

Weyerhaeuser Company, Soft Disposable Division and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Teamsters Local Union 538, Petitioner. Case 6-RC-6690

June 25, 1974

DECISION AND DIRECTION

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

Pursuant to a Stipulation for Certification Upon Consent Election a secret ballot election was conducted on January 10, 1974, among the employees in the stipulated unit.¹ The tally of ballots furnished the parties showed that of approximately 26 eligible voters 25 cast valid ballots, of which 13 were for and 12 against the Petitioner. There was one challenged ballot which was sufficient in number to affect the results of the election. No objections to conduct affecting the results of the election were filed by any party.

Pursuant to the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Regional Director investigated the challenged ballot and on February 6, 1974, issued his order directing hearing on ballot. A hearing on the challenged ballot was held on February 19, 1974. On March 22, 1974, Hearing Officer Sandra Beck Levine issued her report on challenged ballot in which she recommended that the challenge to the ballot of Jo Renee Maples be sustained.

On April 1, 1974, the Employer filed exceptions to the Hearing Officer's report on challenged ballot and a brief in which the Employer argued that the challenge to the ballot of Jo Renee Maples should be overruled, the ballot should be opened and counted, and the Regional Director should serve on the parties a revised tally of ballots including therein the count of said challenged ballot.

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 considered the Hearing Officer's report and the Employer's exceptions and brief and has decided to overrule the challenge to the ballot of Jo Renee Maples.

The Employer is a Washington corporation with its principal place of business located in Tacoma, Washington. It manufactures and sells wood-related

products throughout the United States. The Employer's Harmony, Pennsylvania, plant is the only facility involved herein. It is a part of the Employer's Soft Disposable Division and produces disposable diapers. The Harmony facility consists of only one building which houses the production area, the offices, and the warehouse space. Branch Manager Donald Maples supervises the Harmony facility.

Jo Renee Maples is a 17-year-old high school senior who lives at home with her parents. She submitted to the Employer an employment application and completed a medical history form and took the same medical examination required of all other applicants for employment. She was hired by her father, who also hired most of the employees in the plant during 1973. Prior to her employment with the Employer, she had a job as a bus girl and hostess.

During the summer months she worked on a full-time basis. Her duties were primarily packing and bagging the finished product. She was and is directly supervised by Plant Superintendent Jerry Boyd who also supervises the shipping clerk, maintenance staff, and shift supervisors. At the beginning of her employment, she was paid the probationary rate specified in the employee manual and, upon completion of her probationary period, she received the regular wage rate specified in the employee manual.

In September, when she went back to school, she changed to a part-time work schedule from 12:30 or 1 p.m. to 5 or 5:30 p.m. Her duties were changed to primarily janitorial work. There is also one other part-time employee at the Harmony facility.

With the institution of a second shift on October 1, 1973, her hours were changed again. Since October 1, she has worked 25 hours per week though the figure varies due to machines breaking down (which results in the employees going home early) and overtime work. She has worked full time whenever she has been on vacation from school.

She is covered under the Employer's insurance program as an employee in her own right, not as a dependent of Don Maples. She punches a timeclock like other production and maintenance employees. Her timecard is approved by her supervisor. She is number 10 on the seniority list and shares in Saturday overtime work according to her seniority. She uses the same restroom facilities as other female employees and she eats in the employee lunchroom with the other employees.

It is well-established law that the mere coincidence of a family relationship between an employee and a member of management does not, without a showing

¹ The parties stipulated and we find that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Sec. 9(b) of the Act:

All production and maintenance employees employed by the Employer at its Harmony, Pennsylvania, facility; excluding all other employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

of special status for the employee, warrant the exclusion of that employee from a bargaining unit where the employee's inclusion in the unit would otherwise be appropriate. *Pargas of Crescent City, Inc.*, 194 NLRB 616; *Adam Goettl and Gust Goettl, d/b/a International Metal Products Company*, 107 NLRB 65. In *Pargas* the wife of the employer's local manager worked part time and was supervised by her husband, but nevertheless was included in the unit since she had no special status. Jo Renee Maples happens to be the daughter of Branch Manager Donald Maples, but she enjoys no special status in her employment and, therefore, she must be included in the unit. We specifically note that although the record shows that her hours varied, there is no evidence that they were adjusted to suit her convenience or through any intervention on her behalf by her father. In the absence of such a showing, we reverse the finding of the Hearing Officer that these changes in hours established special status.

Although the Hearing Officer attached significance to the fact that Donald Maples owns 200 shares of the Employer's stock, we note that Standard and Poor's Corporation Records indicates that there are in excess of 62-1/2 million shares of stock of the Employer which are publicly held and traded on the New York Stock Exchange. Donald Maples certainly is not a "substantial shareholder" as defined in *Foam Rubber City #2 of Florida, Inc., doing business as Scandia*, 167 NLRB 623, and therefore Jo Renee Maples cannot be excluded from the unit under Section 2(3) of the Act which excludes an individual employed by his parent or spouse from the definition of an employee.

DIRECTION

It is hereby directed that the Regional Director for Region 6 shall, pursuant to the Rules and Regulations of the Board, within 10 days, open and count the ballot of Jo Renee Maples and prepare and cause to be served on the parties a revised tally of ballots including therein the count of said ballot, upon the

basis of which he shall issue the appropriate certification.

MEMBER JENKINS, dissenting:

The ballot of Jo Renee Maples was challenged by the Petitioner on the ground that she enjoys a special status and has a community of interest separate from her fellow employees. I would sustain the challenge to her ballot as recommended by the Hearing Officer.

Jo Renee Maples, a teenage high school girl, lives at home with her parents. Her father is branch manager of the facility involved herein and he owns 200 shares of the Employer's stock. It further appears that she was hired by her father to work at the Harmony facility.

Section 2(3) of the Act provides that "the term 'employee' . . . shall not include . . . any individual employed by his parent . . ." I am of the opinion that Jo Renee Maples, in the circumstances of this case, cannot be considered an "employee" within the meaning of the Act.

However, as I recently indicated in my dissenting opinion in *Pargas of Crescent City, Inc.*, 194 NLRB 616 (1971), the practice of excluding close relatives of management rests on further practical grounds. Thus, under Section 9(b), in determining whether employees who are not expressly excluded by the Act should nevertheless be excluded from units of rank-and-file employees, the Board must balance the statutory rights of an employee to engage in collective bargaining and the right of a collective-bargaining agent for unit employees to seek and achieve legitimate gains for them. As I have heretofore stated, in my view, the "inclusion of a close relative of management in a bargaining unit with other employees in a particular plant may as effectively hinder the employees in organizing themselves and bargaining collectively as would the intrusion of any representative of management."

Accordingly, and for those reasons fully expressed in *Pargas*, I would sustain the challenge to the ballot of Jo Renee Maples.