

Allegheny Pepsi-Cola Bottling Company and Amalgamated Meat Cutters and Butcher Workmen of North America, Local 117, AFL-CIO, Petitioner,¹ and Locals 430, 764, 771, 776 and 992, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Joint Petitioners.² Cases 5-RC-9005 and 4-RC-11213

February 14, 1975

DECISION AND DIRECTION OF
ELECTIONS

BY ACTING CHAIRMAN FANNING AND
MEMBERS JENKINS AND PENELLO

Upon a petition duly filed in Case 5-RC-9005 under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on July 22 and 30, 1974, before Hearing Officer Nicholas E. Karatinos of the National Labor Relations Board. Following the close of the hearing the Regional Director for Region 5 transferred this case to the Board for decision. Thereafter, the Employer and the Petitioner filed briefs.

Upon a petition duly filed in Case 4-RC-11213 under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on October 25, 1974, before Hearing Officer Deborah F. Neipris of the National Labor Relations Board.³ Following the close of that hearing the Acting Regional Director for Region 4 transferred this case to the Board for decision. Thereafter, the Employer 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 these proceedings to a three-member panel.

The Board has reviewed the Hearing Officers' rulings made at the hearings and finds that they are free from prejudicial error. They are hereby affirmed. Upon the entire record in these proceedings,⁴ 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 Petitioner and the Joint Petitioners are labor organizations claiming 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 Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The Employer is engaged in the manufacture, bottling, sale, and distribution of soft drinks. Its main office is in Baltimore, Maryland, and it operates through four divisions, each of which is further subdivided into a number of branch facilities for the purposes of sales and distribution. The proceedings herein involve only the Harrisburg division, which has its headquarters in Harrisburg, Pennsylvania. The eight branches which constitute the Harrisburg division are located in Pennsylvania (at Lancaster, York, Harrisburg, Newville, and Selinsgrove), Maryland (at Thurmont and Hagerstown), and West Virginia (at Martinsburg).

The Petitioner in Case 5-RC-9005 seeks to represent a unit consisting of the sales and distribution employees employed at the Employer's Martinsburg, West Virginia, branch, exclusive of all office clerical employees, professional employees, guards, and supervisors as defined in the Act. The Joint Petitioners in Case 4-RC-11213 seek to represent a unit consisting of sales and distribution employees employed by the Employer in all the aforementioned facilities of the Harrisburg division, including all route salesmen, route managers, special men, vending machine mechanics, warehousemen, and sales clericals; and excluding all office clerical employees, professional employees, guards, transport drivers, supervisors as defined in the Act, and all other employees.

There is no bargaining history for any employees in the division.

The Employer, in agreement with the Joint Petitioners, contends that the only appropriate unit is a divisionwide unit, encompassing all employees at the Employer's eight branch facilities within the Harrisburg division. In support of this contention, the Employer relies upon, *inter alia*, the frequent equipment interchange, uniform wages, hours, and working conditions, several instances of permanent transfers, functional and operational uniformity among the branches, common work skills of employees at each of the branches, and the substantial overall supervisory authority that the division manager exercises over each of the branches. Petitioner, however, contends that the factors relied on by the Employer are outweighed by the substantial authority of the branch manager over day-to-day operations at the Martinsburg, West Virginia, branch, the geographic separation of the branches, the infrequent

The Regional Director found that the smallest appropriate unit was a divisionwide unit, and therefore dismissed the petition. No request for review was filed with the Board.

⁴ As the above-captioned cases involve the Employer's Harrisburg division and as the petitions herein seek to represent some or all of the employees in that division, the cases are hereby consolidated for decision.

¹ Hereinafter also referred to as Meat Cutters.

² Hereinafter also referred to as Teamsters.

³ At the October 25 hearing, the transcript that was developed in Case 4-RC-10888 was incorporated by reference and made a part of the transcript in the instant proceeding. In that case, the Petitioner sought to represent the employees at the Lancaster branch of the Harrisburg division.

temporary employee interchange between the branches, and the fact that the employees at the Martinsburg branch form a homogeneous, distinct, and identifiable group.

In determining whether a particular group of employees constitutes an appropriate unit for bargaining where an employer operates a number of facilities, the Board considers such factors as prior bargaining history, centralization of management, managerial responsibility of single store or branch managers, differences or similarities in skills and functions of employees, extent of employee interchange, geographical location of the facilities in relation to each other, the general working conditions and fringe benefits, and whether the employees in the petitioned-for unit constitute a homogeneous and identifiable group.

