

**Fleming Foods, Inc. and Local 500, International Brotherhood of Teamsters, AFL-CIO, Petitioner.** Case 4-RC-18120

March 1, 1994

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND TRUESDALE

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held on various dates in May and June 1993 before a designated hearing officer of the National Labor Relations Board. On July 23, 1993, pursuant to Section 102.67(h) of the Board's Rules and Regulations, this case was transferred to the Board for decision.

Having carefully reviewed the entire record in this proceeding, including the posthearing briefs filed by the Petitioner and the Employer, the Board makes the following findings:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Employer is engaged in the warehousing and sale of general merchandise at its warehouse located in King of Prussia, Pennsylvania. The Petitioner seeks to represent a unit consisting of all full-time warehouse clerical employees at the Employer's King of Prussia warehouse. The Employer contends that the only appropriate unit is a residual unit consisting of, in addition to the petitioned-for employees, two part-time warehouse clericals and four maintenance employees.<sup>1</sup>

The Employer's warehouse employees, approximately 130, are represented by Local 384, International Brotherhood of Teamsters, AFL-CIO (Local 384). These employees include receivers, checkers, forklift operators, shippers, stockers, order selectors, return damage inspectors, sales drivers, janitors, rackmen, and commission sales representatives. The Employer's most recent contract with Local 384, effective November 30, 1990, through November 30, 1993, excludes from the represented unit "office, clerical, sales super-

visors, professional associates, supervisors and guards, as defined in the Federal Labor-Management Relations Act." Local 384 does not seek to represent the Employer's warehouse clericals.

There are eight full-time and two part-time warehouse clerical employees at the Employer's facility. The two part-time clericals work 20-24 hours a week and perform the same clerical duties performed by the full-time warehouse clericals. Three of the warehouse clericals previously held positions in the Local 384 bargaining unit before transferring to their present positions.

The warehouse clericals perform receiving, inventory control, dispatch, audit, and credit functions. Most of them are cross-trained and thus are able to perform a number of these clerical duties. The warehouse clericals have offices throughout the facility where they work with computers, inputting data they receive from checkers, receivers, dispatchers, and other Local 384 employees. The clericals also spend much of their time working on the warehouse floor. While on the warehouse floor, the warehouse clericals regularly interact with Local 384 employees.

The warehouse clericals working in receiving (receiving clericals) deliver the appropriate paperwork to the receivers to coordinate the unloading of incoming merchandise. When a truck arrives delivering merchandise to the Employer's warehouse, a receiving clerical and a Local 384 receiver communicate with each other to record any discrepancies between the merchandise received and that which was scheduled to be received.

The warehouse clericals working in inventory (inventory clericals) maintain, verify, and reconcile the paperwork describing the quantity of products stored in inventory. The receiving clerical communicates with the stockers to resolve variances in the inventory paperwork. The inventory clericals also physically count the number of products stored in inventory and assist stockers in locating certain products. If one of the Local 384 employees discovers a shortage of a particular product, that employee speaks to a warehouse clerical about the shortage, who in turn notifies the Employer's merchandiser about the shortage.

The warehouse clericals performing dispatch functions (dispatch clericals) create the paperwork necessary for the shipment of merchandise from the Employer's facility. The dispatch clericals obtain from the Local 384 checkers and shippers the information necessary to prepare the required paperwork for dispatching the merchandise. Further, the dispatch clericals verify that the items placed on the trucks match the descriptions of the merchandise on customer invoices. The dispatch clericals spend a majority of their time working with the Local 384 checkers and shippers, as well as with the Employer's shipping supervisor.

<sup>1</sup> The Employer also suggests that the only appropriate unit is a combined unit of the petitioned-for warehouse clericals and the employees currently represented by Local 384, International Brotherhood of Teamsters, AFL-CIO. This argument is clearly without merit because Local 384 is not seeking to represent the warehouse clericals.

The warehouse clericals performing audit functions (audit clericals) perform most of their duties on the warehouse floor. Like the dispatch clericals, audit clericals verify that shipments of goods to be delivered to customers are consistent with that which the customer has ordered. This is done by physically counting the products that have been packed in tote boxes, which the Employer uses to ship its products. In order to verify any discrepancies between a customer's orders and the products to be shipped to the customers, the audit clerk communicates with the Local 384 employees, with the dispatch clerical, the shipping supervisor, and other warehouse supervisors.

The warehouse clerical performing credit functions (credit clerical) reviews the paperwork concerning merchandise that customers return to the Employer. The credit clerical verifies that certain products have actually been returned, and that the Local 384 employees working in the Employer's returns and salvage department have properly filled out the necessary paperwork for the return. The credit clerical also investigates customer requests for credit and ensures that customers receive credit for their returns. Such investigations involve communicating with the Local 384 employees in the returns and salvage department.

Distribution Manager John Fitzgerald oversees the entire warehousing operations for the Employer. Reporting directly to Fitzgerald are two warehousing superintendents—Loretta Zakoski<sup>2</sup> and Charles McHugh. Next in the chain of command are the supervisors responsible for the frontline supervision of the Local 384 unit employees—Receiving Supervisor Ed Hagan, Shipping Supervisor Joe Techman, Shipping and Line Selection Supervisor Mike Larcenes, Order Selection Supervisors Josie Baranack, Barbara Engro, and Jerry Hayes, and Supervisor Pat Knight-Fox.<sup>3</sup>

Superintendent Zakoski supervises the warehouse clericals. However, as the duties of the warehouse clericals often require interaction with other warehouse supervisors, Zakoski receives input from the other supervisors when preparing evaluations of the warehouse clericals.

