

**Cargill, Incorporated and Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, AFL-CIO.** Case 17-RC-11982

November 30, 2001

DECISION ON REVIEW AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS  
LIEBMAN  
AND WALSH

On June 29, 2001, the Acting Regional Director for Region 17 issued a Decision and Direction of Election (pertinent portions of which are attached), in which he found that a single-facility unit was appropriate. Thereafter, on July 13, 2001, 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 Acting Regional Director's determination. By order dated July 25, 2001, the Board granted the Employer's request for review.

Having carefully examined the entire record, we affirm the Acting Regional Director's finding, for the reasons stated by him and for the additional reasons set forth below, that the petitioned-for unit, limited to production and maintenance employees at the Employer's East facility, is appropriate.

A single facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *J&L Plate, Inc.*, 310 NLRB 429 (1993); *Red Lobster*, 300 NLRB 908 (1990). To determine whether the presumption has been rebutted, the Board considers such factors as centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB 397 (1999); *Rental Uniform Service*, 330 NLRB 334 (1999). Analyzing the facts here in light of the applicable criteria, we agree with the Acting Regional Director that the presumption has not been rebutted.

Although the Employer has centralized control over administration and labor relations policies, there is significant local autonomy over labor relations. Each facility has its own supervisory staff. The three supervisors at East facility make assignments, supervise work, schedule maintenance inspections, impose discipline,<sup>1</sup> handle initial employee complaints, and schedule vacations. *Rental Uniform Service*, supra. The West facility

superintendent has the same authority and responsibilities as the East facility supervisors.

The East and West facilities are geographically separate, located two miles apart. *Renzetti's Supermarket*, 238 NLRB 174 (1978). Further, contrary to our dissenting colleague's contention, interchange between East and West facilities is neither regular nor substantial. There is no evidence of permanent transfers of employees between facilities, and employees at one facility do not bid on job openings at the other facility.<sup>2</sup> The documentary evidence shows only a handful of instances of interchange between the two facilities. Nor is there specific evidence as to the actual hours spent during each instance of interchange.

Our dissenting colleague relies on the Employer's claim of 13-14 instances of interchange between the two facilities. However, since the Employer provided neither documentation to support this claim nor specific testimony regarding the context surrounding these alleged instances of interchange, this claim is of little evidentiary value. *New Britain Transportation Co.*, supra. In any event, we would not view 13-14 instances of interchange among 23 employees over an 8-month period as demonstrating substantial interchange sufficient to overcome the single-facility presumption. *Red Lobster*, 300 NLRB at 911; *New Britain*, supra, 330 NLRB 398.<sup>3</sup>

Finally, we find that the fact that the Employer has a two-facility grain elevator unit in Kansas City and a two-facility flour mill unit in Topeka does not require a finding that the petitioned-for unit at East facility is inappropriate. The fact relevant to our analysis in this case is that there is no bargaining history at either of the plants involved in the current proceeding.

We find that the separate local autonomy, the geographic separation, and the lack of substantial interchange together outweigh the factors cited by our dissenting colleague, including the fact that the East and West facilities are a single-profit center. Accordingly, we agree with the Acting Regional Director that the Employer has failed to meet its burden to rebut the single-facility presumption.

<sup>1</sup> Contrary to the Acting Regional Director's finding, the record shows, and the Employer concedes, that the East facility supervisors give written warnings as well as oral warnings.

<sup>2</sup> In addition, vacations are scheduled separately at each plant. Thus, as the Acting Regional Director found, the fact that there may be a common seniority list for the two facilities does not negate the separateness of the two facilities.

<sup>3</sup> Although the Acting Regional Director found, as contended by the Employer, that the East and West facilities were on the same rail line, there is no evidence that this has resulted in interchange of work or personnel.

## ORDER

The Acting Regional Director's decision is affirmed. This proceeding is remanded to the Regional Director for further appropriate action.

CHAIRMAN HURTGEN, dissenting.

