

White Castle System, Inc. and United Catering, Restaurant, Bar and Hotel Workers, Local 1064, Retail, Wholesale and Department Store Union, AFL-CIO and United Labor Unions, Local 222. Cases 7-CA-19337, 7-RC-16536, 7-RC-16537, and 7-RC-16538

September 29, 1982

DECISION ON REVIEW AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS JENKINS AND HUNTER

On November 13, 1981, the Regional Director for Region 7 issued his Decision and Direction of Election in Cases 7-RC-16536, 7-RC-16537, and 7-RC-16538 in which he found appropriate separate units of employees at three of the Employer's 16 Detroit, Michigan, area restaurants. 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 ground that, in finding the petitioned-for units appropriate, he made erroneous findings as to substantial factual issues and departed from officially reported Board precedent.

The National Labor Relations Board, by telegraphic order dated December 10, 1981, granted the request for review and stayed the election pending decision on review. Thereafter, on May 10, 1982, the Board notified the parties in *White Castle System, Inc.*, 258 NLRB 1131 (1981), that it had decided, *sua sponte*, to reconsider its decision in that case, in which it found that the Employer violated Section 8(a)(5) and (1) of the Act by refusing to bargain with United Catering, Restaurant, Bar and Hotel Workers, Local 1064, Retail, Wholesale and Department Store Union, AFL-CIO (hereinafter Local 1064), as the collective-bargaining representative of its employees at its Southgate, Michigan, facility known as castle unit #20.¹ Thereafter, the Employer and Local 1064 filed statements of position in Case 7-CA-19337, and the Employer filed a brief on review in Cases 7-RC-16536, 7-RC-16537, and 7-RC-16538.

In light of the identical issues presented in the above cases, the Board has decided, *sua sponte*, to consolidate these cases for decision.

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.

¹ In Case 7-RC-16276, Local 1064 was certified as the collective-bargaining representative of the Employer's employees at the Southgate, Michigan, location on May 7, 1981.

The Board has considered the entire record² in this proceeding and makes the following findings:

The Employer operates a number of so-called fast food restaurants in the Detroit area. For approximately 9 years prior to 1975, the employees in the Detroit area restaurants were represented in a single unit by the Hotel and Restaurant Employees and Bartenders International Union, Local 234. Said representation terminated in 1975, and since that time there has been no collective bargaining at any of the stores.

The Petitioner in Cases 7-RC-16536, 7-RC-16537, and 7-RC-16538, United Labor Unions, Local 222 (hereinafter Local 222), seeks separate units at the Employer's restaurants located at 17758 Fenkell (No. 14), 6301 Livernois (No. 18), and 1960 Michigan Avenue (No. 19). In Case 7-RC-16276, Local 1064 sought a separate unit at the Employer's Southgate, Michigan (No. 20), restaurant. The Employer contends that separate units at each of these restaurants are inappropriate. We find merit in this contention, since the Employer's centralized and uniform operating and personnel procedures, the lack of autonomy over day-to-day labor relations by the supervisory personnel at the individual restaurants, the significant amount of employee interchange, the commonality of job skills and terms and conditions of employment of the employees, and the prior bargaining history rebut any presumption as to the appropriateness of a single-store unit.

All of the Detroit area restaurants are under the overall control of the area manager and assistant area manager, who operate out of the Employer's area office located in Farmington Hills, Michigan. The area is divided into five districts consisting of from two to four restaurants, called "Castles," each of which is under the direction of a district supervisor. Each restaurant has a castle supervisor and assistant castle supervisor.

All of the restaurants sell the same product at the same prices, have the same hours of operation and the same operating procedures, and operate with the same equipment. The Employer's administrative process is highly centralized, with payroll, purchasing, distribution of supplies, advertising, and capital expenditures centrally controlled by the area manager and his staff. In addition, general personnel policies are uniform and are centrally administered. In this regard, the evidence indicates that the area office, with the approval of the Em-

² At the hearing, the parties agreed, and the Regional Director ruled, that the record in Case 7-RC-16276 and his Decision and Direction of Election in that case, dated April 3, 1981, would form the basis for his decision in this proceeding. Accordingly, the record in Case 7-RC-16276 forms the basis of our decision herein.

ployer's Columbus, Ohio, headquarters, establishes overall personnel policy, including employees' classifications, full-time work hours, wage rates, vacation and holiday, dress code, and evaluation and disciplinary procedures, which are the same at all restaurants. Personnel files for all employees are kept in the area office, although copies of pertinent documents are maintained in personnel files at the individual restaurants.

Although significant authority over the day-to-day operation of the individual stores is ostensibly vested in the store supervisor, that authority is in fact highly circumscribed, particularly with respect to labor relations. The record indicates that district supervisors make daily visits to each restaurant within their district to assure that the Employer's policies are being properly implemented. They prepare work schedules jointly with the supervisor and must approve employee changes from full-time to part-time status. They observe the conduct of the employees at the individual restaurants to see that employees are complying with the Employer's policies concerning service procedures, dress code, etc., and, if proper procedures are not being followed, will either notify the supervisor or apprise the employee of the infraction directly.

