

**All-American Distributing Co., Inc. and United Industrial Workers, Midwest, Seafarers International Union of North America, AFL-CIO, Petitioner.** Case 13-RC-13661

December 4, 1975

DECISION ON REVIEW

BY CHAIRMAN MURPHY AND MEMBERS  
FANNING AND PENELLO

On June 20, 1975, the Regional Director for Region 13 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate a unit of all full-time and regular part-time warehouse employees, including printroom employees of the Employer at its warehouse presently located at 1000 Estes Avenue, Elk Grove Village, Illinois; but excluding the order and invoice clerk, the sales clerk, office clerical employees, and guards and supervisors as defined in the Act. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's Decision on the grounds, *inter alia*, that in deferring ruling on the eligibility of six laid-off employees and permitting them to vote under challenge and by excluding the order clerk and the "will-call" employees from the unit found appropriate, he made erroneous findings as to substantial factual issues and departed from officially reported Board precedent. Petitioner filed a reply brief urging that the Regional Director be affirmed and requested leave to file cross-exceptions. The Employer filed a motion to strike Petitioner's reply brief as untimely filed and opposed Petitioner's request to file cross-exceptions.<sup>1</sup>

By telegraphic order dated August 13, 1975, the National Labor Relations Board granted the Employer's request for review and stayed the election pending decision on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

The Employer, an Illinois corporation, is engaged in the warehousing and wholesale distribution of auto supplies to stores which have automotive departments. Its business involves the purchase and

storage of automotive products, the sale of these products, and their preparation for shipping. The Employer's executive vice president, Morton D. Purvin, has responsibility for the purchase, receipt, and packaging of merchandise, as well as the supervision of the eight or nine employees who work in these areas. In the receiving department, located on the west side of the warehouse, merchandise is unloaded from trucks, stacked on pallets, and taken, by the use of a forklift truck or hand pallet truck, to the place where it is to be stored in the warehouse. The packaging department, located in the northeast corner of the warehouse, is where bulk items are brought to be individually packaged, reassembled into standard packs, and returned to the warehouse for order picking.

The warehouse manager, Rudolph Herz, supervises the shipping area at the east side of the warehouse, where the general warehousing and shipping functions take place. Warehouse employees, according to established routines, pick orders, check orders, pack orders, and stack them on pallets to be taken to the shipping area and prepared for shipping.

The record indicates that on or about April 4, 1975, the Employer laid off six warehouse employees. The Employer contends that the Regional Director erred by deferring ruling on the eligibility of the six laid-off employees and permitting them to vote subject to challenge. We find merit in the Employer's contentions.

The evidence, as found by the Regional Director, indicates that the Employer's volume of business has dropped about 20 percent over the past year due to the loss of several large customers and a general business decline. The Employer's president and general manager, Maurice Kaplan, testified that there has been a shift from large accounts to small accounts and that he did not project an increase in the volume of sales or the need to hire additional employees or recall the laid-off employees. Kaplan also stated that three of the six laid-off employees requested and received reference letters for other employment. Kaplan's testimony that the employees were given no expectancy of recall was corroborated by laid-off employee Michael Durlak who testified that, when Warehouse Manager Herz told him he was laid off, he was also told "to look for another job."

In its reply brief, the Petitioner contends that the Employer has the prospect of improved business and that the problem causing its decrease in business may soon be alleviated.<sup>2</sup> Thus, as the record evidence

<sup>1</sup> The Board, by letter dated August 22, 1975, rejected Petitioner's request to file cross-exceptions and, by letter dated August 27, 1975, denied the Employer's motion to strike Petitioner's reply brief.

