

Alaska Fish and Farm Products, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America—Teamsters Local 959—State of Alaska, Petitioner. Case 19-RC-7058

July 31, 1974

DECISION ON REVIEW

BY CHAIRMAN MILLER AND MEMBERS FANNING
AND JENKINS

On May 1, 1974, the Regional Director for Region 19 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate and directed an election in a unit of salesmen, drivers, warehousemen, and helpers employed by the Employer. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rule and Regulations, Series 8, as amended, the Petitioner filed a timely request for review of the Regional Director's Decision on the ground that in including salesmen in the unit determination, the Regional Director made findings of fact which are clearly erroneous and departed from officially reported Board precedent. Thereafter, the Employer filed a timely brief in support of the Regional Director's Decision. By telegraphic order dated May 28, 1974, the request for review was granted and the election stayed pending decision on review.

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 entire record in this case with respect to the issue under review and makes the following findings:

The Employer is engaged in the wholesale food service business at Anchorage, Alaska, and employs 3 salesmen and 10 drivers, warehousemen, and helpers. The Employer contended, and the Regional Director agreed, that the smallest appropriate unit must include the salesmen. Petitioner contends that the salesmen's terms and conditions of employment are substantially different from those of the drivers, warehousemen, and helpers and, therefore, the salesmen should have been excluded from the unit. We find merit in this contention.

The record reveals that the drivers' duties consist of filling orders, loading trucks, delivering merchandise, and collecting from customers when delivering "collect" orders. Although the drivers come into contact with customers when making deliveries, they have no selling duties. The duties of the warehousemen and helpers include unloading shipments of merchandise,

putting the merchandise away, keeping the premises clean, and filling orders in the warehouse. The drivers, warehousemen, and helpers normally work from 7 a.m. to 4 p.m. under the direction of the leadman, Tozier, although they are under the overall supervision of the operations manager, with whom they have little contact. The drivers, warehousemen, and helpers receive wages computed at an hourly rate, work set hours with an established lunch break, punch time-cards, and receive overtime on Saturdays or past 4 p.m. on weekdays. These employees, including the drivers, usually wear jeans to work, although the drivers are expected to look somewhat neater since they come into contact with customers.

The salesmen's duties consist of soliciting business from customers and ascertaining whether their customers' orders have been properly filled and delivered. There is general testimony that in checking on their orders they spend about 25 percent of their time at the warehouse where they come into contact with the drivers, warehousemen, and helpers. The salesmen have no set hours and usually come to the warehouse around noon, before the afternoon deliveries. The salesmen have made deliveries and filled orders on an occasional and irregular basis, usually after the other employees have left the warehouse at 4 p.m. On rare occasions, when there is a heavy workload at the warehouse, one or two of the salesmen are called in to work in the warehouse for a day. The record reveals that this occurs 6 to 10 times a year. The record also reveals that two of the three salesmen presently employed by the Employer were formerly employed as drivers.

Unlike the other employees, the salesmen work under the immediate direction of the operations manager for approximately 1 hour each day. In the course of pursuing their duties, the salesmen exercise discretion in soliciting new accounts without prior approval from the operations manager or the general manager. In contrast to the other employees, the salesmen are salaried, do not punch timecards, and do not receive overtime. They supply their own cars and are compensated for gasoline which they expend in the course of business activities. Although the Employer has no specific dress requirements, salesmen are expected to be neat in appearance and, in practice, wear coats and ties. All of the Employer's employees, including the salesmen and management, receive company-sponsored fringe benefits.

Based on the foregoing and the record as a whole, we conclude that the salesmen are outside salesmen whose primary function is selling, and any duties they perform at the warehouse or with respect to deliveries are merely incidental to their selling function. Inasmuch as these salesmen have terms and conditions of

employment which substantially differ from those of the drivers, warehousemen, and helpers, we find their interests are not such as to require that they be included in the unit.¹

Accordingly, the salesmen are excluded from the

unit and the case is remanded to the Regional Director for the purpose of conducting an election pursuant to his Decision and Direction of Election, as modified herein, except that the payroll period for determining eligibility shall be that immediately preceding the date of issuance of this Decision. [Excelsior footnote omitted from publication.]

¹ *Newark Electronics Co., Inc.*, 131 NLRB 553, 554