

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
WASHINGTON, D.C.

HOUSE OF RAEFORD FARMS, INC.,	)	
	)	
	)	
Employer,	)	
	)	Case 11-RC-06740
and	)	
	)	
	)	
UNITED FOOD AND COMMERCIAL	)	
WORKERS, LOCAL 204	)	
	)	
Petitioner.	)	

**EMPLOYER'S MOTION TO SUPPLEMENT AND SUPPLEMENT TO  
EMPLOYER'S REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S  
DECISION AND DIRECTION OF ELECTION**

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September 28, 2010

**TABLE OF CONTENTS**

I. Motion to Supplement Employer’s Request for Review of Regional Director’s Decision and Direction of Election ..... -2-

II. The D&D Departs from Officially Reported Board Precedent by Creating an Inappropriate Departmental Unit ..... -2-

Certificate of Service ..... -6-

**TABLE OF AUTHORITIES**

**CASES**

Burns & Roe Services Corp.,  
313 NLRB 1307 (1994) ..... -2-

E. I. du Pont & Co.,  
162 NLRB 413 (1966) ..... -2-

E. I. du Pont & Co.,  
192 NLRB 1019 (1971) ..... -2-

General Electric Co.,  
89 NLRB 726 (1950) ..... -2-

Mirage Casino-Hotel,  
338 NLRB 529 (2002) ..... -2-

I. Motion to Supplement Employer's Request for Review of Regional Director's Decision and Direction of Election

Employer requests permission to supplement its Request for Review filed on September 24, 2010 to clarify its position, to provide additional authority for its position, and to correct an oversight in not including the information in its Request for Review.

Throughout Employer's Request for Review, Employer asserts that a unit consisting of the petitioned-for employees is inappropriate. On page 28 of Employer's Request for Review, Employer makes the point that the D&D appears to allow a craft type unit for part of Employer's Shipping Department employees and to suggest that departmental units would be appropriate for more than 20 of Employer's remaining unrepresented departments, all of which raises a substantial question of law or policy because of departure from officially reported Board precedent.

There is no prejudice to the Union in considering or granting this motion because the Union has ample opportunity to respond to the contentions presented and the Motion supplements the existing argument rather than making an additional one.

II. The D&D Departs from Officially Reported Board Precedent by Creating an Inappropriate Departmental Unit

Employer's position is that the petition must be dismissed because the Union has sought an election in an improper departmental or craft-like unit.

Since the passage of the Wagner Act, the Board has been reluctant to recognize separate craft or departmental units and has imposed substantial restrictions on such units. *See 1 The Developing Labor Law*, pp. 658-659. CCH Labor Law Reporter states:

Originally, departmental units were closely related to craft units, inasmuch as they were usually composed of a substantial nucleus of skilled craftsmen. In fact, departmental groups for which separate departmental units were established were referred to as “craftlike.” At the same time, however, departmental groups had to be “homogeneous” and “identifiable”—performing operations substantially different from those performed in the rest of the plant—before they could constitute appropriate departmental units. Accordingly, the essential requirement for the establishment of or severance of a departmental unit was the existence of a separate department “. . . devoted to a specialized function of the plant operations and centering around a very great nucleus of highly skilled craftsmen . . .” General Electric Co., 89 NLRB 726, 745 (1950). Such groups included boiler rooms, powerhouses, toolrooms, and machine shops.

CCH Labor Law Reporter—Labor Relations 2, ¶ 2630, p. 6917 (1972) (emphasis added).

More recently, the Board has stated that an appropriate craft (departmental) unit is defined as:

. . . one consisting of a distinct and homogeneous group of skilled journeymen craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment.

*Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994) (emphasis added). The Board has stated:

With respect to craft or departmental units, the general rule is: Where no bargaining history on a more comprehensive basis exists, a craft or traditional departmental group having a separate identity of functions, skills and supervision, exercising craft skills and having a craft nucleus, is generally appropriate. See, for example, *E. I. du Pont & Co.*, 162 NLRB 413 (1966). See also *Mirage Casino-Hotel*, 338 NLRB 529 (2002); and *E. I. du Pont & Co.*, 192 NLRB 1019 (1971).

*An Outline of Law and Procedure in Representation Cases*, p. 200, § 16-200.

