

Queen City Distributing Co., Inc. t/a Sol's and United Food and Commercial Workers Union, Local 23, AFL-CIO-CLC, Petitioner Case 6-RC-9379

28 September 1984

DECISION ON REVIEW, ORDER, AND DIRECTION OF ELECTION

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND DENNIS

On 9 August 1983 the Acting Regional Director for Region 6 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate a unit consisting of all full-time and regular part-time employees at the Employer's Green Garden Plaza, Aliquippa, Pennsylvania store. In so finding, the Acting Regional Director rejected the Employer's contention that the appropriate unit must encompass all five of the Employer's retail facilities. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Acting Regional Director's decision, and for a stay of the election which he had directed. The Employer alleged that there were erroneous findings of fact and a departure from official precedent in the Acting Regional Director's decision.

By telegraphic order on 9 September 1983 the request for review was granted. However, the Employer's request for a stay of election was not granted.¹ Pursuant to the Board's procedures,² the election was held on 13 September 1983, and the ballots were impounded pending the decision on review. The Employer filed a brief on review.

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

The Board has reviewed the entire record in this case and makes the following findings:

The Employer owns and operates five retail stores, which sell sporting goods and law enforcement equipment in western Pennsylvania. The farthest distance between any two stores is 29 miles. There are two stores in Aliquippa: the principal facility at Franklin Avenue and the other in Green Garden Plaza, both of which trade under the name "Sol's." Two other stores, one in Mars (Cranberry Mall) and one in Carnegie, are known as "Sol Neft Sports." The fifth store, in Pittsburgh, trades as "Sol Neft Police Uniforms." All stores sell sporting goods, except the Pittsburgh store, which sells law

enforcement equipment, including firearms, exclusively. Two other stores also sell firearms. There is no history of collective bargaining at any of the Employer's outlets.

The Petitioner filed an election petition seeking a separate unit of all clerks, cashiers, and stockroom employees employed by the Employer at the Green Garden Plaza facility. Alternatively, the Petitioner contends that if a unit limited to the Green Plaza facility is found to be inappropriate, then the smallest appropriate unit would be one comprised of the Employer's two Aliquippa stores: Green Garden Plaza and Franklin Avenue. At the hearing in this case, the Petitioner indicated its willingness to proceed to an election in any unit found appropriate by the Board.

The Employer contends that a separate unit at the Green Garden store is inappropriate due to the Employer's centralized administration of business and labor relations policies for all five stores, the concomitant lack of significant authority possessed by the individual store managers in operational and labor relations matters, and continuing employee interchange among all of the Employer's facilities. The Employer contends that the only appropriate unit should consist of all full-time and regular part-time employees employed at the Employer's five retail locations.³

For the reasons discussed below, we find merit in the Employer's contentions.

When considering a multifacility operation, the well-established Board policy is to find a single-facility unit presumptively appropriate. This presumption can only be overcome by a showing of functional integration so substantial as to negate the separate identity of the single-facility unit. In making findings on this issue, the Board looks to such factors as central control over daily operations and labor relations, skills and functions of the employees, general working conditions, bargaining history, employee interchange, and geographical location of the facilities in relation to each other.⁴ Based on the facts in the record in this case, and contrary to the result reached by the Acting Regional Director, we find that the presumption favoring single-facility units has been overcome.

Control over the Employer's daily operations and labor relations/personnel matters throughout

³ There are 63 full-time and regular part-time employees in the petitioned-for job classifications at all five stores: Franklin Avenue—15, Green Garden Plaza—15, Carnegie—22, Cranberry Mall—7, Pittsburgh—4.

⁴ *Orkin Exterminating Co.*, 258 NLRB 773 (1981), see also *Second Federal Savings & Loan*, 266 NLRB 204 (1983), *Petrie Stores Corp.* 266 NLRB 75 (1983).

¹ In granting review, Chairman Dotson would also have stayed the election.