I conclude that the presumption in favor of a single facility has been rebutted. Accordingly, I would find that the single-facility unit is not appropriate.

The Union sought a unit confined to the 15 production and maintenance employees at the East facility in Topeka, Kansas. The Employer would add the eight production and maintenance employees at the West facility in Topeka.

The facilities are only two miles apart. The two facilities constitute a Farm Service Center. This Center, in turn, is part of the Twin Rivers Farm Service Group that includes five other facilities in other cities. The Employer's administrative operations and its labor relations policies are centrally determined. These policies result in identical basic terms and conditions of employment at both the East facility and the West facility. The superintendent for these two facilities is responsible for implementation of these policies at both facilities, including hiring, firing, disciplinary actions more severe than verbal warnings, setting wage levels, and promotions.

Although each facility has at least one supervisor, those supervisors report to the single superintendent for both facilities. The authority of the supervisors is limited by the oversight of the superintendent with regard to the evaluation of employee performance, wage decisions, decisions regarding serious discipline, and the final adjustment of employee grievances.

The superintendent testified that there were 13–14 interchanges between the two facilities in the 8-month period from November 2000 to July 2001. Given the small total number of employees at the two facilities, and the brevity of the period, this is a substantial amount of interchange.<sup>1</sup>

My colleagues say that there are only a "handful" of instances of interchange. In light of the fact that there are only 23 employees in the unit, it seems to me that 13–14 interchanges are more than a "handful." In addition, my colleagues say that there is no "documentation" of the interchanges. However, there is un rebutted and credited testimony of the superintendent, and this testimony cannot be ignored. Similarly, my colleagues say that there is no testimony as to the "context" of the interchanges. I believe that the fact of substantial interchanges is itself a factor tending to negate a one-facility

unit. In any event, there was ample opportunity to cross-examine the superintendent and to thereby seek to undermine the significance of the interchanges. No such undermining took place.

*New Britain Transportation Co.*, 330 NLRB 397 (1999), is distinguishable. In that case, the employees were drivers, and thus it was essential to know the number of routes and charters that were involved in the interchanges. The employer there failed to provide this context. By contrast, the instant case involves production and maintenance employees. As noted above, the substantial interchange among these employees is itself a factor militating against a one-facility unit.

The East and West facilities are on the same rail line. The East and West facilities are considered a single profit center. There is also a common seniority list.

Finally, bargaining history of the Employer is inconsistent with a single-facility unit. The Employer's two Kansas City elevators are in a single bargaining unit, as are its two flour mills in Topeka.<sup>2</sup>

In all these circumstances, I would not find that a unit confined to the East facility is appropriate.

## APPENDIX

## DECISION AND DIRECTION OF ELECTION

The Petitioner seeks an election in the following bargaining unit: all full-time and regular part-time production and maintenance employees employed by the Employer at its facility located at 1845 West Gordon, Topeka, Kansas, but excluding office clerical employees, professional employees, guards, and supervisors as defined by the Act.

The Employer agrees that the bargaining unit should include production and maintenance employees, but contends that the appropriate bargaining unit must include employees at both the 1845 West Gordon and 1850 Northwest Brickyard Road facilities, because of the functional integration of the two facilities and close community of interest between the employees who work at the facilities.

There is no collective-bargaining history at either facility. However, in May 2000, the Employer and the Petitioner herein entered into a stipulated election agreement in a bargaining unit limited to the employees employed at the Employer's East facility.

## Employer's Structure

The Employer's grain division, called Ag Producer Services (APS) is organized in groups of approximately 39 entities called "farm service groups." The two facilities at issue herein are included in the Employer's Twin Rivers Farm Service Group (Twin Rivers Group). The Twin Rivers Group is made up of seven grain storage elevators: the two elevators at issue herein located in Topeka, Kansas; two elevators in Kansas City

<sup>1</sup> The documentary evidence is for a shorter period, and does not contradict the superintendent's testimony.

