

**Ohio Valley Supermarkets, Inc. d/b/a Foodland of Ravenswood and United Food and Commercial Workers International Union, Local 347, AFL-CIO-CLC, Petitioner.** Case 9-RC-16860

May 7, 1997

**ORDER DENYING REVIEW**

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent portions of which are attached as an appendix). The request for review is denied as it raises no substantial issues warranting review.<sup>1</sup>

<sup>1</sup>The sole issue presented for review is the Regional Director's finding that the single-facility presumption favoring a single-store unit at the Employer's Ravenswood, West Virginia facility has not been rebutted.

**APPENDIX**

**DECISION AND DIRECTION OF ELECTION**

The Employer, an Ohio corporation, is engaged in the retail sale of grocery products at 13 stores located in Ohio and West Virginia. Nine of these stores do business under the name of Foodland, the remainder under the rubric Sav-A-Lot. There is no history of collective bargaining affecting the employees who work at these stores.

The Petitioner seeks to represent only those (approximately 45) employees who work at the Foodland store in Ravenswood, West Virginia. The Employer contends that the employees of a single store do not constitute an appropriate unit and that the smallest appropriate unit must include, at least, all Foodland stores. The parties agree, however, that whatever the geographic scope of the unit, it should include all full-time and regular part-time employees, including the various department heads, head cashier(s), and head night stock clerk(s). The parties disagree as to the unit placement of the assistant store manager at the Ravenswood store; the Petitioner, contrary to the Employer, contends that he should be excluded from any unit found appropriate as a supervisor within the meaning of the Act.

The Employer maintains its headquarters at a store in Galipolis, Ohio, from which its CEO and founder, Robert Eastman, exercises administrative control over the various stores with the assistance of his spouse, Sheila; his two sons and Corporate Vice Presidents Kevin and Brent; General Manager Larry Howard; and Office Manager Cookie Krautger, who is in turn assisted by two clericals. Headquarters personnel make all decisions on such matters as contracting with suppliers, advertising and pricing for the various stores. The Employer has, however, contracted for the Foodland and Sav-A-Lot names with a franchise merchandiser, SuperValu, which in addition to being the major wholesale supplier of the various stores' products, also provides certain oversight and training services with respect to the Employer's operation. Thus, SuperValu personnel periodically visit individual

stores to assure that they meet the standards set forth in the franchise agreement, reporting any serious problems to the Employer's headquarters. Moreover, as set forth below, headquarters personnel periodically conduct in-store visits.

Personnel matters also appear to be centralized to a great degree. Thus, policies regarding wages, vacations, holidays, profit sharing, and employee fringe benefits are centrally established and uniformly applied, albeit with some minor variances between Foodland and Sav-A-Lot stores. Two employee handbooks, one for the Foodland store employees and a different one for the Sav-A-Lot store employees, set forth these policies. Personnel files are kept in the headquarters' offices, which are the repository of such records as employee warning reports.

While overall policy is set by headquarters personnel, day-to-day supervision at the various stores is the responsibility of individual store managers—in the case of the Ravenswood facility, Tim Witt. Thus, although headquarters personnel interview prospective full-time employees, Witt is responsible for interviewing all part-time applicants, who comprise approximately three-fourths of the work force at the store.<sup>1</sup> Moreover, although Witt must inform headquarters of the fact he wishes to hire someone, it appears that his choices are invariably approved with little more than a telephonic communication before an employee begins work. With respect to scheduling, each store is provided with a document listing total hours available per week, by department. Witt is then responsible for actually scheduling specific employees to fill the total. Thereafter, if a Ravenswood employee wishes time off, is going to be late for work or otherwise needs an adjustment to his or her schedule, that employee contacts Witt. Witt also has authority to independently schedule overtime of less than 4 hours' duration and to approve sick or disability leave of less than 3 months' duration. It does not appear that any employee at Ravenswood has ever requested longer leave, requests which must be referred to headquarters.

While headquarters personnel participate in a yearly evaluation of employees holding specialized positions, such as a meatcutter or scanning coordinator, and Robert Eastman signs all evaluations, Witt is solely responsible for performing the yearly evaluations of all other employees.<sup>2</sup> Moreover, store managers have authority to recommend employee promotions.