With respect to hiring and discipline, restaurant supervisors are permitted to interview and hire new employees subject to the approval of the district supervisor and if within the staffing levels prescribed by the area manager. However, their authority to discipline employees for infractions of the Employer's rules is quite limited. Although the castle supervisors have authority to discharge an employee for serious offenses such as stealing or for a fourth specified infraction under the Employer's established progressive discipline system, the district supervisors or the assistant area manager is often asked by either the employee or the supervisor involved to investigate the incident and make a final decision. The record contains evidence of several instances in which either a castle supervisor has asked higher management to take disciplinary action or an employee has challenged a restaurant supervisor's disciplinary action. On at least several occasions the restaurant supervisor's disciplinary action has been rescinded after an independent investigation and evaluation by higher management.³

³ The record contains testimony of two instances in the recent past in which employees were summarily discharged by their restaurant supervisor for serious offenses only to be reinstated by Assistant Area Manager Brown, who conducted an investigation and found that mitigating circumstances warranted revocation of the discipline. On another occasion, Brown denied a supervisor's request to discharge two employees for a serious offense (fighting) because Brown considered them to be good employees.

In addition, employees have been encouraged by area management to take their complaints to the district supervisors.

Similarly, although the restaurant supervisors prepare employee evaluations for the prescribed review periods and will recommend raises, they do so in conjunction with the district supervisors who, because of the frequency of their visits to each store, are often familiar with the individual employees being evaluated.

Finally, the restaurant supervisors' authority to grant time off is also subject to specific guidelines. Moreover, in some matters, as with granting time off when unrelated to illness, the supervisor must obtain the approval of the district supervisor.

With respect to employee interchange among the various area stores, the Employer presented evidence that, in a 1-year period, there were in excess of 60 permanent transfers and more than 700 temporary transfers.⁴ The Regional Director discounted this evidence since a new store had been opened during the period involved. However, the record indicates nearly 80 percent of the temporary transfers and 25 percent of the permanent ones were to locations other than the newly opened store.⁵

The foregoing evidence, in our view, sufficiently rebuts the presumption that single-location units are appropriate here. We particularly note that the regular visits of the district supervisors to the stores,⁶ which involve both personally ascertaining whether the Employer's policies are being carried out⁷ and taking corrective action, coupled with the close supervision of the castle supervisors' disciplinary and other personnel actions, evidence the lack of autonomy of the castle supervisors over the day-to-day labor relations at the individual restaurants.⁸ We also find that the evidence of substantial employee interchange,⁹ the Employer's uniform personnel and operating procedures, the similar job skills, classifications, and work conditions of employees at all locations,¹⁰ and the bargaining histo-

⁴ This temporary transfer figure reflects the number of weeks employees were on temporary assignment. Thus, an employee temporarily assigned to another location for 5 weeks would count as five temporary assignments. Nevertheless, the exhibit introduced by the Employer contains over 200 different names, indicating a significant amount of interchange in a group which has 350-400 employees at any given time.

⁵ We recognize, however, that permanent transfers are of little relevance in these cases absent evidence of the reason for transfer. See *Lipman's, a Division of Dayton-Hudson Corporation*, 227 NLRB 1436, 1438 (1977).

⁶ See, e.g., *I.T.T. Continental Baking Company, Inc.*, 231 NLRB 326 (1977); *The Lawson Milk Company Division, Consolidated Foods Corporation*, 213 NLRB 360 (1974); *Waikamilo Corporation, d/b/a McDonald's*, 192 NLRB 878 (1971).

⁷ *Bud's Food Stores, Inc., d/b/a Bud's Thrift-T-Wise*, 236 NLRB 1203, 1205 (1978) (Member Jenkins' dissenting opinion).

⁸ See, e.g., *I.T.T. Continental Baking Company, Inc., supra*.

⁹ See, e.g., *Waikamilo Corporation, d/b/a McDonald's, supra*.

¹⁰ See, e.g., *Petrie Stores Corporation*, 212 NLRB 130 (1974).

ry in a areawide unit further rebut the presumption that a single-location unit is appropriate.

Accordingly, as we have found that the single-store units sought are not appropriate units for the purposes of collective bargaining, and as Local 222 has not indicated any desire to represent the Employer's employees in any broader unit,¹¹ we shall dismiss the petitions in Cases 7-RC-16536, 7-RC-16537, and 7-RC-16538. In addition, we shall vacate our Decision and Order in Case 7-CA-19337 (258 NLRB 1131), dismiss the complaint,

¹¹ In finding the requested single-store units to be inappropriate, we need not pass upon the Employer's contention that the only appropriate unit herein must encompass employees in all of the Detroit area stores.

In agreeing with his colleagues, Member Jenkins does not rely on *Waikamilo Corporation d/b/a McDonald's*, 192 NLRB 878. He also notes that here, as in his dissent in *Bud's Food Stores, Inc., d/b/a Bud's Thrift-T-Wise*, 236 NLRB 1203, 1204, the presumptive appropriateness of the single-store units had been rebutted.

revoke the certification issued in Case 7-RC-16276, which found appropriate a single-location unit at the Southgate restaurant, and dismiss the petition in that case.

ORDER

It is hereby ordered that the petitions in Cases 7-RC-16536, 7-RC-16537, and 7-RC-16538 be, and they hereby are, dismissed.

IT IS FURTHER ORDERED that the Board's Order in Case 7-CA-19337 (258 NLRB 1131) be vacated and the complaint be, and it hereby is, dismissed.

IT IS FURTHER ORDERED that the certification issued in Case 7-RC-16276 be, and it hereby is, revoked.

IT IS FURTHER ORDERED that the petition in Case 7-RC-16276 be, and it hereby is, dismissed.