<sup>2</sup> There was a stipulated election agreement in May 2000 for a unit limited to the East facility herein. Apparently, there was no certification. A stipulated unit does not establish a bargaining history.

(the Chouteau and Katy facilities, respectively); an elevator in Hamburg, Iowa; an elevator in Atchison, Kansas; and an elevator in Forest City, Missouri. The Twin Rivers Group is managed by Mickey Ebenkamp. Jerry Endreson, the Twin Rivers Farm Service Group operations leader, reports to Ebenkamp. The two Topeka facilities constitute a "farm service center" within the Twin Rivers Group, and are a single-profit center, while each of the other five elevators in the Twin Rivers Group is considered a separate profit center. John Kauk, is responsible for the overall operation of the Topeka "farm service center," i.e., the East and West facilities in Topeka at issue herein. Kauk's title is superintendent; he maintains an office at the East facility, and he reports directly to Endreson.

#### The Facilities

The Employer purchased the East facility in 1982. The East facility has a grain storage capacity of approximately 24 million bushels, and can load up to 100 rail car units. The management hierarchy at the East facility includes: Jim Colwell, grain supervisor; Jim Bailey, maintenance supervisor; and Kevin Gatzemeyer, operations supervisor. A total of 15 employees are currently employed in production and maintenance jobs at the East facility.

The Employer purchased the West facility from Continental Grain Company in July 1999. After obtaining the facility, the Employer shut down some of the storage capacity at the West facility. The West facility currently has a grain storage capacity of approximately 3-1/2 million bushels, and can load up to 25 rail car units. It is located slightly over 2 miles from the East facility, and is on the same rail line as the East facility. Vernon Pritchett is the superintendent of the West facility, and is the only management official assigned exclusively to the West facility. Pritchett reports to Kauk. In addition, the maintenance supervisor at the East facility, Bailey, is responsible for the management of a safety program at both the East and the West facilities. A total of eight employees are currently employed in production and maintenance jobs at the West facility. A business office, which houses the merchandising, accounting, clerical, and payroll functions for both the East and the West facility, is located adjacent to the West facility.

#### Supervisors

The parties stipulated that the following individuals are supervisors within the meaning of Section 2(11) of the Act and should be excluded from the bargaining unit: Jim Colwell, Jim Bailey, Kevin Gatzemeyer, and John Kauk. The record supports this stipulation, and I find that each of the foregoing named individuals is a supervisor within the meaning of the Act, and I shall exclude them from the appropriate unit. The parties did not directly address the supervisory status of Ebenkamp, Endreson, or Pritchett. However, based on record evidence, it is clear that both parties consider Ebenkamp, Endreson, and Pritchett statutory supervisors, and I find that the record evidence establishes that each of these three individuals is a supervisor within the meaning of Section 2(11) of the Act, and I shall exclude them from the unit found appropriate herein. The parties also stipulated that Heidi Hawkinson, who is employed at the East facility, is an office clerical employee and is

excluded from the bargaining unit. Accordingly, I find that Hawkinson is properly excluded from the bargaining unit.

#### Job Functions, Work Conditions, and Integration

At both the East and the West facilities, the production and maintenance employees perform similar job functions, including loading grain into and out of storage bins; inspecting and emptying the dump trucks that carry the grain into the facility; loading grain onto rail cars for outbound shipment; sanitation work; and maintenance work. The Employer's merchandising office purchases grain for delivery in Topeka without regard to whether the delivery of grain will ultimately be assigned to the East or to the West facility. Both the East and the West facilities store corn. Wheat is generally stored at the East facility because of the ability of the East facility to handle 100 rail cars.

