

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

EMPIRE COFFEE COMPANY, INC.

Employer

and

LOCAL 116, PRODUCTION &
MAINTENANCE EMPLOYEES UNION

Petitioner

Case No. 34-RC-1729

DECISION AND DIRECTION OF ELECTION

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.

Pursuant to 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, the undersigned finds:

1. The hearing officer's rulings 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.
3. The labor organization involved claims to represent certain employees of the Employer.
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 Employer, a New York corporation with its offices and facilities located in Port Chester, New York, is engaged in the packaging and non-retail sale and distribution of coffee. Although otherwise in accord as to the composition of a unit of full-time and regular part-time production and maintenance employees, the parties disagree as to the status of three “lead people”: Ernesto Hernandez, Rosa Rodriguez, and John Kuzme. The Petitioner, contrary to the Employer, would exclude these three individuals as supervisors within the meaning of the Act.

Apart from the 3 disputed individuals, the agreed-upon unit is composed of 26 individuals, all of whom are under the overall supervision of Operations Manager Todd Good. The record reveals that Good reports to the Employer’s two corporate owners, at least one of whom works at the Port Chester facilities. When Good is absent he is replaced by Office Manager Laura Thoden who is primarily responsible for sales and marketing.

Ernesto Hernandez works in the warehouse with, and is “assisted” by two other less experienced employees. The record indicates that they all perform the same routine work, which consists of loading and unloading trucks, shrink wrapping packages, marking bills of lading and cleaning the floors.

John Kuzme is currently the Employer’s only maintenance employee. He is responsible for maintaining all of the Employer’s equipment and for installing any new equipment. An individual with 30 years experience, he has had other employees “working under him.” However, as of the date of the hearing, no one was reporting to or working under him. The record does not indicate if this will change.

Rosa Rodriguez is employed as a production assistant. This entails assisting Good in scheduling production and performing various quality assurance functions.

The record establishes that none of the lead people can hire, discharge or discipline other employees. They also do not recommend the hire or discharge of employees. Furthermore, although they may report “problems” to Good, they don’t recommend discipline. Rather, Good independently determines if employees need to be disciplined. Good also directs the work of the unit on a daily basis.

Both Hernandez and Rodriguez are bilingual, speaking Spanish and English. Good is not fluent in Spanish. Because some employees only speak Spanish,

Hernandez and Rodriguez are occasionally called upon to act as “translators” for Good when he makes work assignments or metes out discipline. Such communications however, are conducted in Good’s presence, and clearly emanate from him.

All three disputed lead people are experienced salaried personnel who are responsible for training and instructing the lesser experienced hourly paid unit employees. The three disputed lead people receive family medical coverage, while unit employees only receive individual coverage. All other benefits are the same. Finally, even though the lead people are salaried, when overtime is considered, their actual compensation could be less than the hourly paid employees.

Based upon the above and the record as a whole I find that Ernesto Hernandez, Rosa Rodriguez, and John Kuzme are not supervisors within the meaning of the Act and I shall include them in the unit found appropriate herein. See, e.g., *McCullough Environmental Service, Inc.*, 306 NLRN 565, 566 (1992). In reaching this conclusion I note particularly that the Petitioner has not sustained its burden of establishing that any of these three individual possess or independently exercise any of the statutory indicia of supervisory authority.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, including machine operators, warehouse employees, shipping and receiving employees, quality control employees, dumpers, roasters, plant clerical employees, porters, drivers, machine maintenance employees and lead people¹ employed by the Employer at its 106 Purdy Avenue, Port Jefferson, New York facility; but excluding all office clerical employees, and guards, professional employees, and supervisors as defined in the Act.

¹ Based upon the stipulation of the parties and the record as a whole, I find that Karina Loop is not a supervisor within the meaning of the Act, and I shall include her in the unit found appropriate herein.

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 notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit who were 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 their status as such during the eligibility period and their replacements. Those in the military services of the United States 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. These eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by Local 116, Production & Maintenance Employees Union.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights to vote, all parties to 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 and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The undersigned shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before June 22, 1999. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply

with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Right to Request Review

Under 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, DC 20570. This request must be received by the Board in Washington by June 29, 1999.

Dated at Hartford, Connecticut this 15th day of June, 1999.

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

177-8560-1500