UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 28

ALBERTSON'S, INC.1

Employer

and

Case 28-RC-6300

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL UNION NO. 540, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTIONS

The Petitioner seeks to represent a unit comprised of all meat department employees, including full-time and regular part-time journeyman and apprentice employees in the classifications of meat cutter, meat wrapper, butcher block supervisor, butcher block clerk, meat deli clerk, meat cleanup, and assistant head meat cutter employed at five stores located in El Paso, Texas. The parties stipulated that any unit or units found appropriate should exclude all other store employees, including, but not limited to, head meat cutters, also known as meat department managers, office clerical employees, service deli employees, direct store delivery clerks, confidential employees, guards and supervisors as defined in the Act. The Employer contends that the petitioned-for five-store unit is inappropriate and that the meat department employees at each of these stores constitute an appropriate bargaining unit.

Based more fully on the reasons set forth below, I find that the scope of the petitioned-for multifacility unit of meat department employees is inappropriate, and shall order a separate election in each of the five stores. I base my conclusion upon the lack of functional integration, common supervision, and the distinct administrative grouping of employees in the petitioned-for unit, as well as other relevant factors analyzed below.

DECISION

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding, I find:

¹ The name of the Employer appears as corrected at the hearing.

² The name of the Petitioner appears as corrected at the hearing.

- 1. **Hearing and Procedures:** The Hearing Officer's rulings made at the hearing are free from prejudicial error and are affirmed.
- 2. **Jurisdiction:** The parties stipulated, and I find, that the Employer, a Delaware corporation with its principal office and place of business in Boise, Idaho, and other offices and places of business in several states, is engaged in the retail sale of groceries and related items. During the 12-month period preceding the hearing, the Employer, in conducting its business operations described above, derived gross revenues in excess of \$500,000, and during the same period, purchased and received at its El Paso, Texas facilities, goods valued in excess of \$50,000 directly from suppliers located outside the State of Texas. The Employer is engaged in commerce within the meaning of the Act, and, therefore, the Board's asserting jurisdiction in this matter will accomplish the purposes of the Act.
- 3. **Claim of Representation:** The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.
- 4. **Statutory Question:** A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
- 5. **Unit Finding:** As stated above, the Petitioner seeks to represent a unit comprised of all meat department employees, including full-time and regular part-time journeyman and apprentice employees in the classifications of meat cutter, meat wrapper, butcher block supervisor, butcher block clerk, meat deli clerk, meat cleanup, and assistant head meat cutter at five of the Employer's stores in El Paso, Texas. The parties dispute the appropriateness of the petitioned-for unit's scope. The Employer asserts that the five-store unit is inappropriate and instead contends that each of these five El Paso stores constitutes a separate appropriate bargaining unit.

A. The Employer's Overall Structure and Operations

The Employer's corporate headquarters are located in Boise, Idaho. The Employer maintains individual stores across the country that are grouped into administrative divisions according to their geographic location. There are eight stores in El Paso, all of which are part of the Southwest Area/Intermountain West Division, which also encompasses stores in Arizona and New Mexico. At three of the El Paso stores, Store No. 932 located at 7022 North Mesa, No. 933 located at 9111 Dyer, and No. 934 located at 2200 Yarbrough, the meat department employees are already represented in a single unit by the Petitioner. The Petitioner wishes to represent the five remaining stores in El Paso, including Store No. 936 located at 3100 North Mesa, No. 994 located at 5630 North Desert Boulevard, No. 999 located at 10765 Kenworthy, No. 1006 located at 5200 Montana, and No. 1016 located at 11320 Montwood. All five of these unrepresented stores came into existence after the Petitioner gained representative status at the three original stores.

Lisa Goodman, Southwest Area Assistant Meat Sales Manager, is responsible for providing operational support to the meat departments in the approximately 40 stores in the Southwest Area. Her duties include devising sales strategies and identifying areas of improvement within each meat department. Joe Bichler, the District Five Manager for the Southwest Area, also provides operational support to numerous stores, including those in El Paso.