The two facilities are subject to a common operating budget, although Kauk maintains a separate listing of expenses for the two facilities. Both the East and the West facilities operate from 8 a.m. to 4 p.m. In addition, two employees at the East facility work a night shift, from midnight to 8 a.m. Policies concerning work rules; hire of employees; probationary periods; paydays; training; regular pay; overtime pay; safety programs and incentives; and benefits, including health and disability insurance, vacation leave, sick leave, holidays, and pensions, are established by the Employer at the division level, and apply to both Topeka facilities as well as to other grain elevators operated by the Employer. Both facilities have the same employee handbook, which applies to all facilities within the division. In addition, both Topeka facilities operate with the same computer software, called LYNX, that is used by all facilities within the Employer's APS division. Both facilities utilize the same report, called the daily grain report, to track the movement of grain within the elevator.

Kauk testified that he is responsible for the day-to-day operation of both the East and West facilities, including scheduling, logistics and grain movement, grain quality management, long range planning, capital projects, maintenance projects, employee relations, hiring employees, setting wage rates, and promoting employees at both the East and West facilities. Training of new employees consists of on the job training conducted pursuant to guidelines established by the Employer at the division level. Evaluation of employee performance is done by the employee's immediate supervisor in conjunction with Kauk. The grain supervisor at the East facility, Colwell, is responsible for monitoring grain condition, and supervising the loading of rail cars, and the placement of incoming grain in storage facilities. Bailey, the maintenance supervisor at the East facility, is responsible for purchasing maintenance supplies and scheduling maintenance inspections at the East facility. Bailey also acts as the safety coordinator over both the East and the West facility. Gatzemeyer, the operations supervisor, is responsible for making daily job assignments to employees at the East facility and for supervising outside activities, such as the loading of rail cars and sanitation. Pritchett is responsible for the performance at the West facility of the functions of grain supervisor, maintenance supervisor, and operations supervisor. Vacation schedules at the two facilities are separate and are prepared by the immediate supervisors at the two facilities.

Initial verbal warnings are issued by the employee's immediate supervisor, and Kauk determines and issues higher level discipline including written warnings and terminations. Kauk maintains the overall records of disciplinary actions, including verbal warnings.

#### Interchange of Equipment and Employees

Some equipment is shared between the two facilities including: a trackmobile, bobcat, front-end loaders, a farm truck, and a spray painter. On occasion, employees are transferred between the two facilities in order to meet work demand. In particular, when the trackmobile is used at the West facility, an employee from the East facility is often assigned to operate the trackmobile at the West facility. The Employer is currently remodeling the merchandising office at its business office in front of the West facility, and had used employees from both the East and the West facilities for about a week to help with remodeling work. However, employees are regularly scheduled to work at either one facility or the other. Employees punch a timeclock at the facility where they are regularly assigned. Employees who are temporarily assigned to work at the other facility continue to punch the timeclock at their regular facility at the beginning and the end of the day.

Kauk testified that from the time that the West facility was purchased in July 1999, the Employer has intended to integrate the functioning of the East and West facilities so that they function as a single unit. Kauk further testified that since November 2000, when he became superintendent, he has increasingly integrated the operations of the East and West facilities, and that it is contemplated that the two facilities would become increasingly integrated in the future. Kauk testified that the Employer viewed the ability to temporarily transfer employees between the two Topeka facilities as crucial to its ability to operate the facilities efficiently, and that the ability to temporarily transfer employees between the two facilities had, in part, enabled the Employer to save labor costs and to terminate its use of temporary employees. While the Employer does not currently employ any temporary employees, Kauk testified that temporary employees may be employed in the future if they are needed during the corn and soy bean harvest in the fall. The parties stipulated at hearing that they do not intend to include temporary employees within the bargaining unit found appropriate herein.

As evidence of the increased integration of the two Topeka facilities, Kauk initially estimated that since November 2000, there have been 13 or 14 occasions when an employee from one facility worked at the other facility for part of a day. Although the Employer does not keep detailed records of the temporary transfers of employees between the two Topeka facilities, the Employer introduced records showing that in the 3-month period of March, April, and May 2000, the following temporary transfers occurred: on April 24, May 3, 4, 5, and 30, 2001, one employee was transferred from one facility to the other to perform regular production work. In addition, on May 1, 2, 3, and 4, 2001, two employees from the East facility worked in the Employer's office building adjacent to the West facility in conjunction with the remodeling of the Employer's merchandising office.

