

R.D. # 0018-99  
Edison, NJ

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

**JERI-JO KNITWEAR, INC.**<sup>1</sup>  
Employer

and

CASE 22-RC-11791

**UNITED FOOD AND COMMERCIAL  
WORKERS UNION, LOCAL 348-S,  
AFL-CIO, CLC.**  
Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby 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.<sup>3</sup>

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> Briefs filed by the Petitioner and the Employer have been fully considered.

3. The labor organization involved claims to represent certain employees of the Employer.<sup>4</sup>
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described *infra*:

All full-time and regular part-time store employees, ticketers, maintenance employees, production employees, shipping and receiving employees, hi-low drivers, messengers, packers, checkers and warehouse clerical employees employed by the Employer at its Edison, New Jersey facility, excluding executive personnel, designers, administrative personnel, office clerical employees, employees employed at other locations, professional employees, guards and supervisors as defined in the Act.<sup>5</sup>

The Employer declined to stipulate that the Petitioner is a labor organization under the Act. With regard to the labor organization status of the Petitioner, there are essentially only two requirements for a party to meet to achieve the status of a labor organization as defined by Section 2(5) of the Act: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962). In this regard, the record reveals that employees have participated in the Petitioner with respect to serving on its executive board and participating in general membership meetings and

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<sup>3</sup> The Employer, a Delaware Corporation, is engaged in the warehousing, sale and distribution of women's apparel at its Edison, New Jersey facility, the only facility involved herein.

<sup>4</sup> The status of the Petitioner as a labor organization within the meaning of Section 2(5) of the Act will be discussed, *infra*.

<sup>5</sup> There are approximately 100 employees in the unit.

all aspects of decision making. The record also discloses that the Petitioner deals with employers concerning wages, rates of pay, hours and other terms and conditions of employment, has collective bargaining agreements with various employers and processes grievances on behalf of employees it represents. In these circumstances, I find the Petitioner to be labor organization under Section 2(5) of the Act. *Ana Colon, Inc.*, 266 NLRB 611, 612 (1983); *Alto Plastics Manufacturing Corp.*, supra.

The parties agree that all full time and regular part-time time store employees, ticketers, maintenance employees, production employees, shipping and receiving employees, hi-low drivers, messengers, packers and checkers employed at the Employer's Edison facility should be included in the unit. The parties further agree that executive personnel, designers, administrative personnel, office clerical employees, professional employees, guards and supervisors as defined in the Act should be excluded from the unit.

In dispute in this proceeding are whether or not two classifications of employees should be included in the unit. The Employer, contrary to the Petitioner, seeks to include in the collective bargaining unit, warehouse clerical employees employed in Edison and production employees employed at its New York facility, asserting these employees share a requisite community of interest with the other employees and should be included in the unit.

***Warehouse Clerical Employees:***

The Board customarily excludes office clerical employees from production and maintenance and/or warehouse employees units, while plant clericals are generally included in such units. *Hygeia Coca-Cola Bottling Co.*, 192 NLRB 1127 (1971); *Westinghouse Electric Corp.*, 118 NLRB 1043 (1957); *Raytee Co.*, 228 NLRB 646

(1977). The distinction between office clericals and plant clericals, however, is not always a clear one because the disputed employees often appear to share characteristics of both groups in the duties they perform and in their working conditions. A controlling factor in making this distinction is whether the disputed clericals perform work that is directly related to, and integrated with, the functional operation of the facility and the duties performed by other unit employees. *Ives Business Forms, Inc.*, 263 NLRB 286, 289 (1982). In making this determination the Board looks at factors such as whether the clericals have regular contact with unit employees; work in an area adjacent to unit employees; and share common wages, immediate supervision, working conditions, and fringe benefits with unit employees. *American Parts System, Inc.*, 254 NLRB 901, 902 (1981). If such factors are present, the clericals are considered to be plant clericals. *Jacob Ash Co.*, 224 NLRB 74, 75 (1976). If, however, the disputed employees have separate and distinct functions from unit employees; are separately supervised; physically separated; have minimal contact with unit employees; and limited transfer or interchange with unit employees, the clericals are found to be office clericals and excluded from the unit. *Ives Business Forms, Inc.*, supra.

The Employer asserts that seven warehouse clericals share a community of interest with the other employees sought by the Petitioner. The record reveals that the facility involved in this matter is a 100,000 square foot warehouse. The warehouse consists of one floor, which is divided by partitions to delineate the storage and receiving area and the shipping area. Additionally, within the shipping area, there is a “make-shift” office in which eight desks are located. There is also a separate building, which is appended to the warehouse. The computer room, accounts receivable department, a kitchen, the receptionist and five executive offices are located in this separate building.