<sup>2</sup> The Employer's president testified that the drop in business causing the layoffs resulted from the financial reverses in 1974 of certain of the Employer's major customers. The Petitioner notes that two large discount

indicates that the Employer has a policy of recalling laid-off employees, the Petitioner asserts that the Board should find that the six employees at issue have a reasonable expectancy of recall and should be permitted to vote. However, the record also shows that none of the employees laid off the year before were recalled, and part-time employees have worked fewer hours since the layoff of the six employees involved herein. Accordingly, in view of all the circumstances, we are not persuaded that these laid-off employees have a reasonable expectancy of recall and shall not permit them to vote under challenge. *Sierra Lingerie Company*, 191 NLRB 844 (1971).<sup>3</sup>

The Employer also contends in its request for review that the Regional Director improperly excluded the order clerk, Betty Stubblefield, from the warehouse unit because in his view she did not have a community of interest with unit employees. The Employer asserts that Stubblefield is a plant clerical and that, as her duties are directly related to warehouse operations, she should be included in the unit. We agree.

The record reveals that Stubblefield spends most of her time in the display department located adjacent to the shipping section of the general warehouse area. A doorway connects the warehouse and the display area which is also adjacent to the general office in which the Employer's three office clericals work. Contrary to the office clericals, Stubblefield does not report to the general office, have a desk there, or perform any duties there. Whereas office clericals are supervised by the office manager, Stubblefield is supervised by the Employer's president, Kaplan.

Stubblefield's duties include recording all orders in a book, stamping orders with invoice numbers, preparing the orders for filling, checking with the warehouse manager as to whether an order has been shipped, and generally checking on what has been shipped and what has not. Orders are either brought to the warehouse by Stubblefield or a warehouse employee comes to her to collect them. Stubblefield spends 20 to 25 percent of each day in the warehouse and warehouse employees regularly come to her work area to consult and perform other duties.

The order clerk receives the same paid holidays, health insurance, profit sharing, and vacation benefits as do warehouse employees.<sup>4</sup> She punches a timeclock in the warehouse as do warehouse and office clerical employees.

Based on the foregoing, we find that the order clerk is essentially a plant clerical engaged in warehousing functions and has a community of interest with warehouse employees. Accordingly, we include her in the unit. *The May Department Stores Company, d/b/a Famous-Barr Company*, 153 NLRB 341 (1965).

In addition to the above, the Employer contends, contrary to the Regional Director, that the employee who works in the will-call room shares a community of interest with the warehouse employees and should be included in the unit. We agree with this contention.

The will-call room serves as the entrance to the company premises for all persons other than employees. This room contains some chairs and tables and some pegboard shelves on which are displayed a few samples of merchandise and various catalogues of the merchandise sold by the Employer. Marvin Becker, the employee assigned to the will-call area, is responsible for taking orders from customers who prefer to pick up their orders rather than have them delivered. Becker not only takes the orders, but must go into the warehouse to have them filled. Sometimes Becker picks up the orders from the warehouse himself or a warehouse employee brings the order to the will-call area.

In view of the evidence indicating that Becker works closely with warehouse employees in a section adjacent to the warehouse and performs a sales function which is integrated with the warehouse operations, we find that the will-call employee's interest is aligned with that of the unit employees. Therefore, we include the will-call employee in the unit. In making this finding, we note, but find unpersuasive, the contention made by the Petitioner in its reply brief that the will-call employee's interest is more closely aligned with that of the Employer's outside salesmen who were by stipulation excluded from the unit. The record contains no evidence to support this contention.

Accordingly, the matter is hereby remanded to the Regional Director for Region 13 for the purpose of conducting an election in the appropriate unit, as modified herein, pursuant to his Decision and Direction of Election, except that the payroll period for determining eligibility shall be that immediately preceding the date of issuance of this Decision on Review. [*Excelsior* footnote omitted from publication.]

The Regional Director found the record insufficient to determine that issue, which is not unusual with respect to the prospect of recall of laid-off employees, and Member Fanning believes his colleagues, without additional testimony, are disenfranchising six employees

<sup>4</sup> The record does not indicate whether office clericals share in all these benefits. Also, there is no evidence as to whether the order clerk's wages are more akin to those of warehouse or office clerical employees

houses, which had been customers of the Employer, have filed chapter XI bankruptcy petitions which are not "straight" bankruptcy but are rehabilitative in nature.

<sup>3</sup> Member Fanning views the facts herein as distinguishable from those in *Sierra Lingerie Company*, *supra*. He would not have granted review on the challenge issue as, in his opinion, the Regional Director reached the correct result in permitting the six laid-off employees to vote subject to challenge