The Employer asserts that at other locations, it has successfully operated several grain storage facilities with a single production and maintenance crew. In addition, the record reflects that the Employer occasionally transferred employees on a temporary basis between other elevators within the Twin Rivers Group, to help with seasonal heavy workloads at harvest time. The Employer further notes that its two grain storage facilities in Kansas City (Katy and Chouteau), are included in a single-bargaining unit represented by the Petitioner herein. In addition, employees employed at the Employer's two flour mills located in Topeka are included in a single-bargaining unit represented by the Petitioner.

The Employer conducts a single "kickoff" safety meeting at the beginning of the crop year that is attended by employees from both the East and West facilities. Throughout the year, periodic safety meetings are conducted separately at each facility but the same safety training program and materials are presented at the safety meeting. Some testing, including hearing testing, is performed at the East facility for employees from both the East and West facilities. In the past year, an employee appreciation dinner, a retirement dinner, and a business meeting where members of the Employer's division management met with employees and explained the Employer's business plan were attended by employees from both the East and the West facilities.

Kauk testified that he maintains a single-seniority list comprised of employees at both the East and the West facilities, and that he would "probably" use the single-seniority list in the event of a layoff. However, there is no evidence that there has been a layoff where the joint seniority list was used; that there will be a layoff in the foreseeable future; or that the joint seniority list has any function other than potential use in a layoff situation.

There is no evidence of any permanent transfers of employees between the two facilities. Moreover, employees do not bid on job openings in any facility other than the facility where they are regularly assigned. The Employer fills job openings at the East and West facilities by hiring new employees rather than soliciting or permitting employees from the other Topeka facility to bid on or transfer to the other facility.

#### Determination

The Board has consistently adhered to the principle that a single location or facility unit is appropriate, and the party seeking a multiple location unit bears the burden of overcoming the presumption. *Courier Dispatch Group, Inc.*, 311 NLRB 728 (1993); *Red Lobster*, 300 NLRB 908, 910 (1990); *Kapok Tree Inn*, 232 NLRB 702, 703 (1977). Unless a single facility has been effectively merged into a more comprehensive unit, or is so functionally integrated with another unit that it has lost its separate identity, it constitutes an appropriate unit. *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *J&L Plate*, 310 NLRB 429 (1993); and *Dixie Belle Mills, Inc.*, 138 NLRB 629, 631 (1962). To determine whether the presumption has been rebutted, the Board looks at such factors as control over daily operations and labor relations, including extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; the physical and geographical loca-

tion of the facilities; and bargaining history, if any. *Esco Corp.*, 298 NLRB 837, 839 (1990).

