

J. C. Penney Company, Inc. and International Brotherhood of Teamsters, Local Union 41, AFL-CIO, Petitioner. Case 17-RC-11368

June 18, 1999

DECISION ON REVIEW AND ORDER
BY CHAIRMAN TRUESDALE AND MEMBERS
HURTGEN AND BRAME

On June 21, 1996, the Regional Director for Region 17 issued a Decision and Direction of Election in this proceeding, in which he found appropriate a unit of all full-time and regular part-time employees employed by the Employer at its catalog fulfillment center in Lenexa, Kansas, excluding, inter alia, the telemarketing department employees.¹ Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision with respect to the exclusion of the telemarketing department employees from the unit found appropriate, and of certain catalog maintenance technicians.² By Order dated July 24, 1996, the Board granted the Employer's request for review. The election was held as scheduled on July 24, 1996, and the ballots were impounded.

The Board has delegated its authority in this proceeding to a three-member panel. Having considered the entire record in this proceeding, including the Employer's brief on review,³ we conclude, in agreement with the Employer, that the telemarketing department employees must be included in the bargaining unit.

The Lenexa facility consists of about two million square feet under one roof.⁴ The overall function of the facility is to receive, process, fill, and distribute orders for merchandise ordered by customers from the Employer's catalogs. Customers' calls to the Employer's toll-free "800" number are received by the telemarketers, who then enter information regarding the customers'

¹ The unit includes employees in departments A receiving, area 2, area 4, area 6, central warehouse, inventory control, W receiving, "W" areas, job lots, packing, shipping, returns, customer relations, factory ship, accuracy control/supply, merchandise exam, engineering, maintenance, data processing, traffic, loss prevention, controllers/accounting, merchandise coordinator sales assistants, and control clerks in the departments included herein.

² The Regional Director found appropriate a unit larger than that sought by the Petitioner, adding classifications because of their role in processing orders and on traditional community of interest grounds. No request for review was filed as to the Regional Director's inclusion of the additional classifications.

³ The Employer has requested oral argument. The request is denied as the record, request for review, and brief on review adequately present the issues and the positions of the parties.

⁴ The facility is configured as a large square with an "operations center" attached to the east side, and a shipping area attached to the south side. The warehouse area of the facility is largely open, and divided by half walls or moveable partitions. However, other areas of the facility are divided into discrete sections.

orders into the central computer system.⁵ Approximately 70 percent of the orders received by the telemarketing department are filled by warehouse employees at the Lenexa facility; the rest are sent to one of the Employer's other five catalog fulfillment centers to be filled.⁶ There are 950 employees in the unit found appropriate, and about 365 employees in the telemarketing department.⁷

The National Labor Relations Act allows a union to petition for an appropriate unit. This does not necessarily mean that the unit will be the most appropriate or that there might not be another more appropriate. See *National Cash Register Co.*, 166 NLRB 173, 174 (1966); *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). While we recognize and adhere to this principle, we find, contrary to the Regional Director, that the telemarketing department employees share such a strong community of interest with the employees in the unit found appropriate that their inclusion is required.

As the record amply demonstrates, the telemarketers share common wage scales, benefits,⁸ and personnel policies with unit employees. A single personnel department services the entire facility. Telemarketers work in the same physical location as other included employees,⁹ and attend common meetings.¹⁰ The telemarketing department manager, like eight other department managers, reports directly to Facilities Manager Frank R. Kemp Jr. As discussed more fully below, telemarketers have similar skills and perform similar functions to unit employees in the customer relations and factory ship departments, and there is evidence of substantial contact and interchange between the telemarketers and employees in other included departments.

⁵ Telemarketers have access to systemwide information via the computer system to answer customers' inquiries regarding merchandise, the availability of merchandise, delivery schedules, and the status of orders, and to place customers' orders.

⁶ The geographical location of the customer's shipping address, as well as the availability of the merchandise, determine which catalog fulfillment center will fill the order. The Employer has 14 telemarketing centers in the United States, 4 of which are situated in the same location as the catalog fulfillment center.

