

Safeway Stores, Inc. and Brotherhood of Teamsters and Auto Truck Drivers, Local 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 20-UC-75

February 27, 1975

DECISION ON REVIEW AND ORDER

BY MEMBERS FANNING, JENKINS, AND
PENELLO

On October 8, 1974, the Regional Director for Region 20 issued a Decision and Order in the above-entitled proceeding in which he dismissed the Employer's petition seeking to clarify the unit placement of the trucking or shipping supervisor or dispatcher at the Employer's Fremont, California, distribution center¹ (hereinafter supervisor-dispatcher). Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision on the grounds, *inter alia*, that in dismissing the unit clarification petition he departed from Board precedent and made findings of fact which are clearly erroneous.

The National Labor Relations Board, by telegraphic order dated December 9, 1974, granted the request for review. The Employer filed a brief on review and the Union filed a statement of position.

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 issues under review, including the documents filed by the parties, and makes the following findings:

The Employer operates a chain of retail supermarkets in various States throughout the United States and maintains distribution centers, including one at Fremont, California, involved herein.

The record discloses that the Employer and the Union are parties to a current multiemployer collective-bargaining agreement running from August 1, 1972, until July 31, 1975. Section 10 of the agreement sets out wage rates for drivers, hostlers, helpers on trucks, platform men, delicatessen cold

storage men, and working foremen. Section 9-D provides:

A Dispatcher shall be considered a Working Foreman within the Drivers classification. Upon ratification of this Agreement, those houses employing union dispatchers shall maintain those positions. The dispatcher's duties shall be limited to the routing, assigning and dispatching of runs.

The Fremont distribution center has been in operation since September 1973, and it is undisputed that, with the exception of the supervisor-dispatcher, a position occupied since that date, the current agreement has been applied to employees at that facility.²

The Regional Director dismissed the petition seeking clarification of the supervisor-dispatcher's status concluding it would be disruptive of the bargaining relationship voluntarily entered into by the parties to clarify the unit at this time. In so doing, he referred to the contractual language above relating to the inclusion of dispatchers and noted that during negotiations the parties had addressed themselves to that issue and concluded that any dispute regarding the application of said clause concerning dispatchers could be resolved through the contract grievance procedure.³ The Employer asserts the duties of the Fremont supervisor-dispatcher do not fall clearly within any of the job classifications covered by the parties' current collective-bargaining agreement, and that position should be excluded from the unit as supervisory. We find merit in the Employer's contention.

Contrary to the Regional Director, we do not find it would be disruptive of the collective-bargaining relationship to clarify the unit at this time. It is settled that the Board will not normally entertain a petition for unit clarification during the term of a contract to modify a unit which is clearly defined in the current bargaining agreement.⁴ Here, the petition does not seek to modify such a unit but to have the Board determine the placement of the trucking and shipping supervisor (supervisor-dispatcher), a position not expressly covered in the agreement and which did not exist at the time the parties executed their contract. Thus, we conclude it is appropriate to entertain the clarification petition at this time.⁵

The record reveals that in addition to performing certain dispatching duties, the Fremont supervisor-

¹ At the hearing, the titles "trucking and shipping supervisor" and "dispatcher" were used interchangeably.

² The record discloses that Walt Collin occupied that position from the date of the opening until July 8, 1974, when he was succeeded by another individual. Collin was formerly the trucking and shipping supervisor at the Employer's Richmond distribution center. In that former capacity, he participated in management meetings with respect to the opening of the Fremont distribution center.

³ The parties' current contract provides for binding arbitration of disputes concerning the application or enforcement of the agreement. The Union agrees that the dispute concerning the Fremont supervisor-dispatcher is one of contractual interpretation, and should be resolved through the grievance procedure.

⁴ See *Wallace-Murray Corporation, Schwitzer Division*, 192 NLRB 1090 (1971).

⁵ Cf. *Monongahela Power Company*, 198 NLRB 1183 (1972).

dispatcher oversees the work of the 25 trucking and shipping department employees employed at that distribution center. He also visits the Employer's stores serviced by the Fremont distribution center to observe the performance of the drivers and discuss the delivery of merchandise with the various store managers. He reports directly to the warehouse manager, who is in charge of the entire operation at the Fremont distribution center. The supervisor-dispatcher effectively hires and terminates employees in the trucking and shipping department, grants time off, assigns work, and approves overtime for drivers.⁶ He participates in weekly management meetings held at the Fremont center and with the warehouse manager represents the Employer in grievances involving trucking and shipping department employees. Unlike the employees whose work he oversees, the supervisor-dispatcher is paid an annual salary and receives fringe benefits reserved for the Employer's management personnel.

Based on the foregoing, and the record as a whole, it is clear that the position of the Fremont distribu-

tion center supervisor-dispatcher was created after the execution of the current agreement and that the incumbent performs duties beyond those described in the agreement regarding dispatchers. Further, in view of the authority he possesses, we find that the supervisor-dispatcher is a supervisor within the meaning of the Act. Accordingly, we shall exclude him from the unit.

ORDER

It is hereby ordered that the contractual collective-bargaining unit covering the employees of Safeway Stores, Inc., Fremont, California, represented by the Brotherhood of Teamsters and Auto Truck Drivers, Local 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, be, and it hereby is, clarified by excluding therefrom the position known as the trucking or shipping supervisor or dispatcher at the Fremont, California, distribution center.

supervisor-dispatcher performed supervisory duties

⁶ The Regional Director acknowledged that the record disclosed the