The Southwest Division determines employee wages and wage progressions. The record reflects that in November 2003, Mary Penske, head of human resources in the Southwest Area, asked Store No. 994 Director Christie LeClaire to compile data on competing grocers' wages in the El Paso area. Subsequently, all unrepresented employees, including non-meat department employees, except courtesy clerks, at the eight El Paso stores received wage increases that went into effect on July 16, 2004. Jim Rice, Senior Vice President of Operations for the Southwest Region, issued a letter addressed to all El Paso unrepresented associates on July 29, 2004, informing them of this wage increase. LeClaire testified that Penske told her that employees in Arizona also received wage increases around the same time. There is no evidence indicating whether employees of New Mexico stores also received wage increases.

The Employer's corporate headquarters in Boise possess exclusive decision-making authority over employee health and life insurance, retirement plans, benefits and work rules. These matters are uniform in all five of the petitioned-for stores. Except as may be changed by the collective-bargaining agreement, these matters are the same for the three El Paso stores already represented by the Petitioner.

B. Operations of the El Paso Meat Departments

The El Paso stores are situated as follows: Store No. 999 is located in the Northeast corner of El Paso. Store No. 933 is approximately 9 miles southwest of Store No. 999. Store No. 1016 is 11 miles southeast of Store No. 933. Store No. 934 is 2 miles west of Store No. 1016, and Store No.1006 is 4 miles west of Store No. 934. Store No. 936 is five miles west of Store No.1006, and Store No. 932 is 4 miles northwest of Store No. 936. Finally, Store No. 944 is 3 miles northwest of Store No. 932. The record reveals that the Employer operates stores in at least two New Mexico cities, one in Las Cruces, located approximately 30 miles from El Paso, and one in Silver City. The record does not reveal the distance between Silver City and El Paso.

Each store's meat manager is responsible for purchasing meat products from the Employer's distribution center in Tolleson, Arizona, which supplies all fresh and frozen meat products to the El Paso stores. Each meat manager determines the quantity and mix of meat products to purchase for the individual store he or she manages. On occasion, it is necessary to transfer a meat product from one store to another. This would occur, for example, if one store ran low on a sale item or failed to receive a product shipment. Store-to-store transfers occur approximately once per month at each store. In such a situation, the meat manager requesting the product calls a neighboring store to determine the product's availability. If the product is available and the supplying store's meat manager approves the transfer, the

requesting store must purchase the product from the supplying store for the same price at which the supplying store purchased the product. Thus, the supplying store derives income from the transfer, while the requesting store incurs a cost in the transaction. The meat manager requesting the product then usually retrieves the product from the supplying store and transports it back to his or her store. Another employee from the requesting store retrieves the product from the supplying store approximately 25 percent of the time. This procedure is the sole method for transferring meat products among the eight El Paso stores.

Each store's meat department owns, and is responsible for buying, cleaning, and repairing its equipment. No equipment is borrowed or commonly owned or shared among the eight El Paso stores.

The Southwest Division establishes an annual budget for each of the El Paso stores. This budget consists of sales, profit and labor projections, which are broken down by department. Each store's meat manager has the sole discretion and responsibility to determine how available resources should be allocated to meet his or her department's projections by the end of the year. For example, a manager will schedule an employee's work hours based on the labor budget and sales at his or her store. Surpluses or deficits in sales, profits, and labor are never transferred between stores. The amount of a meat manager's bonus is based upon the individual performance of his or her store; the performance of other stores is irrelevant to this calculation.

The same meat cutting, packing, wrapping and stocking skills are necessary to work in specific classifications in each of the El Paso stores' meat departments. Each store's meat manager is independently responsible for scheduling lunch breaks, rest breaks, work hours and days and vacation for employees at his or her store. Each manager has sole discretion to assign work duties, adjust employee grievances, fire, promote, train and settle customer complaints without consultation with employees or managers of other El Paso stores. A meat manager may also seek guidance from the store director or corporate employees concerning these matters.

