

Abdow Corporation and General Teamsters, Chauffeurs, Warehousemen and Helpers, Building Materials, Heavy and Highway Construction Employees, Local Union 404 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner.
Case 1-RC-17930

29 August 1984

**DECISION ON REVIEW, ORDER, AND
DIRECTION OF ELECTION**

**BY MEMBERS ZIMMERMAN, HUNTER, AND
DENNIS**

On 2 August 1983 the Regional Director for Region 1 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate a unit of all full-time and regular part-time drivers and warehouse employees at the Employer's commissary in Springfield, Massachusetts, including dockmen, shipping/receiving, and the plant clerical.¹ The Regional Director rejected the Employer's contention that the only appropriate unit was a plantwide unit including the kitchen and bakery employees. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision on the grounds, inter alia, that in excluding the kitchen and bakery employees from the unit found appropriate, he made erroneous findings of fact and departed from official Board precedent.

By mailgram dated 26 August 1983, the request for review was granted. Pursuant to the Board's Rules and Regulations, the election was held on 27 August 1983 in the unit found appropriate by the Regional Director and the ballots were impounded pending decision on review.

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, a Massachusetts corporation, operates a commissary where it is engaged in the preparation of food products which are distributed to restaurants in Massachusetts and Connecticut. The Petitioner seeks to represent a unit of approximately 10 employees (drivers, dockworkers, and shipping/receiving employees) employed at the

Employer's commissary. The Employer contends that a plantwide unit of approximately 24 employees including the kitchen and bakery employees is the only appropriate unit. The Regional Director found that the drivers and warehouse employees share a community of interest distinct from that of the other employees based on such factors as separate supervision, dissimilar job responsibilities, and lack of interchange with the kitchen and bakery employees. The Employer argues that in reaching this conclusion the Regional Director failed to give appropriate weight to such factors as the integrated nature of the Employer's operation, its small size, and employee contact. We agree.

The Employer's commissary covers approximately a 16,320 square-foot area which has dock, storage, and refrigeration areas; a kitchen; a bakery; several offices; and a "break room." The kitchen and bakery areas are located at the center of the facility with storage areas on either side. The main offices are located behind the kitchen and bakery. There is also a small office in the storage area. The break room is adjacent to the bakery. The two dock areas are located on the outside of the facility. The in-dock area runs parallel to the upper storage area; the out-dock area runs parallel to the lower storage area. Entrances to the commissary are located between the dock and storage areas.

The Employer's manager, Jeff Costello,² and Assistant Manager Wayne Minor have overlapping authority over the entire plant operation. Originally, Minor, on his own request, was transferred from driving to the kitchen so that he could learn kitchen operations. After spending 6 to 8 months in the kitchen, Minor was promoted to kitchen supervisor and then to assistant manager. Minor works primarily with the kitchen employees and supervises the entire operation only when Costello is absent.

There are 13 full-time employees and 1 part-time employee in the kitchen and bakery classifications. These employees prepare the food products which are shipped out to various restaurants. One section of the storage area directly across from the bakery is for the exclusive use of the kitchen and bakery employees.

There are five dockworkers. They are responsible for filling orders from inventory kept in the storage area, bringing the orders to the dock to be loaded on company trucks for delivery, and receiving and placing incoming products in the storage areas. They also replenish the kitchen and bakery staffs' storage area when necessary. On occasion,

¹ The Petitioner had requested the unit found appropriate with the exception of the clerical who, it contended, was an office clerical and therefore properly excluded. However, the Employer alleged and the Regional Director found that the disputed employee was a plant clerical and thus properly included in the unit.

² Costello was promoted to manager about 10 days prior to the hearing.

other employees who are available assist the dockworkers in unloading trucks. Two of the dockworkers also serve as substitutes for the Employer's drivers.

The Employer's three drivers regularly deliver its products to Connecticut and Worcester, Massachusetts, as well as to various local restaurants. When making a run to Connecticut, a driver generally spends about 1-1/2 hours loading his truck before going out on the road and returns to the commissary early in the afternoon. He then spends another hour loading up for two afternoon deliveries. After these trips have been completed, the driver generally does not return to the warehouse until the following day. Similarly, when making a run to Worcester, a driver typically makes an early morning run to two local stores, then returns to the commissary and spends approximately 1-1/2 to 2 hours loading his truck. After the trip to Worcester has been completed, the driver typically does not return to the warehouse until the following day. On local runs, drivers deliver goods to five different stores. Out of the 5 days the drivers regularly work, 1 day a week is spent in the warehouse working with the dock employees in replenishing the storage areas.

The plant clerical spends 25 to 40 percent of her time in the office located in the storage area. She takes orders and does inventory control work. The clerical also works in the front office (located behind the kitchen and bakery) where she handles computer work concerning order information.

Finally, there is the shipping/receiving classification. Although employees in this classification as well as dockworkers normally receive shipments as they arrive at the commissary, if they are unavailable, any of the other employees are allowed to and actually have signed the truckers' bills.