Certain office clerical employees, whom the parties agree are excluded from the unit, also work in this separate building. Arnold Titlebaum, the Employer's CFO, and Lillian Schneider, the Employer's owner, occupy two of the executive offices. The remaining two offices are occasionally utilized by Angelina Helck, a showroom supervisor based in New York when she has occasion to be at the Edison facility.

Sebastian Cuomo, the Employer's warehouse manager, testified that the seven warehouse clericals are generally responsible for processing shipments which includes preparing paperwork, scheduling appointments for merchandize to be picked up, generating UPC labels, generating tickets for garments, and "all basic warehouse functions." The warehouse clericals have individual responsibilities. For example, Dona Onifer, a warehouse clerical, is primarily responsible for generating UPC tickets. She accomplishes this by keypunching information in her computer terminal, which is located in the make-shift office area in the warehouse. The labels are printed in the computer room, which is located in the building attached to the warehouse.<sup>6</sup> Cuomo testified that Onifer spends three-quarters of her day in the make-shift office area and one-quarter of her day on the warehouse floor interacting with the other employees.<sup>7</sup> Onifer earns approximately \$11.00 an hour and receives the same benefits as the other warehouse employees.<sup>8</sup> Susan Lally, a warehouse clerical, assists Onifer in generating UPC labels. Once the labels are completed, Lally gives them to the ticketers, who put them on the garments. Cuomo testified that Lally spends half of her working day generating labels

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<sup>6</sup> Throughout the hearing tickets and labels are used interchangeably.

<sup>7</sup> The record does not describe what this interaction entails.

<sup>8</sup> It should be noted that with the exception of the ticketers, all warehouse employees receive the same health benefits, sick and vacation pay. The ticketers are not entitled to sick pay, and they receive an additional 15 minute break.

and the remainder of her day with the ticketers.<sup>9</sup> Lally earns approximately \$11.00 an hour and receives the same benefits as the other warehouse employees.

After merchandise is delivered to the warehouse, Leonard Camacho, a receiver, writes a receipt for the merchandise and brings it to Laurie Harmer, a warehouse clerical, who keypunches all information from the receipt into her computer terminal, which is located in the make-shift office area in the warehouse. Harmer assists with processing purchase orders for merchandise from customers. These orders are faxed from the New York showroom to a fax machine which is located in Cuomo's office, which is also located in the make-shift office in the warehouse. Harmer earns approximately \$11.00 an hour and receives the same benefits as the other warehouse employees. Michael Vassler, a warehouse clerical, proofreads the purchase orders that Harmer prepares, performing this function in the make-shift office area. If the purchase order is a rush, it is printed and given to Marie Boquin, a warehouse clerical, to prepare for shipping; otherwise the order is processed in its normal course. Boquin performs this task in the make-shift office. The allocation department located in New York determines whether an order is a rush. Cuomo testified that Vassler spends three-quarters of his day in the make-shift office area and one-quarter of his time with the packers and checkers.<sup>10</sup> Vassler earns approximately \$11.00 an hour and receives the same benefits as the other warehouse employees. Marie Boquin sorts the "pick-tickets" which are the rush orders, by accounts, different styles, and shipping methods (i.e., UPS, regular delivery). Boquin then pages a hi-lo driver and gives him the ticket so it can be processed immediately. If orders are not deemed a rush, Boquin sorts the tickets by shipping dates and drops them in the appropriate basket in

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<sup>9</sup> The record is silent as to exactly what type of work Lally does with the ticketers.

<sup>10</sup> The record did not describe what job duties Vassler performs with the packers and checkers.

Cuomo's office. If Boquin finishes sorting the tickets, the remainder of her day is spent packing merchandise in the warehouse. Cuomo testified that Boquin packs half a day a couple of days a week. Boquin earns approximately \$8.00 an hour and receives the same benefits as the other warehouse employees.

Darlene Diaz, a warehouse clerical, is responsible for keypunching certain information on the tickets to produce a manifest and a bill of lading. These bills of lading are used by the truck drivers when they deliver freight. Diaz is also responsible for calling trucking companies to inform them when freight is ready to be delivered and also to clear any weight limitations for the freight. Cuomo testified that Diaz has significant contact (approximately one-quarter of her day) with the checkers because they "feed" her the tickets. She has even "been known to unload a truck."<sup>11</sup> Diaz earns approximately \$10.00 an hour and receives the same benefits as the other warehouse employees. Vivian Lazerte, a warehouse clerical, assists Laurie Harmer with entering purchase orders. Lazerte also makes changes, as needed, to purchase orders based on "memos" sent by the showroom in New York. Cuomo testified that Lazerte spends one-quarter of her time on the "floor" interacting with other employees and three-quarters of her time in the make-shift office in the warehouse.<sup>12</sup> Lazerte earns approximately \$11.00 an hour and receives the same benefits as the other warehouse employees.