⁷ There are nine separate job classifications in the telemarketing department. At the time of the hearing, about 348 employees were classified as telephone customer service representatives; 7 as senior telephone customer service representatives; 2 as catalog credit specialists, and 1 employee in each of the following classifications: detail assistant, senior detail assistant, control clerk, staffing clerk, automatic call distributor, general maintenance tech, staffing clerk, and administrative secretary.

⁸ Uniform health, leave, and discount benefits apply to all employees at the facility who average 25 hours or more of work per week.

⁹ The facility has two floors. The telemarketing department is located in the center of the second floor, directly over the data processing department, and next to the cafeteria. Other departments included in the unit, such as controllers/accounting, traffic, and engineering, also work on the second floor.

¹⁰ Telemarketers attend one of three monthly Employer-sponsored general employee meetings with unit employees, and participate in facility-wide committees.

Skills and functions

Similar to other unit classifications, telemarketers are not required to possess prior skill requirements in order to be hired into the department. Telemarketers perform functions similar to those of employees in the customer relations¹¹ and factory ship¹² departments, who are included in the unit. About 100 of the customer service representatives in the telemarketing department are trained to respond to customer inquiries, and handle problems with merchandise. Senior customer service representatives assist them in handling more difficult calls. Although customers' complaints and inquiries are initially handled by telemarketers, a portion are transferred to the customer relations department if there is greater volume than can be handled by the telemarketing department or if the problem cannot be handled or resolved by the telemarketing department.¹³ Six to eight detail assistants in customer relations investigate and process unusual orders where the Employer suspects there is an error in the order information. They also attempt to reorder merchandise from vendors to fill orders when the merchandise is not available at the facility. Senior detail assistants in customer relations are cross-trained with senior detail assistants in the factory ship department to respond to customer inquiries and to make adjustments regarding factory shipped merchandise, as well as dealing with customer orders that are filled from merchandise shipped from the inventory at the facility. Seventy to eighty per cent of the calls that senior detail assistants receive in customer relations are from the customer service representatives in the telemarketing department. Three detail assistants in factory ship similarly handle customer inquiries.

Contact and interchange

Telemarketing department employees have substantial contact and interchange with unit employees. Telemarketing customer service representatives frequently contact employees in the customer service department to expedite rush orders or in relation to customer inquiries.¹⁴ Telemarketers also contact employees in the accuracy control/supply department, and the returns department concerning orders and inquiries; employees in the traffic department to determine delivery rates or schedules for a customer; and employees in the loss prevention

department regarding fraudulent orders. Factory ship interfaces regularly with the telemarketing and customer relations departments concerning the items that they ship directly from the factory to customers. Telemarketers participate with all employees in the annual inventory in the warehouse, both physically counting merchandise and keying information regarding inventory into the computer. They are trained to perform the annual inventory by employees in the customer relations department. On occasion, telemarketers are loaned to the factory ship department, the returns department, and other departments when the work demands in those departments require extra help.¹⁵

The Employer maintains a "job system" where all job openings at the facility are posted for bid in every department at the facility, and employees routinely transfer between the various departments, including in and out of telemarketing.¹⁶ Telemarketers operate under the same layoff and recall policies as other employees at Lenexa, and have bumped employees in other departments during a reduction-in-force. Employees from other departments have also been placed in the telemarketing department as a result of a reduction-in-force. In a few cases, telemarketers have been recalled to other departments.

Telemarketers, like employees from all other departments, have served as models for the merchandise exam department. Over the last 3 years, they worked with customer relations employees in quality circles on two separate projects concerning updates in guidelines and improvements in customer problem resolution. When large numbers of customers need to be contacted by telephone to be informed that an item they ordered is out-of-stock or the order is otherwise unfillable, customer relations employees and telemarketers are assigned to make the calls. Telemarketing employees have trained customer relations employees on new computer software.

Other considerations

In finding that the telemarketers share a close community of interest with the unit found appropriate, we note that the telemarketing department is not the only department at Lenexa that handles work for other catalog fulfillment centers in overflow or other situations. For example, the data processing department processes the orders received by various telemarketing centers, and provides some services to other locations. The packing department fills orders for the Employer's fulfillment cen-

¹¹ The customer relations department is responsible for the resolution of customer complaints and problems, making adjustments to customer accounts, and handling special orders of merchandise.