² Sec. 102.67(b) of the Board's Rules and Regulations.

its five-store chain is highly centralized. The record establishes that all significant decisions affecting business affairs and personnel policies are made by the Employer's co-owners, Marvin and David Neft, who operate out of the Franklin Avenue main store. An operations manager, Glen McQuiston, assists the Nefts in overseeing the individual store managers. The merchandise available at the Employer's five outlets is substantially similar. Marvin Neft controls the sale and distribution of sporting goods products, which are available at four of the stores, and David Neft concentrates on the sale of firearms and law enforcement equipment, which may be purchased at three of the stores.

The Nefts are directly responsible for the purchase of 80 percent of the Employer's stock, which is delivered to the warehouse at Franklin Avenue and then distributed to the remaining stores at the direction of the Nefts.⁵ The Nefts determine which goods will be sold at which stores, decide the marketing methods to be used, and set companywide prices for all the items stocked.⁶ Advertising is administered centrally, often with two or three stores listed on the same promotional material.⁷ Frequently, the merchandise of one store is transferred to another when an item, often an advertised special requested by a customer, is out of stock. Marvin Neft visits each store at least once every 2 weeks, David Neft visits some of the stores weekly. In addition, there are usually 10 to 15 phone calls daily between central management and each of the individual stores.

All business, financial, and personnel decision-making and recordkeeping is centralized at the Franklin Avenue main store. Most merchandise is delivered initially to the warehouse at the Franklin Avenue location. A separate bank account is maintained for each store, for the sole purpose of receiving daily deposits. These deposits are subsequently transferred to the central account under the name of the Franklin Avenue store. Store managers have no authority to withdraw funds from or issue checks against these local accounts.

Labor relations and personnel policies and procedures are also highly centralized, with local store autonomy limited to only routine daily matters. The Nefts establish labor relations and personnel

policies and, with Operations Director McQuiston, closely supervise their implementation. The main office controls payroll procedures by obtaining information from the store managers, compiling employee hours, and forwarding the material to a computer processing firm, which issues all paychecks from the centralized account on the companywide payday. Policies regarding wages, hours, overtime, vacations, holidays, pension and profit-sharing plans,⁸ Christmas bonuses, and employee fringe benefits, including merchandise discounts, are centrally established and uniformly applied at all five locations. The Nefts retain final authority over hiring and firing, and individual wage increases. The hiring process begins at the store level, with a request from the store manager for permission to hire an additional employee. If that request is approved by either of the Neft brothers, then applications for employment are accepted, and job interviews conducted, by the store manager. Applications and recommendations are then sent to the Nefts, for their review, possible further investigation, and final decision. Usually, the recommendation of the store manager is accepted by the Nefts. However, the record reveals one instance in which Marvin Neft disapproved a store manager's recommendation that an applicant be hired.

When a store manager recommends to the Nefts that an applicant be hired, he also recommends a starting wage rate, within a specified range established by the Nefts—up to 25 cents more than the established base starting rate. Once again, as with the hiring decision itself, the Nefts exercise final authority in approving recommended starting wage rates.

The procedure for discharge, like the procedure for hiring, originates at the store manager level, with a recommendation to the Nefts. Within the 12-month period prior to the hearing, the Nefts approved a recommendation for the discharge of a store employee and disapproved another. The Nefts also determine the size of the work force at each location, and decide whether additional employees are needed or if layoffs are required. The store managers decide who is to be laid off. Further, the Nefts determine and set the hours of operations for each store, while permitting store managers to determine day-to-day employee scheduling.

The Employer has no written policy concerning employee discipline or grievances. The procedure generally practiced allows local store management to initially handle these types of problems. However, employees are informed that if the determina-

⁵ Of the remaining goods purchased, 18 percent is law enforcement equipment (uniforms, etc.) ordered by the manager of the Pittsburgh store, where these items are available exclusively. The other individual store managers purchased a total of 2 percent of the Employer's goods.