In the instant case, the record shows that Division Manager Lebo is responsible for the overall operation of the Harrisburg division. Under Lebo are four area managers, each of whom covers two branches in the division, and whose principal duties are training and marketing. Apart from their training responsibilities, the area managers have no personnel or labor relations role. Each of the eight branches has a branch manager, who functions in both sales and managerial capacity.

For the reasons discussed below, we find that the Harrisburg division, an administrative subdivision of the Employer, may constitute an appropriate unit for purposes of collective bargaining. The record shows that general policy is implemented and overall administrative supervision is exercised at the division level. For example, working conditions, wages, and benefits are determined at the division level and are uniform among the branches. The employees at each of the branches perform similar work in functionally identical job classifications, and the training and orientation which each employee receives for his job classification is the same in all branches.

Equipment, trucks, and property are all centrally obtained by the division through lease or purchase agreements negotiated by the division manager. Route trucks and equipment are transferred among the branches as needed. Advertising and promotional activities are established uniformly for the division. All reports, such as for accidents, sales, complaints, insurance, and OSHA are funneled through division headquarters in Harrisburg.

Division Manager Lebo is responsible for the overall supervision of the Harrisburg division. In this capacity, he prepares and administers the division's operating budget, negotiates leases and purchases, and has final authority for all hiring and termina-

tions. He also determines the weekly production needs of the branches and arranges for product delivery to the branches. As administrative head of the division, Lebo communicates almost daily by telephone with his branch and area managers, and spends a substantial portion of his time traveling between the branches, which are located between 30-85 miles from division headquarters. Considering the above, we find in agreement with the stipulation of the Employer and the Joint Petitioners that the divisionwide unit composed of sales and distribution personnel at the eight branches of the Harrisburg division constitutes a unit appropriate for purposes of collective bargaining.

Notwithstanding the foregoing, however, we find on the facts of this case that a single branch unit may also be appropriate. The record demonstrates, for example, that despite Lebo's overall supervisory authority the branch managers exercise a substantial degree of autonomy over the daily operation of the branch. According to Lebo's uncontradicted testimony, branch managers "are responsible for the overall operation of the branch. They are responsible for the inventories, the money and to make sure the trucks are out on the road and that there are people out on the road." The branch manager also effectively recommends employees for employment and discharge to Lebo, who makes the final decision. With respect to initial employment, prospective employees apply at the branch office where they are interviewed by the branch manager. The branch manager then checks the applicant's references and, if there is an opening for which the applicant is qualified, forwards the application to Lebo with the recommendation that the individual be hired. Once an employee is hired, the branch manager participates in administering the training program. Training is uniform throughout the division, but is conducted locally at the branches by the branch manager in conjunction with the respective area managers. In any event, direct supervision of the employees on a day-to-day basis is exercised exclusively by the branch manager.

Similarly, all run-of-the-mill grievances are handled by the branch manager, as are employee reprimands for unsatisfactory performance of duties. The branch manager also keeps daily sales records, time records, and files of accounts receivable at the branch, pursues collections of delinquent accounts, and distributes allotted overtime at his discretion to the employees of the branch. Monthly meetings of the employees in the branch are conducted by the branch manager. Thus, while Division Manager Lebo has overall operational authority for the division, we find that the branch manager is

responsible for the day-to-day operations of the branch on a local basis and exercises considerable responsibility with respect to employment matters.⁵

The Employer adduced evidence showing that there have been a substantial number of transfers of employees—usually by promotion or on request of the employee—among the branches in the Harrisburg division. The record shows, however, that temporary transfers or interchange of employees between the branches occur infrequently, apparently only in the event of emergency or disaster situations. In such circumstances the evidence of permanent transfers here adduced is insufficient to render the single branch unit inappropriate.

Regularly scheduled divisionwide meetings of all employees occur only once, or possibly twice, each year, but even then, according to Lebo, employees from all the branches are not necessarily brought together. Lebo also stated that occasionally the employees of two branches under an area manager might be brought together for a training or promotional meeting, but there is no indication that this occurs with any regularity or frequency.

The geographic distance between the branches also is significant. From the Harrisburg headquarters, it is 35 miles to Lancaster, 30 miles to York, 30–32 miles to Newville, 54–55 miles to Selinsgrove, 60 miles to Thurmont, 70–75 miles to Hagerstown, and 85 miles to Martinsburg.

