

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 34

Carabetta Management Company <sup>1</sup>

Employer

and

International Chemical Workers Union Council/  
United Food and Commercial Workers Local  
560-C, AFL-CIO, CLC <sup>2</sup>

Petitioner <sup>3</sup>

Case No. 34-RC-1692

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, 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>4</sup> the undersigned finds:

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<sup>1</sup> The Employer's name is corrected and appears as reflected in the record.

<sup>2</sup> The Petitioner's name is corrected as amended.

<sup>3</sup> At the hearing the Employer questioned the Petitioner's status as a labor organization. However, the record clearly establishes, and I so find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

<sup>4</sup> In its post-hearing brief the Petitioner argued, for the first time, that the undersigned should draw an adverse inference from the Employer's alleged failure to produce at the hearing, certain documents which the Petitioner had subpoenaed. As the Employer correctly notes in its post-brief objection, the record contains no evidence or other indication that the Employer had failed or refused to produce subpoenaed information, or that the Petitioner believed that the record was incomplete. To the contrary, in response to two separate inquiries from the Hearing Officer at the close of the hearing, the Petitioner's representative affirmatively indicated that it had nothing additional to present. Accordingly, the Petitioner's request is hereby denied. Inasmuch as the Petitioner's post hearing brief was timely filed and appropriately served on the Employer, the latter's motion to strike the brief in its entirety is denied.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer, a Connecticut corporation with its principal office and place of business located in Meriden, Connecticut, is engaged in the operation and management of approximately 60 residential apartment complexes located throughout the State of Connecticut. The Petitioner seeks to represent approximately 35 grounds keepers, cleaners, maintenance workers and superintendents<sup>5</sup> employed by the employer at the 19 complexes which the Employer operates and manages in Meridian, Connecticut. Although otherwise in agreement as to the composition of the unit, the Employer disagrees as to its scope. More specifically, contrary to the Petitioner, the Employer contends that the only appropriate unit is one which encompasses all of the approximately 160 grounds keepers, cleaners, maintenance workers and superintendents employed at all 60 complexes it services in Connecticut.

Overall supervision of the Employer's operations is vested in Service and Purchasing Manager Robert Memery. Reporting to Memery are two regional managers who directly supervise the various complexes.<sup>6</sup> In this regard, the record reveals that the Employer has administratively divided its operation in the State into east and west regions. Grouped in the "west," and under the separate supervision of one of the regional managers, are the apartment complexes located in Meriden, New Britain, Bristol and Waterbury. Grouped in the "east," and under the separate supervision of the other regional manager, are the apartment complexes located in Middletown, Rockville, Williamantic, Norwich, Wallingford, Hartford and New Haven.

The various apartments in the complexes located in Meriden, Connecticut are all within 2 miles of the Employer's main office. All of the apartments in the other complexes in the west are located between 8 and 13 miles from the Employer's Meriden

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<sup>5</sup> There is no evidence or contention that any of the superintendents are supervisors within the meaning of the Act.

<sup>6</sup> There is no evidence that any of the individuals assigned to work at any of the apartments possess or exercise any of the statutory indicia of supervisory authority. Rather, it appears that although Memery and the regional managers work out of the Meriden office, Memery and/or a regional manager makes and communicates all supervisory decisions telephonically or by personal visits to the apartment complexes.

office. All of the apartments in the complexes in the east are located between 4 and 39 miles from the Employer's Meriden office.

Service and Purchasing Manager Memery testified generally that over the last year there were "several hundred" short term and long term transfers of employees among and between the various complexes. However, the Employer specifically identified and proffered as "examples" only 20 such instances since November, 1996. Moreover, as the Petitioner correctly notes, only 3 of these examples involved Meriden apartments. Nevertheless, since the Petitioner failed to present any significant probative evidence to impeach Memery's testimony, it stands un rebutted.

Finally, the record also indicates that all accounting, payroll,<sup>7</sup> purchasing, insurance, and personnel functions are handled at the Meriden office; that the Employer maintains a central warehouse at the same site; and that all employees are governed by the same published guidelines and receive the same fringe benefits.

Based upon the above and the record as a whole, and notwithstanding the geographic proximity of the Meriden complexes, I find that they do not share a separate and distinct community of interest, and that a unit limited to those complexes is inappropriate for the purposes of collective bargaining. *Kobacker Stores, Inc., d/b/a Pic-Way Shoe Mart*, 274 NLRB 902 (1985), *New England Telephone and Telegraph Company*, 258 NLRB 1284 (1981), *Connecticut Light and Power Company*, 222 NLRB 1243 (1976), *The Lawson Milk Company*, 213 NLRB 360 (1974).<sup>8</sup>

Accordingly, I shall grant the Employer's post-hearing motion and dismiss the petition.<sup>9</sup>

### **ORDER**

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<sup>7</sup> As the Petitioner correctly notes, employee paychecks bear the name of, and are apparently charged to, each particular complex at which the employees work. In this regard, although employee wages vary at each location, they are centrally determined by Memery.

<sup>8</sup> At the hearing, the Petitioner appeared to be willing to proceed to an election in an alternative unit composed of those apartment complexes located in Meriden, New Britain, Middletown and Waterbury. However, it is clear from the record that such a unit is not geographically unique, does not correspond to any administrative or supervisory sub-grouping, and shares no other separate and distinct community of interest. I find, therefore, that such a unit is inappropriate.

<sup>9</sup> In view of my determination herein, and noting that the Petitioner has not indicated a desire to proceed to an election in any other unit, I find it unnecessary to pass upon the Employer's contention that a State-wide unit is the only appropriate unit for the purposes of collective bargaining.

IT IS HEREBY ORDERED that the petition herein be, and it hereby is, dismissed.

**Right to Request Review**

Upon the provisions 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, D.C. 20570. This request must be received by the Board in Washington by March 5, 1999.

Dated at Hartford, Connecticut this 19th day of February, 1999.

/s/ Peter B. Hoffman  
Peter B. Hoffman, Regional Director  
Region 34  
National Labor Relations Board

440-3375-5050