There is no bargaining history at either the East facility or the West facility. However, the parties have established multi-facility bargaining units at the Employer's flour mills located in Topeka, Kansas, and at the Employer's two grain elevators located in Kansas City, and both of the multilocation bargaining units are subject to a current collective-bargaining agreement. The Employer's administrative operations and its labor relations policies are centrally determined. Overall division policies set identical basic terms and conditions of employment at both the East facility and West facility, and Kauk is responsible for implementation of these divisionwide policies at both facilities including hiring, firing, disciplinary actions more severe than verbal warnings, setting wage levels, and promotions. The East and West facilities are considered a single-profit center. The East and the West facilities have separate direct supervision of employees, and it appears that the direct supervisors have local autonomy with respect to the assignment of work duties; issuance of initial discipline; recommendations with regard to the need to hire new employees, and the evaluation of employee performance; initial handling of employee grievances; and the approval and scheduling of vacation leave. However, it appears that the local autonomy of the direct supervisors is limited by the oversight of Kauk with regard to the evaluation of employee performance; wage decisions; decisions regarding serious discipline; and the final adjustment of employee grievances. The facilities are located in very close geographical proximity, only 2 miles apart, and are on the same rail line. Both facilities are serviced by the same merchandising or grain purchasing department, and grain is assigned to the elevators based on storage capacity and availability. Thus, there is no particular type of work performed at either facility that can be identified as work exclusively assigned or performed by one of the facilities rather than the other, or can be identified as exclusively that facility's work. The two facilities share a common support staff housed in a facility located adjacent to the West facility. In addition to sharing the identical terms and conditions of employment that prevail throughout the Employer's grain division, employees at the Employer's East and West facilities possess the same basic job skills, perform the same basic functions, and receive identical job and safety training. Although there is no evidence of permanent transfers between the two facilities, there is evidence of some temporary exchange of employees between the two facilities, and the Employer asserts that it intends to regularly transfer employees between the two facilities in the future. Although employees from two facilities share common activities such as a joint employee recognition dinner and retirement party, these types of activities are too removed from the core terms and conditions of employment to carry any weight. *O'Brien Memorial, Inc.*, 308 NLRB 553 (1992).

In *Esso Corp.*, supra at 840, the Board found that the presumption of a single-facility unit had not been rebutted, finding that the lack of regular and substantial interchange or contact between employees at three separate warehouses, plus the great distances between the locations (the three facilities therein were

174 to 346 miles apart) outweighed the centralized operations and labor relations, the limited local autonomy, and the common skills and functions of the employees at all three locations. The Board also noted that it was significant that there was "a responsible employee" at the excluded warehouse facility, who, although found not to be a statutory supervisor, was responsible for overseeing the operation at the warehouse. In *D & L Transportation, Inc.*, 324 NLRB 160 (1997), the Board found that the single-facility unit presumption had not been rebutted and that local autonomy supported the presumption of single-facility unit where local supervisors maintained control over hiring, time off, dispatching/assignment, and minor discipline, notwithstanding central operational rules and labor relations policy. In addition, there was some difference in job skills and pay, and minimal interchange of employees (the employer sought to have all seven of its terminals included in the bargaining unit, while the union sought to represent employees in a single terminal).

Although a number of factors in this case may favor the broader unit sought by the Employer, on balance, I find that the evidence presented does not establish that the East and the West facilities have been "so effectively merged into a comprehensive unit, or is so functionally integrated" that the East facility has lost its separate identity and that the single location presumption has been rebutted. *J & L Plate*, supra. In finding that the single-facility presumption has not been rebutted, I rely in particular on: the fact that each facility has separate immediate supervision; that the immediate supervisors possess authority to assign and direct work, issue minor discipline, participate in the evaluation of employee performance, and grant and schedule vacation. Therefore the record evidence establishes a substantial amount of separate local autonomy at each facility; there is less than substantial temporary interchange of employees or regular contact between employees at the two facilities; there is no evidence of permanent transfers of employees between the two facilities; and employees do not have the opportunity to bid on or transfer to available job positions at the other facility. As stated by the Board in *D & L Transportation, Inc.*, supra at 162 fn. 8, "local autonomy over . . . the employees' overall working conditions, together with the presence of the local manager and the dispatcher, *strongly outweigh* the fact that wages and formal discipline are the province of the Employer's central management and that all other personnel policies are uniform and centrally determined" (emphasis added). In accord *R & D Trucking, Inc.*, supra at 532, finding that the single-facility presumption had been rebutted where there was no management official or any employee acting as "in charge" or as a "responsible employee"; and citing at 532 fn. 1, *Esco Corp.*, wherein the Board found that the single-facility presumption had not been rebutted, relying on, inter alia, the presence of a "responsible employee" at the excluded warehouse facility who, although found not to be a statutory supervisor, was responsible for overseeing the operation at the warehouse.

Accordingly, I find that the single location or single-facility presumption has not been rebutted and that the East facility is an appropriate bargaining unit.