Vacation signup sheets are prepared at headquarters and posted in the stores. After employees indicate their preferences, the sheets are returned to headquarters where, in conjunction with store managers, adjustments are made to assure adequate coverage.

With respect to employee discipline, although apparently reviewed by headquarters, each store manager has the independent right to suspend an employee for up to 3 days. Store managers, of course, are also present to admonish employees short of formal discipline. Formal disciplinary actions, such

<sup>1</sup> At the time of the purchase of the Ravenswood store as an ongoing operation in April 1996, headquarters employees interviewed all personnel then working at the Ravenswood facility. The purpose of the interviews was in large part to get to know the employees rather than to screen out applicants as all employees who desired to remain were kept.

<sup>2</sup> In its brief, the Employer conceded that Witt has done all the evaluations to date at Ravenswood.

as the employee warning reports mentioned above, are reviewed at headquarters and Robert Eastman will ordinarily sign as the supervisor of record before the document is placed in the offending employee's file. On occasion, however, headquarters personnel have determined that an infraction was not severe enough to place a warning in the employee's file. Headquarters personnel also must approve dismissals and conduct interviews with all voluntary quits.

The employee handbooks mentioned above are generally distributed to individual employees by the store managers. The Foodland handbook in effect at Ravenswood contains a grievance procedure, the first step of which involves the employee presenting his or her problem to the store manager for settlement. The store manager is then to respond with an answer within 2 days.<sup>3</sup>

Payroll checks are prepared for the Employer by SuperValu, contain the name and address of the individual employee's store, and are actually distributed at that store. Moreover, the payroll process is initiated by the store managers, who gather employee timecards, add the hours contained thereon, and initial them to indicate approval.

Although various headquarters personnel visit individual stores, the evidence with respect to the frequency of such visits is conflicting. For example, while it was estimated at one point in the record that Office Manager Krautger visits each store approximately once every 2 weeks, it appears that in the last 6 months she has only visited the Ravenswood store on three or four occasions. Robert Eastman estimated that he visits every store one to three times a week (although such visits averaged only a half hour to an hour or two); General Manager Howard estimated that he visits store managers one to five times per week; Brent and Kevin Eastman are estimated to visit stores once or twice a week. Employee witnesses, however, report seeing these individuals at their stores far less frequently. In any event, it would appear somewhat difficult for headquarters personnel to conduct their administrative duties and to spend any significant amount of time at each store due to the distance, both between the headquarters store in Gallipolis and each location, and between the stores themselves. Thus, the Ravenswood store is 35 miles from headquarters (on a secondary highway), but 90 miles from the Waverly, Ohio facility. Of the remaining stores, three are approximately 60 miles from headquarters and four are between 20 and 35 miles away. I also take administrative notice that the cities and towns in which these stores are located are widely spread over seven counties in Ohio and West Virginia. On the other hand, stores are in daily telephone contact with headquarters with respect to such matters as reporting daily sales figures.

"There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the most appropriate unit; the Act only requires that the unit be 'appropriate.'" *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd.* on other grounds 190 F.2d 576 (7th Cir. 1951). Thus, in a representation proceeding the unit sought by the petitioner is always a relevant consideration. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994); *Dezcon*,

*Inc.*, 295 NLRB 109 (1989). Therefore, although other combinations of employees here may also constitute an appropriate unit, I am faced only with the issue of whether the employees at the Ravenswood store alone constitute an appropriate unit. In analyzing the facts of the instant case with respect to this issue, I am mindful of the settled principle that a single facility is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *J&L Plate, Inc.*, 310 NLRB 429 (1993); *Penn Color, Inc.*, 249 NLRB 1117 (1980); *Dixie Bell Mills*, 139 NLRB 629, 631 (1962); *Tempco Aircraft Corp.*, 121 NLRB 1085, 1088 (1958). Moreover, this principle has been found specifically applicable to the retail store industry (*Haag Drug Co.*, 169 NLRB 877 (1968)) and has been utilized numerous times in analyzing the appropriateness of a single-store unit in grocery operations such as the Employer's. See, e.g., *Renzetti's Market*, 238 NLRB 174 (1978); *Bud's Thrift-T-Wise*, 236 NLRB 1203 (1978); *P & C (Cross Co.)*, 228 NLRB 1443 (1977); *Hit'n Run Food Stores*, 227 NLRB 1186 (1977); *Holiday Village*, 226 NLRB 1305 (1976); and *Angeli's Super Valu*, 197 NLRB 85 (1972).

