

Copps Food Center, Inc. and United Food & Commercial Workers Union, Local 73A, AFL-CIO-CLC, Petitioner. Case 30-RC-4852

January 28, 1991

DECISION ON REVIEW AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

On January 24, 1989, the Regional Director for Region 30 issued a Decision and Direction of Election in the above-entitled proceeding in which he found that the unit petitioned for by the Union, consisting of all full-time and regular part-time meat department employees employed at the Employer's store in Manitowoc, Wisconsin, but excluding all other employees, was appropriate for collective-bargaining purposes and directed that an election be held among employees in that unit. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision, contending that the separate unit of meat department employees sought by the Union is not appropriate, and further that the Regional Director erred in not dismissing the petition based on an alleged agreement between the parties in which the Union purportedly agreed to seek only a storewide unit.

On February 27, 1989, the Board issued an order granting the Employer's request for review. The Employer and the Union have filed briefs in support of their respective positions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the basis of the entire record in this proceeding, including the briefs filed by the parties, the Board, for the reasons set forth below, finds that the unit in which the Regional Director has directed an election is not appropriate.¹

The Employer operates several retail food stores in the State of Wisconsin, including one in Manitowoc, Wisconsin, the only facility involved here. The Manitowoc store, known in the retail trade as a "super store," has 11 departments,² employs approximately 270 employees, and is opened 24 hours a day, 7 days a week. Responsibility for the overall operation of the Manitowoc store is vested in a store manager, and each department, with the exception of the grocery department, has its own department manager who reports

directly to the store manager. Within their own areas, department managers are responsible for the hiring, firing, promotion, discipline, scheduling, and supervision of employees. In the meat department there are, in addition to the department manager and assistant manager, both of whom are statutory supervisors,³ approximately 28-29 employees. As found by the Regional Director, there are six meatcutters, one production worker, five stock clerks, five meatwrappers, eight service clerks, and three sanitation clerks employed in the meat department.

In finding that a unit of meat department employees was appropriate for collective bargaining, the Regional Director relied on a prior Board holding that such a unit is presumptively appropriate,⁴ and on his conclusion that the Employer here had failed to rebut the presumption. In *Hall's Super Duper*, 281 NLRB 1116 (1986), however, the Board, in discussing application of the presumption, stated that "where it is demonstrated that meat department jobs do not entail the use of [traditional meatcutting] skills, the 'presumption' that separate meat department units are appropriate . . . does not apply." *Id.* at 1117. In *Hall's*, the Board found that the presumption was not applicable because the Employer's meat department employees did not exercise traditional meatcutting skills. In so doing, the Board relied on the fact that *Hall's* meat department employees did not handle carcass meat, but instead handled prepackaged and boxed meats that merely had to be cut into smaller portions and trimmed by meatcutters before being weighed and wrapped for individual sales. The Board also relied on the fact that the meat department's cut-to-order work amounted to less than 1 percent of the department's total business. For these reasons, and because the meat department employees in *Hall's* also shared a community of interests with other store employees, the Board found that a separate unit of meat department employees was not appropriate.

We find the instant case analogous to *Hall's*. Here, as in *Hall's*, the meat department employees handle only prepackaged and boxed meats and do not handle carcass meat. Like the meatcutters in *Hall's*, the meat clerks at the Manitowoc store merely trim and cut the boxed meat into smaller portions for retail sale, after which the meat is wrapped, priced, and stocked in display cases by the meat wrappers and/or service clerks. Further, as in *Hall's*, the amount of cut-to-order work performed by the Manitowoc meatcutters is minimal, occurring only about once per week. In light of these

¹In view of our finding that the petitioned-for unit is inappropriate and our subsequent dismissal of the petition, we deem it unnecessary to pass on the Employer's other contention that the Petitioner had agreed to seek only a storewide unit.

²The 11 departments, situated in the selling area, are the front end, video, produce, bakery, deli, dairy, meat, frozen food, general merchandise, grocery, and health and beauty aides.