C. Employee Transfer and Interchange Among El Paso Stores

Employees have the opportunity to permanently transfer between stores. When an opening exists, a job announcement is posted at all area stores for approximately one week. Interested employees then apply for the position and contact the store director and/or meat manager of the store with the available position to schedule an interview. The meat manager, who has sole authority to choose a candidate, conducts interviews and fills the position.

Approximately five years ago, Store No. 935 in El Paso closed. The record does not reveal the location of Store No. 935 or whether it ever reopened. These employees were unrepresented and the Employer attempted to transfer the affected employees to other area stores, including those in Las Cruces, New Mexico. It is unclear if the Employer operates more than one store in Las Cruces.

No formal written policy concerning temporary employee interchange between the eight El Paso stores exists. A store's departmental labor budget determines the number of hours employees are scheduled to work each week. Employees are, therefore, not guaranteed to work 40 hours per week. In an attempt to fairly distribute the total number of available labor hours in a given week, each employee is scheduled to work approximately the same number of hours as other department employees each week. Each employee is assigned a specific home store. A store other than an employee's home store is referred to as a "float" store. Employees may volunteer or be asked to work at a store other than their home store for various reasons, such as a shortage of employees due to injuries or vacations or an employee's desire to increase earnings by working additional hours. A home store meat manager cannot prevent an employee from working at a float store as long as the employee's scheduled home store shift is not affected.

When employees work in a float store, they are paid the same rate as they receive at their home store or the float store's rate, if it is higher. The float store earnings are paid on the employee's regular paycheck for the hours worked there by virtue of an administrative adjustment. The meat manager of the float store possesses exclusive authority to discipline, schedule lunch and break periods, and assign work to floating employees. The float store manager need not consult with the home store manager before making such determinations. Apart from the temporary interchange circumstances, meat department employees in one store do not have daily contact with meat department employees in other stores.

The record exhibits reflect that several employees at the five unrepresented stores have worked at float stores at various times between January 2004 and August 2004, which will be referred to here as the "relevant period." The number of unit employees at each location ranges from approximately 8 to 12. There are 49 total employees in the petitioned-for five-store unit.

Before transferring to Store No. 936 on February 27, 2004, butcher block service clerk Frank Alvidrez worked at Store No. 1006. While at Store No. 1006, Alvidrez worked approximately 25 total hours as a floater at Store No. 936 in January and February 2004. Store No. 936 meat cutter David DeAnda worked eight hours as a floater during the relevant period. In January 2004, before transferring to Store No. 994 on January 20, 2004, meat cutter Arturo Delgado worked approximately 40 hours at Store No. 994. The 8.25 hours Delgado worked at Store No. 994 during the pay period ending January 1, 2004, is included in this total. Store No. 994 meat cutter, identified in exhibits as "JRM," worked eight hours as a floater. Before transferring to Store No. 994 on May 20, 2004, meat cutter Gilberto Marquez worked 60 hours as a floater at Store No. 934, and approximately 134 hours as a floater at Store No. 994. After transferring to Store No. 994, Marquez worked seven hours as a floater. Store No. 999 assistant meat manager "RM" worked 10 total hours as a floater during the relevant period. Store No. 999 meat wrapper Yvonne Mena worked approximately 137 hours as a floater at Store No. 994 during the relevant period. Meat cutter Eloy Pedregon worked 22 hours as a floater to Store No. 933, 103 hours as a floater to Store No. 934, and 6 hours as a floater to Store No. 1006 during the relevant period. Store No. 999 meat cutter Juan Reyes worked 43 hours as a floater to Store No. 925 in Las Cruces, New Mexico, 6 hours at Store No. 932, and 27.5 hours at Store No. 933 during the relevant period. None of the meat

department employees at Store No. 1006 worked as floaters during the relevant period. Store No. 1016 meat cutter "CAA" worked 59 hours at Store No. 994 during the relevant period, including 10.5 hours CAA worked during the pay period ending January 1, 2004. Finally, Store No. 1016 meat cutter Mario Ledesma worked approximately 227 hours at Store No. 934 and 96 hours at Store No. 994, 6 hours at Store No. 999, and 7 hours at Store No. 1006 during the relevant period.

