether Sadowski as an on-call employee meets the eligibility requirements and thus we shall allow him to vote subject to challenge.

[Direction of Elections and *Excelsior* footnote omitted from publication.]

²⁰ *Quick Shop Markets, Inc.*, 168 NLRB 180; *The Great Atlantic & Pacific Tea Company*, 132 NLRB 799.

²¹ Thus, like Mundie, he has authority to approve customer checks, make change for the cashiers, approve cashier mistakes on the register tape, and grant refunds.

²² He is also the only employee in the department

²³ See fn. 20, *supra*.

²⁴ See *Parisoff Drive In Market, Inc.*, 201 NLRB No. 102.

²⁵ *Mademoiselle Shoppe, Inc.*, 199 NLRB No. 147; *Davison-Paxon Company*, 185 NLRB 21, and cases cited therein at fn. 7.