Settled case law further instructs that the presumed appropriateness of a single-store unit is subject to rebuttal. The burden, however, is on the party opposing the appropriateness of a petitioned-for single-facility unit to present sufficient evidence to overcome that presumption. *J&L Plate, Inc.*, *supra*; *Red Lobster*, 300 NLRB 908, 910-911 (1990). To determine whether the presumption has been rebutted, the Board looks at such factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions, and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any. *J&L Plate*, *supra* at 429, citing *Esco Corp.*, 298 NLRB 837, 839 (1990).

Based on these considerations as applied to the record before me, I find that the presumption favoring a single-store unit comprised of employees working at the Employer's Ravenswood facility has not been overcome. In this regard, I am mindful that that the Board has recognized that it "is common in retail chain operations, and particularly in food chains, [for there to be] a considerable degree of centralized administration in the functioning of . . . stores." *Angeli's Super Valu*, *supra* at 85. Therefore, such a circumstance is not considered a "primary factor" in the consideration of single-store units in this industry. *Renzetti's Market*, *supra* at 175.<sup>4</sup> What is considered more significant is that "the employees in issue perform their day-to-day work under the immediate supervision of one who is involved in rating employees performance, or in performing a significant portion of the hiring and firing of the employees, and is personally involved with the daily matters which make up their grievance and routine problems." *Angeli's Super Valu*, *supra* at 86. Accord: *Renzetti's Market*, *supra* at 175.

In the instant case the record does not establish such centralized control over personnel and labor relations matters as

<sup>4</sup> See also *Bud's Thrift-T-Wise*, *supra*; *P & C (Cross)*, *supra*; *Hit'n Run Food Stores*, *supra*; *Holiday Village*, *supra*; and *Grand Union Co.*, 176 NLRB 230 (1969), for grocery store cases where a high degree of centralization was not a factor in rebutting the appropriateness of a single-store unit.

<sup>3</sup> General Manager Larry Howard asserts that he is consulted by the store managers for his input if this procedure is initiated in order to assure companywide uniformity.

to preclude a single-store unit. Thus, the Board has determined that responsibility, such as that possessed by Witt, to hire part-time employees, to schedule and assign employees, to approve overtime, to grant time off, to impose and recommend discipline, to evaluate employees and recommend their promotion, and to resolve and handle formal and informal employee grievances, constitutes significant evidence of local authority over employees' status such that centralized control over other matters does not overcome the appropriateness of a single-store unit. *Renzetti's Market*, supra at 174; *Bud's Thrift-T-Wise*, supra at 1204; *P & C (Cross)*, supra at 1443; *Hit'n Run Food Stores*, supra at 1187; *Holiday Village*, supra at 1306; *Angeli's Super Valu*, supra at 86; and *Grand Union Co.*, supra at 232.

Also strongly supporting the appropriateness of a single-store unit here are the distances between the stores involved. In this regard, the closest store operated by the Employer to the Ravenswood facility is a Sav-A-Lot location approximately 7 to 8 miles away in Ripley, West Virginia. The Employer, however, concedes that an appropriate unit could exclude employees at the Sav-A-Lot stores. The closest Foodland store to Ravenswood is approximately 25 miles away. Thus, I find that the geographic separation of the Ravenswood store serves to strengthen the presumption favoring a single-store unit.

Employee skills, functions, and working conditions are substantially uniform throughout the Employer's Foodland operations. I note, however, that such factors are apparently accorded little weight in retail situations involving widely separated facilities where the employees are subject to direct supervision from a local manager with significant authority. See, e.g., *Red Lobster*, supra; *Carter Hawley Hale Stores*, 273 NLRB 621 (1984); and *Renzetti's Market*, supra.

