

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

MONDELEZ INTERNATIONAL, INC.¹
Employer

and

Case 05-RD-110453

COREY CRUMP
Petitioner

and

BAKERY, CONFECTIONERY, TOBACCO
AND GRAIN MILLERS WORKERS
INTERNATIONAL UNION (BCTGM),
LOCAL UNION #358, AFL-CIO, CLC²

Intervenor

DECISION AND DIRECTION OF ELECTION

Corey Crump, an individual, filed a petition under Section 9(c) of the National Labor Relations Act, as amended, to decertify the Bakery, Confectionery, Tobacco and Grain Millers Workers International Union (BCTGM), Local Union #358, AFL-CIO, CLC as the collective-bargaining representative of a unit of employees of Mondelez International, Inc. On August 12, 2013, a hearing on the petition was held before an officer of the National Labor Relations Board at which all Parties were present and afforded the opportunity to present evidence.³ There are 39 employees in the petitioned-for unit.

¹ The name of the Employer appears in the caption as amended at the hearing.

² The name of the Intervenor appears in the caption as amended at the hearing.

³ At hearing, the parties waived the opportunity to file post-hearing briefs.

The issue presented at hearing is whether part-time warehouse hourly employees are excluded from the unit and therefore ineligible to vote in an election arising from this proceeding.

After carefully considering the evidence and arguments made by the parties at the hearing, I find for the reasons discussed below that the Intervenor failed to meet its burden of demonstrating that the part-time warehouse hourly employees are excluded from the historical bargaining unit. Those employees are included in the unit, are eligible to vote, and I am directing an election.

I. STATEMENT OF FACTS

Mondelez International, Inc. (“the Employer”), a Virginia corporation with offices and places of business in Richmond and Chesapeake, Virginia, the only locations involved in this Petition, is engaged in the wholesale sale and distribution of snack foods and beverages. During the preceding twelve months, a representative period, the Employer, in the course and conduct of its business operations described above, has sold and shipped from its Richmond and Chesapeake, Virginia facilities goods valued in excess of \$50,000 directly to points outside the Commonwealth of Virginia. The parties stipulated at hearing that, for the purposes of the collective-bargaining and labor agreements involved in this proceeding, Mondelez International, Inc. is a successor to Kraft Food Global, Inc.

On January 20, 2006, and after a secret ballot election⁴ conducted under the Board’s Rules and Regulations, the Regional Director certified the Intervenor, Bakery, Confectionery, Tobacco and Grain Millers Workers International Union (BCTGM), Local Union #358, AFL-CIO, CLC (“the Intervenor”) as the exclusive collective-bargaining representatives of the

⁴ NLRB Case No. 5-CA-15924.

employees in the following unit at the Richmond and Chesapeake facilities of Kraft Food Global, Inc.:

All warehouse hourly employees and truck drivers employed by the Employer at its facilities in Chesapeake and Richmond, Virginia, but excluding office clerical employees, professional employees, guards, and supervisors as defined by the Act.

The Intervenor has since executed a series of collective-bargaining agreements with Kraft Food Global, Inc. covering the bargaining unit described in the 2006 Certification. The most recent agreement (“the CBA”) became effective on November 1, 2009 and expires on October 27, 2013. Article I, Section 1 of that agreement contains a recognition clause that reads:

The Company recognizes the Union as the exclusive collective bargaining agent for all of its warehouse and driver employees certified in National Labor Relations Board Case Number 5-RC-15924 and employed by the Company at its customer logistics operations in Richmond and Chesapeake, VA and shall exclude clerical office employees, sales persons, professional and supervisory employees, executives and guards as defined by the National Labor Relations Act, as amended.

The CBA references part-time employees throughout its Articles and clauses, including: Article XV, Section 5, 6, and 7 (seniority); Article XVI (hours of work and overtime); Article XVIII (holidays); and Article XIX (vacations).

The Intervenor presented no witnesses at hearing, and introduced one document, a copy of the 2006 Tally of Ballots from Case 5-RC-15924. The Petitioner called two witnesses, both of whom testified regarding commonalities between the duties, credentials, and benefits applicable to full- and part-time employees at the Employer’s Richmond facility.⁵

⁵ As discussed below, the burden of demonstrating ineligibility is on the party asserting ineligibility (in this case, the Intervenor). As I find that the Intervenor has not met this burden, I will not extensively discuss the Petitioner’s evidence or the part-time employees’ community-of-interest with full-time employees.

