

Sears, Roebuck and Co. and Transport and Local Delivery Drivers, Warehousemen and Helpers, Local Union 104, an Affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 28-RC-3024

January 20, 1976

DECISION ON REVIEW

BY CHAIRMAN MURPHY AND MEMBERS FANNING
AND PENELLO

On September 23, 1975, the Regional Director for Region 28 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate the Petitioner's requested unit comprised of all warehousemen at the Employer's 1402 East Buckeye Road Phoenix, Arizona, distribution center.¹ Thereafter, in accordance with 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 finding delivery office clericals, receiving clericals, and merchandise control office clericals to be office clerical employees and thus excluded from the unit found appropriate, he made erroneous factual findings and departed from officially reported precedent. The Petitioner filed an opposition thereto.

On November 5, 1975, the National Labor Relations Board, by telegraphic order, granted the Employer's request for review with respect to the aforementioned clerical employees and stayed the election pending decision on review.²

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

The Employer is a New York corporation engaged in the business of retail department store and mail-order sales. At its Phoenix, Arizona, distribution center merchandise such as appliances and furniture is received and reshipped to the Employer's retail stores in Arizona, or directly to customers. The distribution

center employs approximately 27 warehousemen and approximately 21 clerical employees, including the 6 merchandise control clericals, 2 receiving clericals, and 3 delivery office clericals whose unit placement is here in dispute.

The distribution center is a two-story building which contains office areas, warehouse space, and deluxing areas on both floors, as well as loading and unloading docks, an installation staging area, and a retail outlet store located on the first floor. The time-clock, which all employees use, is located on the first floor. There is a lunchroom and meeting room available to all employees on the second floor.

The operations of the distribution center are conducted under the day-to-day supervision of the distribution center manager. Reporting to him are, among others, the controller, a merchandise control manager, the audit supervisor, an installation manager, the warehouse foreman, and the receiving and shipping supervisor.³

The parties do not dispute the appropriateness of a unit limited in scope to employees at the distribution center. The only issue herein is the inclusion or exclusion of the above-mentioned clerical classifications. The Petitioner asserts, and the Regional Director found, that these employees are office clerical employees and must be excluded from the unit. Essentially, the Employer contends the disputed employees are plant clerical employees and should, therefore, be included in the requested unit of warehouse employees. We agree with the Employer.

Merchandise control office clericals: The record discloses that there are six clerical employees who work in the merchandise control office which is located on the second floor of the distribution center. These employees are under the overall supervision of the merchandise control manager and the immediate supervision of the merchandise control supervisor. Essentially, the merchandise control clericals are responsible for the keeping of inventory records relating to merchandise which is entering or leaving the warehouse, as well as merchandise on order. They also perform paperwork relating to sales checks and requisitions for merchandise sent from the retail stores.

Each of the merchandise control clericals is assigned the recordkeeping responsibility for particular types of merchandise. Similarly, certain warehousemen are responsible for the movement of particular types of merchandise on the warehouse floor. Thus, in the performance of their duties, merchandise control clericals come into personal or telephone contact with their counterparts in the warehouse area.⁴ This

¹ The unit found appropriate consists of "All warehousemen, including janitors, furniture detailers, deluxers, appliance technicians and retail outlet store employees; excluding office clerical employees, watchmen, guards, and supervisors as defined in the Act."

² The request for review was denied in all other respects. The Board thus adopted the findings that installation department clericals and audit clericals should be excluded as office clerical employees

³ The parties stipulated that these individuals are supervisors as defined in the Act and therefore excluded from the unit.

⁴ Personal contact between warehousemen and merchandise control clericals occurs on the warehouse floor as well as in the merchandise control

contact occurs when merchandise control clericals prepare spot checks of their inventory recordkeeping cards, which checks are actually carried out by the warehousemen.⁵ In addition, on a daily basis, warehousemen report out-of-stock, damaged, or returned merchandise to the merchandise control clericals.