¹² The factory ship department is responsible for processing customer orders for merchandise that is filled by shipments directly from the vendor rather than from the facility.

¹³ About 15 to 20 percent of the over one million nonorder calls are forwarded to customer relations annually.

¹⁴ There are about 125,000-130,000 contacts a year between employees in the telemarketing and customer relations departments, including face-to-face, phone call, facsimile, and computer communication.

¹⁵ Between five and eight telemarketing employees have been sent to the factory ship department to help with "keying" the billing (computer entry), and telemarketing has loaned its employees who had previous experience working in the returns department back to that department for 2 to 3-month periods.

¹⁶ Over the past 3 years 150 telemarketing employees bid to transfer to other departments at Lenexa, and about 20 have in fact transferred to other departments.

ters in Reno, Nevada, and Milwaukee, Wisconsin, on a regular basis when those centers do not carry that item.¹⁷

Finally, contrary to the Regional Director, we find that any variation between the telemarketing department and other departments regarding hours of work, seasonal employees, and part-time employees does not negate their close community of interest with the unit found appropriate. Although telemarketers work on multiple shifts (covering 7 a.m. to 11 p.m.) 7 days per week while most employees work on a 5-day schedule and are off on weekends, data processing has 24-hour coverage with employees working a variety of shifts and hours. Other employees in various departments have a variety of starting times. While the employee complement in the telemarketing department is seasonal and subject to wide fluctuation, apparently doubling in size during its peak season (July through Christmas) from its nonpeak level,¹⁸ some of the seasonals are retained temporarily to work in other departments, including the returns department, and stay through inventory before being laid off. Although the majority of part-time employees work in the telemarketing department, 72 percent of the telemarketers at the time of the hearing averaged 25 hours or more per week and therefore were eligible for benefits. Moreover, there are some part-time employees in various other departments such as the area 2 and W areas, and the shipping department has a part-time shift.

CONCLUDING FINDINGS

Based on this record, we conclude that the employees in the telemarketing department must be included in the unit. Although the telemarketing department employees' separate supervision is a factor that militates against their required inclusion, we find that this factor is outweighed by other factors favoring their required inclusion. Thus, telemarketers and employees in the petitioned-for unit work in the same building, receive similar wages and benefits, are subject to the same personnel policies, have

similar skills and perform similar functions, and have substantial contact and interaction. In addition, there is routine permanent interchange and some temporary interchange between telemarketing department employees and the other employees involved herein.

Moreover, the functions of the telemarketers are integrated with the overall function of the Lenexa facility—receiving, processing, filling, and distributing orders for merchandise ordered by customers from the Employer's catalogs. As noted, approximately 70 percent of the orders received by the telemarketing department are filled by warehouse employees at the Lenexa facility. The telemarketers and unit employees in the customer relations and factory ship departments perform common functions with respect to handling customer inquiries. Seventy to eighty percent of the calls that the senior detail assistants receive in customer relations are from the customer service representatives in the telemarketing department.

Based on the above, we conclude that the employees in the telemarketing department must be included in the unit found appropriate. See *Hotel Services Group*, 328 NLRB No. 30 (1999); *Brand Precision Services*, 313 NLRB 657 (1994); *Transerve Systems*, 311 NLRB 766 (1993); *Phoenician*, 308 NLRB 826 (1992). Accordingly, the Regional Director's Decision and Direction of Election is reversed with respect to his exclusion of telemarketing department employees from the unit found appropriate. This proceeding is remanded to the Regional Director for further appropriate action, consistent with the findings herein.¹⁹

¹⁷ There is an instantaneous inventory check between the computers of these centers during third shift and Lenexa will fill in for items when the other centers do not have them in stock.

¹⁸ The Employer employs approximately 1350 employees during nonpeak season, and about 1800 during peak season. Most of the additional employees are hired to work in the telemarketing department.

¹⁹ The Employer correctly notes that the parties stipulated that only the two catalog maintenance technicians in the engineering department should be excluded from the unit, not all catalog maintenance technicians as found by the Regional Director. Accordingly, the Board clarifies the Regional Director's decision to exclude only the two catalog maintenance technicians in the engineering department.