The kitchen, bakery, and dock employees prepare their meals in the kitchen and take breaks in the "break room." Kitchen and bakery workers walk through the upper storage room where the dock employees work in order to get to the break room. Dockworkers must go through the kitchen to carry loads out to the dock. Eight employees have transferred from the kitchen to the warehouse. Of those eight, only two are currently with the Employer. All employees work Monday, Wednesday, Friday, and Saturday with Tuesday and Thursday as alternate days off. In addition, any employee may request a Saturday off. The kitchen and bakery are closed on Sundays. Drivers are required to work one Sunday out of every month.

Drivers are expected to arrive at work between 6 and 6:30 a.m. and may leave as early as 4 or as late as 6 p.m. Dockworkers work until 7 p.m. on

some days, and kitchen and bakery employees arrive between 5:30 and 6 a.m. and work until 2 to 4 p.m.

There are four job grades. Drivers are in grade four with a starting salary of \$4.50 per hour. The average wage for drivers is \$5.28, for dockworkers \$4.31, and for kitchen and bakery workers \$4.25. The clerical earns approximately \$4.40 to \$4.50 per hour. After 3 months, all employees receive a 25-percent raise and every employee is reviewed periodically thereafter. All hourly paid employees receive the same fringe benefits and follow the same general work rules. Dockworkers and drivers wear uniforms different from the uniforms worn by kitchen and bakery employees. In the 2 months prior to the hearing, two employee meetings were held which involved only the dock and driving employees. Management was present at the first of these two meetings.

Upon the foregoing, and our review of the entire record in this case, we conclude that a plantwide unit is alone appropriate. We rely especially on the fact that the Employer employs a relatively small complement of plant employees, approximately 24; they are all located within a single building; the building is designed in such a way that there necessarily is contact between the various classifications; all aspects of the Employer's operation are functionally integrated, revolving around a single goal of preparation and delivery of the Employer's food products to the restaurants; and all employees are allowed to and actually do perform receiving functions. Based on these factors, we are of the view, contrary to the Regional Director, that a unit limited to the Employer's drivers and warehouse employees is inappropriate. Instead, we find that the kitchen and bakery employees share such a substantial community of interest with the warehouse employees that only a plantwide unit is appropriate.³

As the unit found appropriate is substantially larger than the warehouse unit found appropriate by the Regional Director, the election conducted on 27 August 1983 must be vacated. However, as the Petitioner has indicated a willingness to proceed to an election in the broader unit found appropriate, we shall direct that the election be held in the following unit which we have found appropriate:⁴

³ See generally *Napa Columbus Distribution Co.*, 269 NLRB 1052 (1984); *Scholastic Magazines*, 192 NLRB 461 (1971).

⁴ As the unit found appropriate is larger than that requested, the Petitioner is accorded a period of 10 days in which to submit the requisite showing of interest to support an election. In the event the Petitioner does not wish to proceed to an election herein, it may withdraw its petition without prejudice by notice to the Regional Director within 7 days from the date of this decision.

All regular full-time and part-time employees employed at the Employer's commissary in Springfield, Massachusetts, excluding office clericals, guards, and supervisors as defined in the Act.

ORDER

The election conducted on 27 August 1983 is vacated.

[Direction of Election omitted from publication.]

MEMBER ZIMMERMAN, dissenting.

I do not agree with my colleagues that a plantwide unit, including the Employer's drivers, warehouse employees, and kitchen and bakery employees "is alone appropriate." Rather, I would adopt the Regional Director's finding that the unit of drivers and warehouse employees sought by the Petitioner constitutes a separate appropriate unit for the purpose of collective bargaining within the meaning of the Act.

The record establishes that the drivers and warehouse employees spend almost all of their time in the storage and dock areas, which are separate from the kitchen and bakery, and that the contact between them and the Employer's other employees is limited. The drivers and warehouse employees perform the primary duties of loading and unloading trucks, stocking products, picking up and load-

ing orders, and driving delivery trucks.¹ They perform no kitchen or bakery work. The majority states that all employee job functions revolve around the goal of preparing and delivering the Employer's products to customers; but this case lacks the interchange and functional similarity of tasks extant in the cases cited by the majority in support of its finding that the unit sought by the Petitioner is inappropriate. Further, here the drivers and warehouse employees are separately supervised,² differently uniformed, and meet separately with management.

Accordingly, on the record as a whole I would find that the warehouse employees constitute a homogeneous group which shares a community of interest distinct from that of the Employer's other employees.³ I would therefore direct an election in the unit sought by the Petitioner.

¹ There is evidence that kitchen employees are permitted and do receive merchandise coming into the Employer's facility when warehouse employees are not available. However, receiving is only one aspect of the work performed by drivers and warehouse employees who are the only employees to fill orders, perform shipping functions, and drive delivery trucks.

² As noted by the majority, Assistant Manager Minor, who supervises the kitchen employees, oversees the Employer's entire operation only in the absence of Manager Costello. Accordingly, I do not agree with the majority that Minor and Costello have "overlapping authority."

³ *Institutional Food Services*, 258 NLRB 650 (1981); *Marriott Corp.*, 252 NLRB 707 (1980), *enfd.* 652 F.2d 202 (1st Cir. 1981).