With respect to employee interchange, the Employer has a system of multistore postings for certain positions, such as department heads, but not for any part-time positions (the substantial majority of Ravenswood employees) nor even all full-time positions. Three permanent transfers into the Ravenswood store have apparently resulted from these postings, but the Board concluded in *Red Lobster*, supra at 911, that permanent transfers are a "less significant indication of actual interchange" than temporary movement. Accord: *J&L Plate*, supra at 430. Such transfers "are entitled to less weight in . . . determinations as to unit scope, inasmuch as it cannot be said that they contribute significantly to the cohesiveness of multilocation unit." *Bud's Thrift-T-Wise*, supra at fn. 6. While apparently no record is kept of temporary transfers, and an employee temporarily transferred from one store to another continues to be paid on his home store's check, the Employer introduced into evidence a list of 10 temporary transfers involving the Ravenswood store and 5 other such instances of transfer from memory. It appears, however, that three of these transfers involved the deli manager, the head produce clerk and the meat manager assisting at another store's grand opening for 1 or 2 days; at least three other situations involved transfers into Ravenswood for only 2 hours to cover for employees attending an employer sponsored meeting concerning the Petitioner's organizing campaign; and two situations involved an assistant manager filling in at Ravenswood 2 to 4 days when it first opened and a meatcutter who worked briefly at Ravenswood during the same time period. Aside from a meatcutter who filled in

at Ravenswood for approximately 10 days, the other transfers in evidence were only for a day or two and the record does not reflect their purpose.<sup>5</sup> Under these circumstances, I conclude that the extent and regularity of temporary transfers is not "so substantial as to negate the appropriateness of a separate unit." *Red Lobster*, supra at 910.<sup>6</sup>

Based on the above and the record as a whole, and noting a lack of bargaining history on a larger scale and that no labor organization seeks to represent the employees sought within a multifacility unit, I find that the Employer has not met its burden of showing that the petitioned-for single-store unit is inappropriate. In reaching this conclusion, I am mindful that in *Ohio Valley Supermarkets*, 269 NLRB 355 (1984), the Board held that a unit limited to one of this Employer's retail stores was not an appropriate unit for collective bargaining. In that case, the Petitioner sought a unit limited to employees working at one store in Point Pleasant, West Virginia. The Board determined that three stores, two located in nearby Gallipolis and the one in Point Pleasant, constituted the only appropriate unit. It appears, however, that at the time these three stores were the only ones operated by the Employer. Moreover, unlike the circumstances here, the Board relied heavily in that decision on the close proximity of the three stores involved—the greatest distance between any two being 8.9 miles and on the fact that Robert Eastman visited each store on a daily basis and called at 3-hour intervals for sales readings. Moreover, it is apparent that individual store managers had less authority at that time than they do now. In these circumstances, and especially in view of the fact that the Employer now has over four times as many facilities spread over a far wider geographic area than it did in 1984, I do not consider the prior decision as controlling. See, e.g., *Victoria Station v. NLRB*, 586 F.2d 672 (9th Cir. 1978).

The cases relied on by the Employer in asserting that the presumption of a single-store unit has been overcome are distinguishable on their facts from the instant situation, primarily on the geographic proximity of the stores involved in those cases and the significant limitations placed on the authority of the local managers who ran them. For example *V.M.I. Jeans*, 271 NLRB 1408 (1984), of which the Employer urges I take particular note, involved only stores within the New York City metropolitan area. In *V.M.I. Jeans*, the Board indicated that a major factor in reaching its determination was that, unlike here, the stores "share[d] a close geo-

<sup>5</sup>The Employer speculates that the need for temporary replacements at Ravenswood may increase when Ravenswood employees become eligible for vacation after 1 year of employment. However, the record reflects that certain other stores, over a 12- to 14-month period, utilized almost no temporary employees. Thus, the Twin Rivers Foodland in Point Pleasant, West Virginia, in close proximity to at least the 2 Gallipolis Foodland stores and employing 10 more employees than Ravenswood, had only 1 temporary transfer. Burr Oak Foodland in Trimble, Ohio, had only 4 temporary transfers and Acorn Plaza Foodland in Oak Hill, Ohio, a store with 32 employees, had no temporary transfers.