II. DISCUSSION

Positions of the Parties

The Petitioner argues that part-time warehouse hourly employees and truck drivers are included in the historic unit covered by the CBA and should be eligible to vote in the election.

The Intervenor argues that inclusion of part-time warehouse hourly employees and truck drivers is inappropriate and that such employees should not be eligible to vote. The Intervenor contends such employees do not share a community of interest with full-time hourly employees because part-time employees do not perform all the duties that full-time employees perform. It also claims that part-time employees did not vote in the 2006 election. At hearing, the Intervenor presented a copy of the Tally of Ballots from the 2006 election document to support its position.⁶

The Employer takes the position that the part-time employees are included in the current unit and are eligible to vote in the election.

Analysis

Generally, the bargaining unit in which a decertification election is held must be coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955). *See also Mo's West*, 283 NLRB 130 (1989); *W.T. Grant Co.*, 179 NLRB 670 (1969). Here, the unit description contained in the 2006 Certification—and cited in the CBA—is silent on any distinction between part- and full-time employees. It refers only to “hourly” employees and does not mention part-time employees anywhere among its unit exclusions. However, the CBA mentions part-time employees throughout its Articles and clauses. (Articles XV, XIV, XVIII, and XIX). Between the language contained in the 2006 Certification and the frequent reference to part-time employees and their rights under the CBA, there is at the outset no reason to

⁶ The Union also raised an argument that the Employer has impacted the election conditions by recently hiring part-time workers but produced no evidence on the matter. Nevertheless, this argument is not germane to the unit determination issue.

conclude that “[a]ll warehouse hourly employees and truck drivers” was meant to exclude part-time employees from the unit or to conclude that part-time employees have in practice been so excluded.

Nonetheless, the Intervenor argues that part-time employees are not part of the unit and that they should be held ineligible to vote in the election. The Intervenor, however, produced no evidence at hearing that demonstrates that part-time employees are or ever have been excluded from the unit. The burden of proof rests on the party asserting ineligibility to vote. *Sweetener Supply Corp.*, 349 NLRB 1122 (2007). At hearing, the Intervenor presented no witnesses and only one document—the Tally of Ballots from the 2006 election—to support its contention that part-time hourly warehouse employees are excluded from the unit. That document fails to demonstrate in any way that part-time employees were not eligible to vote as part of the unit. In light of the Board law considered above, and of the evidence presented at hearing, I find that the Intervenor has failed to carry its burden that part-time employees are ineligible to vote in the election.

III. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer’s rulings made at the hearing are free from prejudicial error and affirmed;
2. As stipulated by the parties, the Employer is engaged in commerce within the meaning of Sections 2(6) and 2(7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case;

3. As stipulated by the parties, the Union is a labor organization within the meaning of Section 2(5) of the Act;
4. 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 2(7) of the Act;
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective-bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time warehouse hourly employees and truck drivers employed by the Employer at its facilities in Chesapeake and Richmond, Virginia, but excluding office clerical employees, professional employees, guards, and supervisors as defined by the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for the purpose of collective bargaining by Bakery, Confectionery, Tobacco and Grain Millers Workers International Union (BCTGM), Local #358, AFL-CIO, CLC. The date, time, and manner of the election (mail or manual) will be specified in the Notice of Election that the Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before 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 strikes, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure 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 a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized

(overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, Bank of America Center – Tower II, 100 South Charles Street, 6th Floor, Baltimore MD 21201, on or before **August 27, 2013**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Right to Request Review: Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, you may obtain review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001. This request for review must contain a complete statement setting forth the facts and reasons on which it is based.

Procedures for Filing a Request for Review: Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by close of business on **September 3, 2013 at 5 p.m. (ET)**, unless filed electronically.

Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically. If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.⁷ A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

⁷ A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

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Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

(SEAL)

/s/ Wayne R. Gold

Dated: August 20, 2013

Wayne R. Gold, Regional Director
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