³The parties stipulated that the meat department manager is a Sec. 2(11) supervisor. However, at the hearing the Employer contended, and the Union disagreed, that the meat department assistant manager was also a statutory supervisor. The Regional Director found the meat department assistant manager to be a statutory supervisor, and the Union did not request review of that finding.

⁴Citing *Big Y Supermarkets*, 161 NLRB 1263 (1966).

facts, and in the absence of other evidence showing that the meat department employees exercise traditional meatcutting skills, we find that the Board's presumption of appropriateness with respect to a unit of meat department employees does not apply here.⁵

Further, application of the traditional factors used by the Board in making a unit determination supports a finding that a separate unit of all Manitowoc meat department employees would not be appropriate. Thus, the record reveals a strong community of interests between the meat department employees and other store employees. The meat department employees, for example, receive the same fringe benefits, share the same facilities (i.e., breakroom, locker facilities), have similar work hours, are subject to the same work rules, employment policies, and job bidding system, and have frequent contact with other store employees.⁶ Also, the job duties and skills required of service clerks, stock clerks, meatwrappers, and sanitation clerks in the meat department (who combined, represent over 50 percent of the proposed unit) are similar to those required and performed by employees in such departments as the produce, bakery, and deli departments. As to wages, the record reveals that the sales, service, stock, and sanitation clerks in the meat department are included in the same wage range with employees in other departments (i.e., bakery, dairy, deli, frozen, and grocery). Although the meat department, like all other de-

⁵The Regional Director relied on *Great Scot of Florida*, 256 NLRB 885 fn. 1 (1981), and *NLRB v. Super-H Discount*, 744 F.2d 735 (10th Cir. 1984), to show that the meat department employees who handled boxed meats were exercising traditional meatcutting skills. Initially, we note that both these cases were decided prior to the Board's decision in *Hall's* where the Board, as noted, held that the trimming and portioning of boxed meats did not require the use of traditional meatcutting skills. We further note that in both the *Great Scot* and *Super-H Discount* case, the meat department employees handling the boxed meat were found to have spent a substantial amount of their time "cutting, pricing, and packaging meat." Those decisions do not make clear, however, whether the substantial cutting referred to involved "cut-to-order" requests, which the *Hall's* decision implicitly suggests might involve the use of traditional meatcutting skills. In the absence of any explanation in those cases concerning the specific nature of the work performed by the meatcutters and, in view of the Board's subsequent decision in *Hall's*, we do not rely on *Great Scot of Florida* or *NLRB v. Super-H Discount*, supra, for our unit determination.

⁶However, the meat clerks, the production worker, and the meat wrappers (who comprise less than half of the proposed unit) have less frequent contact with the other store employees than do other meat department employees.

partments, is separately supervised and there appears to be little interchange between meat department employees and other store employees, these factors do not outweigh the otherwise strong community of interests that the meat department employees share with other employees.

For the foregoing reasons, we find that a separate unit of meat department employees would, in this case, not be appropriate for collective bargaining. As the Petitioner has not indicated that it would be willing to proceed to an election in a broader or overall storewide unit, we shall dismiss the petition.

ORDER

The petition is dismissed.

MEMBER CRACRAFT, dissenting.

Although I agree that the Board's presumption concerning the appropriateness of a unit of meat department employees does not apply here, I find that the meat department employees share a sufficiently distinct community of interests from other store employees to warrant a finding that they constitute a separate appropriate bargaining unit. The meat department is separately supervised, the employees do not interchange with employees from other departments, and there is only minimal work-related interaction with employees from the other departments. Although the meatcutters are a minority of the department, they spend most of their time cutting meat. Because the boxed meat consists almost entirely of primal cuts, the meatcutters must use skills different from those exercised by employees in other departments. Finally, other meat department employees are being informally trained in meatcutting skills. Given these facts, I would find that these employees constitute an appropriate bargaining unit.

Further, I would find that the Petitioner's purported agreement to seek only a storewide unit, made over a year before the petition filed in this case, does not preclude it from subsequently seeking a narrower unit of meat department employees nor does it serve to bar the Board from deciding the unit question.