<sup>6</sup>See also *P & C (Cross Co.)*, supra at 1443-1444; *Holiday Village*, supra at 1306; and *Angeli's Super Valu*, supra at 86.

The Employer also notes that it sponsors a summer picnic and a Christmas party for all employees at which there would presumably be some contact among the various stores' employees. Such sporadic social contact provides little basis for overcoming the single-facility presumption. See, e.g., *Renzetti's Market*, supra at 174.

graphic proximity (two stores [were] on the same street in Brooklyn)." Moreover, in that case, not only did headquarters personnel regularly visit individual stores, a relief manager actually rotated among them.<sup>7</sup>

<sup>7</sup>Other cases cited by the Employer are similarly distinguishable. Thus, in *Petrie Stores Corp.*, 266 NLRB 75 (1983), the issue was not one of a single facility versus a companywide unit. Instead, the Employer merely took the position that the units should be no smaller than the stores located within the same and adjacent malls. Moreover, the store managers' authority was much more circumscribed than here—the employer utilizing six roving supervisors with the managers not even being involved in the scheduling of employees. *Big Y Foods*, 238 NLRB 860 (1978), involved only three stores, all within 20 miles of headquarters, and local managers were not even involved in the interview or hiring process. *Globe Furniture Rentals*, 298 NLRB 288 (1990), involved five stores all located in the Detroit area within 25 miles of each other. Local managers' authority was so limited that the Board even appeared to question their supervisory status. In *Queen City Distributing Co.*, 272 NLRB 621 (1984), the farthest distance between stores was 29 miles and the local managers' authority was limited. In *Pep Boys-Manny, Moe & Jack*, 172 NLRB 246 (1968), the store manager's authority was extremely limited—the employer utilizing a district manager system and the Board noting, "Thus, the district manager involves himself directly in the day-to-day operations of the store, instructing employees with regard to display, selling, and stock control. The district manager normally conducts the initial interview of applicants for employment at their and other stores, and makes a written recommendation which is forwarded along with the application to the Employer's headquarters where the determination to hire or reject the applicant is made."

While the Employer cites *Food Marts*, 200 NLRB 18 (1972), as a situation wherein the Board determined a 19-store unit to be appropriate, this is simply incorrect. In that case, while the employer operated 19 stores, 1 of 2 petitioners, with the concurrence of the employer, sought a 3-store unit. The other petitioner sought three sepa-

rate units of the same employees. The Board found a three-store unit appropriate in part due to the fact the furthest distance from any store was 5 miles. *Mary Carter Paint Co.*, 148 NLRB 46 (1964), cited by the Employer, predates *Haag Drug Co.*, 169 NLRB 877 (1968), wherein the presumption of the appropriateness of a single-store facility in the retail industry was announced.

There remains for consideration the unit placement of Assistant Store Manager Jim Butler, who also functions as the grocery department head. The record indicates that Butler is often the highest person in authority at the Ravenswood store. Moreover, the record reflects that he apparently prepared at least two warning notices given to employees. The evidence as a whole, however, is insufficient in detail to allow me to make a determination as to Butler's supervisory status. Accordingly, I shall permit Jim Butler to vote subject to challenge, and I instruct my agent to challenge his ballot if he appears at the polls to vote in the election.

In accord with the stipulation of the parties and the record evidence, I shall exclude Store Manager Tim Witt from the unit as a supervisor within the meaning of Section 2(11) of the Act.

Based on the foregoing and the entire record, I shall direct an election among the employees in the following bargaining unit:

All full-time and regular part-time employees employed by the Employer at its Foodland store in Ravenswood, West Virginia, including the heads of the dairy, produce, meat and deli departments, as well as the head cashier and head night stock clerk, but excluding all professional employees, guards and supervisors as defined in the Act.

rate units of the same employees. The Board found a three-store unit appropriate in part due to the fact the furthest distance from any store was 5 miles. *Mary Carter Paint Co.*, 148 NLRB 46 (1964), cited by the Employer, predates *Haag Drug Co.*, 169 NLRB 877 (1968), wherein the presumption of the appropriateness of a single-store facility in the retail industry was announced.