As the record demonstrates, the seven warehouse clericals are involved in the warehousing process. Their work is done in proximity to and in concert with the other employees sought by the Petitioner. Additionally, all warehouse employees, including the warehouse clericals are hired, supervised, disciplined and terminated by Cuomo. Moreover, the warehouse clericals and all other warehouse employees have essentially

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<sup>11</sup> The frequency of this is not described in the record.

the same fringe benefits, work schedules, punch a time clock, receive the same breaks and lunch periods and are paid overtime based on an hourly rate. Finally the warehouse employees' hourly rate of pay ranges from \$5.15 to approximately \$12.00 an hour.

Ticketers earn \$5.15 - \$8.00 an hour; packer/checkers earn approximately \$6.00 - \$8.00 an hour; shipping and receiving employees earn approximately \$6.00 - \$8.00 an hour; hi-lo drivers and maintenance employees earn approximately \$8.00 - \$10.00 an hour, and the store employees earn approximately \$5.15 - \$6.00 an hour.

Based on the above and the record as a whole, noting that warehouse clericals are commonly supervised, share similar pay rates and benefits and have significant daily work contact with other unit employees,<sup>13</sup> I find that the warehouse clericals' functions are directly related to and integrated with the work of the unit employees and, therefore, should be included in the unit found appropriate herein. See, e.g., *Fleming Foods, Inc.* 313 NLRB 948 (1994); *L. M. Berry & Co.*, 198 NLRB 217 (1972).

***Production Employees Employed at the New York Facility:***

The Employer also contends that it employs nine production employees who work primarily in its New York facility and share a significant community of interest with the other employees sought by the Petitioner sufficient to warrant their inclusion in the same unit. In connection with these employees, the parties did not address the appropriateness of a single location unit versus a multi-location unit, rather they solely addressed the community of interests shared between these New York production employees and the unit employees employed in Edison. In conducting the community of interest analysis to determine whether the unit sought is an appropriate one, the Board examines a number of

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<sup>12</sup> The record did not describe what this interaction entails.

<sup>13</sup> Although the nature of this work related contact is described in conclusory terms by the Employer's witness, the Petitioner did not dispute these assertions.

factors, such as bargaining history, functional integration, interchange of employees, hours of work, method of payment of wages, benefits, supervision, contact among employees, work situs and differences or similarities in training and skills. *Atlanta Hilton & Towers*, 273 NLRB 87 (1984), mod. on other grds. 275 NLRB 1413 (1985); *Moore Business Forms Inc.*, 173 NLRB 1133 (1968); *Doubleday & Co.*, 165 NLRB 325 (1967). At the outset, I note that there was limited testimony regarding these New York production employees in this record. Cuomo testified that the New York production employees inspect the garment styles that come from overseas. They also inspect the tickets that are on the garments. According to Cuomo these production employees are “heavy into the samples of the merchandise.”<sup>14</sup> Initially, Cuomo testified that these production employees spend a significant amount of time interacting with the New Jersey employees. However, the record reveals that only one production employee, Diane Rivera, travels to the Edison, New Jersey facility two to three times a week. When Rivera works in Edison she shares office space in a partitioned area in the warehouse next to the store.<sup>15</sup> There was no evidence as to how much contact she has with the other warehouse employees. As for the other production employees, Cuomo testified that only two of them have ever even been to the New Jersey warehouse. Unlike the warehouse employees, the production employees in New York are all salaried. The Employer asserts that Cuomo supervises these production employees although he is located in Edison. I note that the Employer employs a showroom supervisor, Angelina Helck, in New York, whose functions are not described in the record. Based on the limited record evidence regarding these production employees, noting their separate location, different

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<sup>14</sup> There was no additional testimony to expound on what this actually entails.

<sup>15</sup> This is not the same make-shift office space where the warehouse clericals perform their duties.

mode of payment, lack of interchange and limited contact, I find that they do not share the requisite community of interest to be included in the unit sought by the Petitioner. *See Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). In this regard, I also note that the Employer has failed to present evidence sufficient to overcome the presumption that a petitioned for single facility unit is appropriate. *J & L Plate*, 310 NLRB 429 (1993).

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **United Food and Commercial Workers Union, Local 348-S, AFL-CIO, CLC.**

## LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the NLRB Region 22, 20 Washington Place, 5<sup>th</sup> Floor, Newark, New Jersey 07102, on or before September 7, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by September 14, 1999.

Signed at Newark, New Jersey this 31<sup>st</sup> day of August 1999.

/s/ Gary T. Kendellen

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