The Employer's maintenance staff consists of four maintenance employees. These employees perform general maintenance throughout the Employer's facility and are supervised by Distribution Manager Fitzgerald. The maintenance employees primarily do simple, routine repair jobs. Their duties include cleaning and repairing plastic totes, drywall and painting, simple plumbing and electrical repairs, routine repair of forklifts and conveyors, and various other odd jobs. Maintenance employees have computerized security cards that give them access to all parts of the Employer's fa-

cility. Local 384's employees have security cards that provide only limited access to the facility.

Maintenance employees receive no formal training and are not required to have licensing or certifications of any kind. The Employer utilizes outside contractors for all of its major plumbing and electrical needs, and for repair and service of the Employer's equipment. Two employees from the Local 384 unit have transferred to maintenance positions.

There are two janitors who work in the Employer's warehouse. The janitors are part of the Local 384 unit. Loretta Zakoski, who supervises the warehouse clericals, also supervises the janitors. They perform normal janitorial services, including sweeping and scrubbing floors, mopping up spills, and collecting trash. The janitors have assisted maintenance employees on various projects such as drywall work and tarp construction. The janitors also work together with maintenance employees on major cleanup jobs, trash collection, repair of leaky pipes, and in preparing the Employer's facility for sanitary inspections.<sup>4</sup>

Based on the foregoing, we find that the petitioned-for unit of full-time warehouse clericals is too narrow in scope. First, we note that there is no basis for excluding the two part-time warehouse clericals, as these employees perform the same clerical duties that full-time warehouse clericals perform and are regular employees working 20–24 hours a week. *Pat's Blue Ribbons*, 286 NLRB 918 (1987).

Second, we find that the 10 warehouse clericals are residual to the unit of warehouse employees represented by Local 384. In cases involving petitioned-for units of warehouse employees, the Board has found that warehouse clericals should be included in the unit of warehouse employees when the duties of the warehouse clericals are integral to the functioning of the warehouse operations. *John N. Hansen Co.*, 293 NLRB 63, 64–65 (1989); *S & S Parts Distributors Warehouse*, 277 NLRB 1293 (1985). In the instant case, the duties of the warehouse clericals are integral to the shipping, receiving, and storage of the Employer's merchandise. Further, as noted above, the performance of warehouse clerical functions requires a high level of interaction with employees represented by Local 384. Moreover, the warehouse clericals share common immediate supervision with the Local 384 janitors. In view of these facts, the warehouse clericals do not constitute an appropriate unit separate from that of the Employer's other warehouse employees. Instead, they can be represented by the Petitioner only if they constitute an appropriate residual unit.

<sup>2</sup>The Employer's brief refers to Zakoski as "Ms. Sojkowski."

<sup>3</sup>The record does not indicate Knight-Fox's specific area of supervision.

<sup>4</sup>The Employer also employs 20–25 office clericals who work in the Employer's office. The office clericals are unrepresented employees, but neither the Petitioner nor the Employer contend that they should be included in any unit found appropriate.

It is well established that a residual unit is appropriate only if it includes all unrepresented employees of the type covered by the petition. *Eastern Container Corp.*, 275 NLRB 1537, 1538 (1985). Here, in addition to the 10 warehouse clericals, there are 4 maintenance employees who are also unrepresented. As the record evidence set forth above shows, the maintenance employees are assigned to projects that overlap with the duties of the Local 384 janitors. The maintenance employees' duties require them to work on the warehouse floor in the same areas with the Local 384 employees. In addition, maintenance employees cannot claim to be a separate craft unit as they are not skilled craft employees and are not required to undergo any formal training. We find, therefore, that the maintenance employees—like the warehouse clericals—are residual to Local 384's unit of warehouse employees, and thus they must also be included in the petitioned-for unit.

The Petitioner contends, however, that the maintenance employees should not be included in a unit with the warehouse clericals because the maintenance employees are guards or managerial employees in light of their possession of computerized access cards affording them entry to all parts of the Employer's facility. We find no merit to this contention, as there is nothing in the record indicating that the maintenance employees possess any of the statutory indicia of managerial employees or that they perform guard duties within the meaning of Section 9(b)(3) of the Act. Rather, we find that the maintenance employees perform duties that are

at times similar to those of the Local 384-represented janitors, and that require regular interaction with the Local 384 employees.<sup>5</sup>

Accordingly, as the warehouse clericals and maintenance employees constitute all the Employer's unrepresented employees that are residual to the Local 384 unit, they constitute an appropriate residual unit. At the hearing, the Petitioner expressed a willingness, in the event the petitioned-for unit was found inappropriate, to proceed to an election in any broader unit found appropriate. Accordingly, we shall direct an election in the following unit:<sup>6</sup>

All full-time and regular part-time warehouse clerical employees and maintenance employees employed by the Employer at its King of Prussia facility, but excluding office clerical employees, managerial employees, guards and supervisors as defined in the Act, and all other employees.

[Direction of Election omitted from publication.]

<sup>5</sup> There is no evidence that the office clerical employees, unlike the other unrepresented employees discussed above, are residual to the warehouse unit.

<sup>6</sup> As the unit found appropriate herein is larger than the unit requested, the Petitioner is accorded a period of 10 days from the date of this Decision and Direction of Election in which to submit to the Regional Director for Region 4 an additional showing of interest if necessary. 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 for Region 4 within 7 days from the date of this Decision and Direction of Election.