The Employer contends that our decisions in *Frito-Lay, Inc.*, 202 NLRB 1011 (1973), and *U-Wanna-Wash Frocks, Inc.*, 203 NLRB 174 (1973), require a determination that only a multiplant unit is appropriate, and that a single branch unit is clearly inappropriate here. We disagree. In *Frito-Lay* the Petitioner sought a unit composed of three districts and the employer contended that the smallest appropriate unit was the six-district region. In agreeing with the employer, we emphasized the almost total lack of autonomy of the district manager over the employees in his district. Contrary to the instant case, the regional manager in *Frito-Lay* recruited, screened, and hired the employees, was well acquainted with each route salesman, and closely observed the work performance of each individual. The regional manager also conducted frequent route inspections, discussed problems directly with the route salesmen, observed their work, appraised them, and evaluated them for promotion. We note that there is no such close supervision over the employees by the division manager in the present case. Here, the division manager visits each branch only once every 2 weeks,

and even then his exposure is limited primarily to the branch and area managers.

U-Wanna-Wash Frocks, supra, is similarly inapposite. In that case, the production manager was in daily telephone contact with the various facilities, and visited them three to four times per week; there was substantial interchange of personnel; and the product itself was shipped between the various facilities in the course of its completion. Additionally, centrally based drivers were used to transport work and machinery among the plants on a daily basis, and a central maintenance crew was used to repair machinery at all facilities. These factors are in contrast with those in the present case, where there is infrequent personnel contact with the division manager, there is virtually no temporary interchange of employees, and there are branch-based drivers and repairmen.

Accordingly, on the basis of the foregoing factors, we find that both the single branch unit sought by Petitioner and the multiplant unit sought by Joint Petitioners may be appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act. However, we shall not make a final unit determination at this time but shall direct that elections be conducted in the following voting groups at the Employer's facilities:⁶

(A) All employees employed at the Employer's Martinsburg, West Virginia, location, excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

(B) All sales employees employed by the Employer in its Harrisburg Division, located at Selinsgrove, Lancaster, Harrisburg, York, and Newville, Pennsylvania; and Thurmont, and Hagerstown, Maryland; distribution facilities, including all route salesmen, route managers, special men, vending machines, warehousemen, and sales clericals; excluding the employees in voting group A, all office clerical employees, professional employees, guards, transport workers, supervisors, as defined in the Act, and all other employees.

If the majority of employees in voting group A selects the Meat Cutters, the employees in that group will be taken to have indicated their desire to constitute a separate bargaining unit, and the Regional Director conducting the election is hereby instructed to issue a certification of representative to the Meat Cutters for such unit, which the Board under the circumstances finds to be appropriate for

⁵ In this regard, the record reveals that although Lebo visits the Martinsburg facility about once every 2 weeks, he apparently has no direct contact or dealings with the employees and does not engage in direct supervision of them in their duties.

⁶ The voting groups are described as were the unit description in the two petitions. Although the descriptions are not identical, the second shows that they cover employees performing identical functions.

the purposes of collective bargaining. However, if a majority of employees in voting group A does not vote for separate representation, that group will appropriately be included in the divisionwide unit and their ballots shall be pooled with those of voting group B.⁷ If a majority of voting group B, including any pooled group, votes for the Joint Petitioners,

⁷ If the votes are pooled, they are to be tallied in the following manner: The votes for Amalgamated Meat Cutters and Butcher Workmen of North America, Local 117, AFL-CIO, shall be counted as valid votes, but neither for nor against the Joint Petitioners which is seeking to represent the divisionwide unit. All other votes are to be accorded their face value, whether for representation or for no union. In the event that the results show that a majority of the valid ballots have not been cast either for the

they shall be certified as the representative of the employees in that group, which under the circumstances the Board finds to be an appropriate unit for purposes of collective bargaining.⁸

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

Joint Petitioners or against representation, it will be deemed to be an inconclusive election, and a second election will be conducted among the employees in the broader unit in which they will vote as to whether or not they desire to be represented by Joint Petitioners. *Penn-Keystone Realty Corp.*, 191 NLRB 800, fn. 24 at 804 (1971).

⁸ Of course, in that event the Martinsburg, West Virginia, facility will be added to the description of unit B.