⁶ While store managers may recommend a price reduction to meet local competition on an extremely limited basis, such recommendations must be approved by the Nefts or McQuiston.

⁷ For example, the Green Garden Plaza store, where the Petitioner seeks unit representation, frequently has its specials advertised in conjunction with the Franklin Avenue and Cranberry Mall facilities.

⁸ The combination of profits from all five stores forms the basis for determining any profits declared.

tion by local management is unsatisfactory, they may contact Marvin Neft for further discussion and final resolution of the issue

The record reveals that there is substantial temporary interchange between the employees of the various facilities. Often, when an employee at one store is out sick or on vacation, he will be replaced temporarily by an employee from another store who is familiar with the absent employee's area of expertise (the Employer's stores are similarly stocked, and the skills and abilities of the employees are substantially the same). For example, there were at least eight instances in the year prior to the hearing when employees from other stores substituted at the Green Garden Plaza store, and Marvin Neft estimated that temporary employee interchange among all five stores occurs approximately 10 to 15 times per month, with over 100 such occurrences in the past 3 years.⁹ In addition to temporary employee interchange between stores, employees from the various stores occasionally spend a few hours together at the main store (Franklin Avenue) for training, or at one of the other stores, for sales meetings. Twice a year, employees from all stores except Pittsburgh (which, as seen, specializes in law enforcement clothing and equipment) attend seminars at which various of the Employer's suppliers discuss their product line and marketing strategies.

Permanent transfer of employees between stores, while understandably less frequent than temporary transfer,¹⁰ nevertheless does occur. In the year prior to the hearing, four store employees made permanent transfers between stores. Three of these transfers involved the Green Garden Plaza facility, which Petitioner seeks to represent in a single-store unit, two Green Garden Plaza employees transferred to other stores, and a Carnegie employee transferred to Green Garden Plaza. Several employees transferred in order to take advantage of opportunities for promotion to assistant store manager. All transfers, whether temporary or permanent, are voluntary.

All store employees appear to have basically the same skills and functions. The record neither establishes nor implies any significant disparity in the general working conditions between the five stores.

⁹ When the Employer opened its Cranberry Mall store in Mars in July 1983, numerous employees from the other stores worked for a few days at Cranberry Mall as part of the start up effort at that location.

¹⁰ As indicated above, the farthest distance between any two of five stores in question is only 29 miles.

There is no bargaining history in the Employer's stores, and no union seeks to represent employees in a broader unit—although the Petitioner is willing to proceed to an election in any unit found appropriate by the Board.

Based on the record as a whole—especially the high degree of centralized control retained and exercised by the Nefts over the establishment and implementation of uniform operational and labor relations policies, procedures, and practices throughout the five-store chain, and the frequency of temporary employee interchange and similarity of employee skills and working conditions among the stores—we find that the employees at the Green Garden Plaza store do not have a community of interest sufficiently distinct and separate from the employees in the Employer's four other retail stores to warrant the establishment of a separate unit, as found by the Acting Regional Director. Rather, we find that the unit must encompass all full-time and regular part-time employees at all five of the Employer's retail stores.

Because the multilocation unit found appropriate is substantially larger (four times larger) than the single-location unit found appropriate by the Acting Regional Director, the election conducted on 13 September 1983 must be vacated.¹¹ But because the Petitioner has indicated its willingness to proceed to an election in any unit found appropriate, we shall direct that an election be held in the following unit, which we have found appropriate.¹²

All full-time and regular part-time employees employed by the Employer at its Green Garden Plaza and Franklin Avenue stores in Aliquippa, Pennsylvania, and its Mars (Cranberry Mall), Carnegie, and Pittsburgh, Pennsylvania stores, excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

ORDER

The election conducted on 13 September 1983 is vacated.

[Direction of Election omitted from publication]

¹¹ See *Avon Products*, 262 NLRB 46 (1982).

¹² 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 with an election, it may withdraw its petition without prejudice by notice to the Regional Director within 7 days from the date of this Decision.