Employer is a poultry processing operation with a slaughter operation in Plant 1 and processing operation in Plant 2. Employer’s operations consist of thirty (30) departments in Plant 1 and Plant 2, seven (7) of which are represented by the Union in a single production unit. The

remaining twenty-three (23) departments are excluded. See Employer's Exhibit 2. The Union now seeks to represent only certain shipping department employees in Plant 1 and Plant 2.

Employer's shipping departments are not the type of departmental unit recognized by the Board as appropriate, i.e., a craft-like unit, but instead a unit comprised of employees of relatively the same type skills as Employer's other unrepresented departments. There was no evidence at the hearing that the petitioned-for Shipping Department employees have craft skills or a craft nucleus. The tools of the petitioned-for Shipping Department employees consist of nothing more than scanners for tracking product and jacks and lifts for moving the finished poultry products. (Tr. 115). Scanners, jacks and lifts are not the tools of skilled craftsmen, but are the tools of ordinary laborers. The description of those to be included in the unit—checkers, helpers, loaders, jack drivers, and lift drivers—confirms that the workers are not skilled craftsmen.

Furthermore, the petitioned-for employees share a strong community of interest with the other unrepresented employees. The Shipping Managers supervise the petitioned-for employees and other employees excluded from the unit. The excluded groups and the petitioned-for Shipping Department employees have identical fringe benefits. The excluded groups and the petitioned-for Shipping Department employees do not have job bidding and seniority policies like the represented group. The excluded groups and the petitioned-for Shipping Department employees are hourly, except for the two salaried persons identified in the lab, and a handful of non-exempt salaried persons in the sales office. The excluded groups and the petitioned-for Shipping Department employees have similar rates of pay. The excluded groups and the petitioned-for Shipping Department employees work more varied hours and work more overtime. The excluded groups and the petitioned-for Shipping Department employees stay out of the production areas because of the

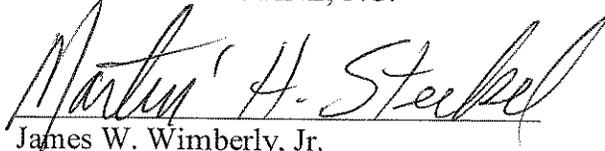
contamination issues. In contrast, the excluded groups and the petitioned-for Shipping Department employees can move among themselves. There are a lot of interrelationships among the plant areas among all excluded groups, including shipping, maintenance, QA, refrigeration, and clericals. The excluded groups and the petitioned-for Shipping Department employees may vary their lunch and break periods, and work more during shutdowns, and also vary their working hours. In fact, the only separate interest that the D&D cites for the Shipping Department employees is their wearing of freezer suits. However, not all of the Shipping Department employees wear freezer suits, nor do the plant clericals in the Shipping Department wear freezer suits. Indeed, many of the Shipping Department employees are involved in the loading and unloading of trucks, which is not a job involving the wearing of freezer suits.

Contrary to the suggestions in the D&D, there is no separation between the shipping department and the departments of the remaining unrepresented employees, as the separation is between all of the unrepresented employees (including shipping) and the production employees. The only “separation” suggested in the D&D is that some shipping department employees wear freezer suits when exposed to cold temperatures, but that fact that has generally not been sufficient to create a separate departmental unit, and further not all shipping department employees wear these suits.

The Union steadfastly refused to amend its petition at any point during the hearing, despite being given numerous opportunities to do so. Under these circumstances, the employer asks that either the petition be dismissed, or that an appropriate unit be designated as the petitioned for unit is clearly inappropriate. If it is necessary to impound the ballots pending the resolution of these issues, that is also sought by the employer.

Respectfully submitted this 28<sup>th</sup> day of September, 2010.

WIMBERLY, LAWSON, STECKEL,  
SCHNEIDER & STINE, P.C.

A handwritten signature in cursive script that reads "Martin H. Steckel". The signature is written in black ink and is positioned above a horizontal line.

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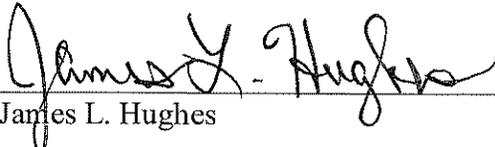
**CERTIFICATE OF SERVICE**

I certify that I have sent a copy of EMPLOYER'S MOTION TO SUPPLEMENT AND SUPPLEMENT TO REQUEST FOR REVIEW OF REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION via email to

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on this 28<sup>th</sup> day of September, 2010.

  
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