D. Bargaining History

As noted above, the Petitioner currently represents meat department employees in three of the Employer's eight El Paso stores (Store Numbers 932, 933 and 934). A predecessor local of the Petitioner was originally certified approximately ten years ago to represent those employees as a result of a stipulated election agreement in Case 28-RC-5132. At the time the election among the meat department employees of these three stores was held, and the Petitioner's predecessor was certified in a three-store unit, the other five stores at issue here did not exist.

E. Legal Analysis and Determination

The Act does not require that the approved bargaining unit be the only appropriate unit or even the most appropriate unit; rather, the unit must simply be *an* appropriate unit. *Executive Resources Associates*, 301 NLRB 400, 401 (1991). Here, the Petitioner seeks to represent a multifacility unit. In these circumstances, the presumption of the appropriateness of a petitioned-for single facility unit is inapplicable. *Hazard Express, Inc.*, 324 NLRB 989 (1997)(citing *NLRB v. Carson Cable TV*, 795 F.2d 879, 886-887 (9th Cir. 1986) and *Capital Coors Co.*, 309 NLRB 322 fn.1 (1992)). In cases involving petitioned-for multifacility units, the Board evaluates the following factors to determine the appropriateness of such units: employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history. *Alamo Rent-A-Car*, 330 NLRB 897 (2000).

The Board applied these factors in *Bashas'*, *Inc.*, 337 NLRB 710 (2002), where it found that a 17-store unit of meat and deli employees within one Arizona county was inappropriate. The Board noted the lack of evidence establishing a community of interest among those employees distinct from the interests of all of the employer's other meat and deli employees in other stores. In that case, the employer operated 26 stores in Arizona that constituted a separate administrative division of the employer's operations. Id. at 710. The petitioner sought to represent meat and deli employees in its 17 stores located within Maricopa County, Arizona, but did not wish to include another nearby store in Casa Grande, only 32 miles away from a store within the petitioned-for unit and part of the same metropolitan area. Id. at 711. The Board found that the 17-store unit was an arbitrary grouping, based in part on the fact that the Casa Grande store was excluded from the unit simply because it was not located within Maricopa County. Id.

In *Albertson's, Inc.*, 270 NLRB 132 (1984), the Board considered whether stores under a multiemployer agreement constituted a multistore unit after the employer withdrew

from multiemployer bargaining. Seven of the employer's 12 Boise area stores had been covered by multiemployer contracts. Id. at 132. These seven stores constituted less than one-fourth of the employer's Idaho Division and each store's management exercised autonomy in the hiring, firing and training of employees. Id. at 133. Given these facts, the Board concluded that a unit limited to the stores previously covered by the contract would not be appropriate when analyzed under traditional unit determination criteria. Id.

Applying the aforementioned factors and applicable case law to the case before me, I find that a multistore unit composed of the five unrepresented El Paso stores' meat department employees is inappropriate and that the meat department employees at each of the five stores constitute separate appropriate bargaining units. In reaching these conclusions, I rely on several factors. First, as emphasized by the Board in *Bashas*', the petitioned-for El Paso stores do not constitute or fall within a distinct operational or administrative structure of the Employer. Rather, the Employer operates and administratively groups its stores by geographic region, and not individual city. All of the eight El Paso stores fall within the Southwest Division, which provides administrative and operational support to stores in three states. When the Southwest Division assists stores in El Paso, it does so most often at the individual store level. This is reflected in the Division's provision of distinct annual budgets and projections to each El Paso store, for which each store is solely responsible and accountable, and the formulation of individualized marketing strategies within each store by Southwest Area Assistant Meat Sales Manager Goodman.