Receiving clericals: There are two receiving clericals in the receiving office which is located on the first floor of the distribution center. These employees work under the supervision of the shipping-receiving supervisor, who also supervises shippers, receivers, and other warehouse employees. The receiving clericals are responsible for the paperwork relating to the receipt of merchandise. They prepare freight bills, match them with the invoices, and forward them to the audit department. In the performance of their duties, the receiving clericals have regular contact with warehouse employees. Thus, two or three times per week, receiving clericals verify store irregularity reports with a shipper or warehouseman to determine whether merchandise was actually loaded. Receiving clericals also have daily personal or telephone contact with the receivers to obtain information relating to the paperwork which is necessary to unload trucks.

Delivery office clericals: There are three clerical employees who work in the delivery office which is located near the center of the first floor of the distribution center. There is also an individual in the delivery office, referred to by the Employer as a "working supervisor," who directs the work of the delivery office clerical employees; he also directs deluxers, a service technician, and furniture refinishers.⁶ Delivery office clericals carry mailbags containing sales checks and requisitions sent from the retail stores to the merchandise control office located on the second floor. There, the delivery office clericals open the bags and sort their contents according to merchandise and zone of delivery. After the merchandise control clericals perform paperwork relating to the sales checks and requisitions, the mail is returned to the delivery office where it is re-sorted by the delivery

office clericals, taken by them to the warehouse floor, and either handed to a warehouseman or placed in a pigeon hole for a warehouseman to pick up. Like the receiving office and merchandise control clericals, delivery office clericals have regular contact with the warehouse employees. Thus, delivery office clericals page warehousemen to pull merchandise for customer pickup. If a problem arises with respect to an incorrect stock number, or an item out of stock, the warehouseman goes to the delivery office, or the delivery office clerical goes to the warehouse floor, to resolve the situation. The record reveals that these situations arise daily.

On the basis of the foregoing and the record as a whole, we find that the delivery office, receiving, and merchandise control clericals perform duties which are directly related to and integrated with the functional operation of the distribution center. These clerical employees have regular contact with warehouse employees in ensuring accurate recordkeeping relating to the movement, condition, and availability of merchandise located at the distribution center; work in areas which are proximate to the warehousing and deluxing areas utilized by the warehouse employees; and, in the case of delivery office and receiving clericals, share common supervision with employees in the unit requested by the Petitioner.

In these circumstances, we find that the disputed clerical employees are plant clerical employees whose interests are closely related to those of other distribution center employees and we shall include them in the unit.⁷ We conclude, therefore, that the appropriate unit is as follows:

All warehousemen, including janitors, furniture detailers, deluxers, appliance technicians, retail outlet store employees and plant clerical employees, employed at the Employer's distribution center at 1402 East Buckeye Road, Phoenix, Arizona; excluding office clerical employees, watchmen, guards, and supervisors as defined in the Act.⁸

Accordingly, as the Petitioner indicated a willingness to proceed to an election in any unit found appropriate, 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 issuance date of this decision. [*Excelsior* footnote omitted from publication.]

⁷ *Sears, Roebuck and Co.*, 220 NLRB No. 191 (1975); *Sears, Roebuck and Co.*, 152 NLRB 45, 49 (1963).

⁸ As the unit found appropriate is broader than that originally requested by the Petitioner, the Regional Director shall determine whether Petitioner's showing of interest is sufficient before proceeding with the election.

office. Thus, the record discloses that almost daily one of the merchandise control clericals visits a deluxer on the warehouse floor to check inventory or give him a requisition or sales check.

⁵ The record discloses that spot checks of the record-inventory-keeping cards are carried out three or four times per month.

⁶ Although the Regional Director found that the "working supervisor" of the delivery office directs the work of the employees assigned to him and that he attends supervisory meetings at which supervisors are present, he did not rule on his supervisory status as it was not clear from the record whether his work in directing other employees is routine in nature, or requires independent judgment. We agree that the record is insufficient to enable the Board to determine whether the "working supervisor" is a supervisor as defined in the Act, accordingly, we too, shall permit him to vote subject to challenge