Second, I find that the lack of common supervision among the five unrepresented meat department employees supports a finding that the individual stores constitute appropriate units. This was particularly evident through the evidence establishing that an employee, when serving as a floater, is subject to the discretion of the float store's manager concerning discipline, scheduling, and direction of work.

Third, with regard to employee interchange, because permanent employee interchange is a less significant indicator of community of interest, the Board gives it less weight in making unit scope determinations. *Bashas*', supra, 337 NLRB at 711, fn. 7. With respect to temporary employee transfers, I find that they are neither prevalent nor numerous enough to support the petitioned-for unit in that only 11 of the 49 employees in the petitioned-for unit have temporarily worked at other stores, some infrequently and a few exclusively at the union-represented El Paso stores. As reflected by the record evidence, temporary employee interchange is neither a frequent nor significant portion of the operations of the five unrepresented stores.

Fourth, while the petitioned-for employees' skills and duties and general terms and conditions of employment are similar, there is no indication that they are significantly different from other meat department employees in other represented or unrepresented stores so as to establish the appropriateness of a separate unit limited to the five stores in question.

With regard to the bargaining history, although the parties have, through their previous stipulated-election agreement resulting in a three-store unit, bargained on this basis for the three represented El Paso stores, I find it of no consequence to the determination I make here.

In this regard, I do not pass upon the appropriateness of the existing three-store unit in El Paso or a unit consisting of all eight El Paso stores. As to the former, the Board has acknowledged that it will recognize and enforce agreements between employers and unions to bargain concerning groups of facilities that it may have deemed inappropriate if it were required to make such a unit determination. *Albertson's*, supra, 270 NLRB at 133.

Finally, I find it significant that each store exercises autonomy in making departmental purchases and addressing employee issues. Thus, in applying all of the foregoing factors for determining the appropriateness of a multifacility unit, I conclude, as urged by the Employer, that the petitioned-for five-store El Paso unit is inappropriate and that the only units appropriate for bargaining are the five individual El Paso stores which are the subject of the petition.

Accordingly, I find that the following employees of the Employer constitute five distinct units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Store No. 936

INCLUDED: All full-time and regular part-time journeyman and apprentice employees in the classifications of meat cutter, meat wrapper, butcher block supervisor, butcher block clerk, meat deli clerk, meat cleanup, and assistant head meat cutter at Store No. 936 located on 3100 North Mesa, El Paso, Texas.

EXCLUDED: All other employees, including, but not limited to, head meat cutters, also known as meat department managers, office clerical employees, service deli employees, direct store delivery clerks, confidential employees, guards and supervisors as defined in the Act.

Store No. 994

INCLUDED: All full-time and regular part-time journeyman and apprentice employees in the classifications of meat cutter, meat wrapper, butcher block supervisor, butcher block clerk, meat deli clerk, meat cleanup, and assistant head meat cutter at Store No. 994 located on 5630 North Desert Boulevard, El Paso, Texas.

EXCLUDED: All other employees, including, but not limited to, head meat cutters, also known as meat department managers, office clerical employees, service deli employees, direct store delivery clerks, confidential employees, guards and supervisors as defined in the Act.

Store No. 999

INCLUDED: All full-time and regular part-time journeyman and apprentice employees in the classifications of meat cutter, meat wrapper, butcher block supervisor, butcher block clerk, meat deli clerk, meat cleanup, and assistant head meat cutter at Store No. 999 located on 10765 Kenworthy, El Paso, Texas.

EXCLUDED: All other employees, including, but not limited to, head meat cutters, also known as meat department managers, office clerical employees, service deli employees, direct store delivery clerks, confidential employees, guards and supervisors as defined in the Act.

Store No. 1006

INCLUDED: All full-time and regular part-time journeyman and apprentice employees in the classifications of meat cutter, meat wrapper, butcher block supervisor, butcher block clerk, meat deli clerk, meat cleanup, and assistant head meat cutter at Store No. 1006 located on 5200 Montana, El Paso, Texas.

EXCLUDED: All other employees, including, but not limited to, head meat cutters, also known as meat department managers, office clerical employees, service deli employees, direct store delivery clerks, confidential employees, guards and supervisors as defined in the Act.

Store No. 1016

INCLUDED: All full-time and regular part-time journeyman and apprentice employees in the classifications of meat cutter, meat wrapper, butcher block supervisor, butcher block clerk, meat deli clerk, meat cleanup, and assistant head meat cutter at Store No. 1016 located on 11320 Montwood, El Paso, Texas.

EXCLUDED: All other employees, including, but not limited to, head meat cutters, also known as meat department managers, office clerical employees, service deli employees, direct store delivery clerks, confidential employees, guards and supervisors as defined in the Act.

There are approximately 9 employees in the unit found appropriate at Store No. 936, 12 employees at Store No. 994, 10 employees at Store No. 999, 8 employees at Store No. 1006, and 10 employees at Store No. 1016. The Petitioner has stated its willingness to proceed to an election in a unit or units other that the one it has petitioned for. Since the units in which I am directing an election are different from the petitioned-for unit, the showing of interest will need to be administratively re-examined to determine if the Petitioner has an adequate showing of interest in each of the above-defined bargaining units. To the extent that

the Petitioner does not have a sufficient showing of interest in a unit or units, the Petitioner is directed to submit to the NLRB Albuquerque Resident Office an adequate showing of interest for such unit or units within 14 days from the date it is notified of the insufficiency of its showing of interest, or such further time as I shall permit. If the Petitioner fails to submit a required additional showing of interest for any of the above-defined bargaining units, it must partially withdraw its petition with respect to that bargaining unit within the time provided, or that portion of the petition will be dismissed.

DIRECTION OF ELECTIONS

I direct that elections by secret ballot be conducted in the above units at a time and place that will be set forth in the notice of election, that will issue soon, subject to the Board's Rules and Regulations. The employees who are eligible to vote are those in the respective units who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Also eligible are those in military services of the United States Government, but only if they appear in person at the polls. Employees in the units are ineligible to vote if they have quit or been discharged for cause since the designated payroll period; if they engaged in a strike and have been discharged for cause since the strike began and have not been rehired or reinstated before the election date; and, if they have engaged in an economic strike which began more than 12 months before the election date and who have been permanently replaced. All eligible employees shall vote whether or not they desire to be represented for collectivebargaining purposes by:

UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL UNION NO. 540, AFL-CIO

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters in the respective store units and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that five election eligibility lists, one pertaining to each of the units found appropriate above, containing the full names and addresses of all the eligible voters, must be filed by the Employer with me within seven (7) days of the date of this Decision and Direction of Elections. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. These lists may initially be used by me to assist in determining an adequate

showing of interest for each bargaining unit. I shall, in turn, make the lists available to all parties to the election, only after I shall have determined that adequate showings of interest among the employees in the respective units found appropriate have been established.

In order to be timely filed, such lists must be received at the NLRB Albuquerque Resident Office, 505 Marquette Avenue, NW, Suite 1820, Albuquerque, New Mexico, 87102-2181 on or before August 31, 2004. No extension of time to file these lists shall be granted except in extraordinary circumstances nor shall the filing of a request for review excuse the requirements to furnish these lists. Failure to comply with this requirement shall be grounds for setting aside the elections whenever proper objections are filed. The lists may be submitted by facsimile transmission. Since each list is to be made available to all parties to the election, please furnish a total of two (2) copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. The Board in Washington must receive this request by September 7, 2004. A copy of the request for review should also be served on the undersigned.

Dated at Phoenix, Arizona, this 24th day of August 2004.

/s/Cornele A. Overstreet

Cornele A. Overstreet, Regional Director National Labor Relations Board – Region 28