

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

DRUMMOND GLASS COMPANY, INC.¹

Employer

and

Case No. 8-RC-15931

AMERICAN FLINT GLASS WORKERS UNION, AFL-CIO

Petitioner

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; hereinafter 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,² 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.

¹ The Employer's name appears as amended at the hearing. The Parties stipulated at the hearing that Drummond is the Employer of the petitioned-for employees. The Employer acknowledges in its brief that Drummond is a wholly-owned subsidiary of Libbey Glass and the record reflects some common administration between the two companies. The Union asserts in its brief that Libbey Glass is the Employer of the petitioned-for employees. Based on the scant record evidence regarding the relationship between Drummond and Libbey I cannot make any findings regarding the Employer relationship between the two companies. With insufficient record evidence to the contrary, I shall accept the Parties stipulation that Drummond Glass Company is the Employer of the petitioned-for employees.

² The parties have filed briefs which have been carefully considered.

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 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:³

All full-time and regular part-time sales associates, greeters, third key employees and assistant sales attendants employed at the Employer's retail outlet in Toledo, Ohio, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

There are approximately 32 employees in the unit found appropriate herein.

As reflected in its amended petition, the Petitioner seeks to represent all full and part-time sales associates who are employed at the Employer's outlet store. The Petitioner asserts that employees in the job classifications of greeters, "third key", and assistant sales attendants do not share a community of interest with the sales associates and should be excluded from the unit. Conversely, the Employer argues that the sales associates and the disputed classifications share a community of interest and it is appropriate to include the third key, greeters and assistant sales attendant in the petitioned-for unit. The Petitioner indicated at the hearing that it would proceed to an election in any unit found appropriate.

The Employer operates a retail outlet store seven days a week in Toledo, Ohio where it sells merchandise manufactured at a separate location by Libbey Glass.

³ At the hearing, the Petitioner amended its petition as follows: "All full-time and regular part-time hourly paid, non-retired sales associates, including Nelson Klute, but excluding greeters, office and third key and assistant salesroom attendant and supervisors as defined in the Act."

GREETERS

The sole witness in this case was Catherine Ward, the manager of the outlet store. Todd Wilson is the assistant manager of the store. Ward testified in detail regarding the duties of greeters. The greeters primary duty is to acknowledge and service customers. Greeters offer customers assistance in finding specific items. Greeters also assist sales associates by wrapping glassware and goods for customers. Occasionally, greeters assist other store employees in cleaning up breakage and also help stock the shelves. At the time of the hearing there were 12 greeters employed at the outlet store.⁴ The only significant difference in duties between sales associates and greeters is that greeters do not operate the cash registers. The Employer started the greeter program approximately two years ago. All of the greeters are retirees of the Libbey Manufacturing Plant.

Greeters are not employed on a full-time basis. They typically work weekends. Ward testified that some part-time sales associates also only work weekends. Greeters earn wages that are comparable to sales associates. Greeters start at \$5.75 an hour whereas a new sales associate will start at \$5.50 per hour. Unlike sales associates, greeters who are performing satisfactorily after the first 90 days of employment do not receive an automatic pay increase. However, pay increases thereafter between sales associates and greeters are similar. Pay increases range from zero to two percent per year. According to Ward, greeters receive on average a twenty-five cent increase. Ward testified that two or three sales associates have received wage increases of less than twenty-five cents. Full-time sales associates receive benefits that the greeters do not enjoy. Full-time sales associates receive paid vacations and health insurance. The greeters are in a

⁴ The record contains the names of 10 of the 12 greeters. While the Employer was in the possession of the names of the other two greeters, the Employer's attorney refused to introduce those names into the record.

similar position as part-time sales associates who also do not receive the same benefits as the full-time sales associates.

In determining whether job classifications of employees share a sufficient community of interest to warrant inclusion in a single unit, the Board's decision in **Kalamazoo Paper Box Corp., 136 NLRB 134 (1962)** sets forth the following relevant factors for consideration: common supervision, degree of functional integration, the interchangeability and contact among the various employee classifications, the nature of employees skills and functions, location of the work situs, and similarities in general working conditions and fringe benefits.

It is apparent in this case that there does exist a sufficient community of interest between the greeters and the sales associates to include the greeters in the bargaining unit. Significantly, there is an appreciable degree of interaction between the greeters and the sales associates. The greeters are supervised by Catherine Ward as are the sales associates. The greeters perform many of the same duties as sales associates such as assisting customers in locating merchandise, wrapping goods for customers, restocking shelves and pulling inventory for customers. The wages earned by the sales associates and the greeters are comparable and the fact that the greeters do not receive the same benefits as sales associates does not warrant their exclusion from the unit. As noted above, part-time sales associates also do not receive all the benefits that full-time sales associates do. Although greeters do not operate the cash registers they are made familiar with the stockroom and are shown where merchandise is kept and instructed on how to fill out the breakage report. Greeters interact directly with sales associates in assisting at the wrap desk and locating merchandise for customers.

The Petitioner urges that because all of the greeters are retirees from the Libbey Manufacturing Plant, it would not be appropriate to include them in a bargaining unit with the

Drummond employees. The Petitioner relies on the Supreme Court's decision in **Chemical Workers v. Pittsburgh Plate and Glass Company, 404 U.S. 157 (1971)** to argue that retirees benefits are not a mandatory subject of bargaining. The Supreme Court's decision in **Pittsburgh Plant and Glass Company** does not apply to the facts of this case. While the greeters may well be retirees of Libbey, for the purposes of this petition they are employees of Drummond Glass Company, Inc. If the employees select the Union as their exclusive bargaining representative in a Board election, the Employer and the Union would bargain over the terms and working conditions of Drummond Glass Company employees, not retirement benefits of persons formerly employed by Libbey at the manufacturing plant. The Petitioner also asserts that because at one time an outside agency, known as Staff Mark, handled the greeters payroll, that greeters do not have a reasonable expectation of continued employment at Drummond Glass. There is no record evidence to suggest that the greeters employment is going to end at any time in the near future.

On the basis of the foregoing and the record as a whole I shall include the greeters in the petitioned-for unit.

ASSISTANT SALES ROOM ATTENDANT

Floyd Dubois, a long time employee, is the only employee in the job classification known as assistant sales room attendant. Ward testified as to the various duties that Dubois performs. Dubois is responsible for sweeping floors and receiving merchandise. He stocks shelves and assists sales associates by working at the wrap desk. As a sales associate rings up the merchandise, Dubois wraps the merchandise and places it in bags. Dubois is very familiar with the stock as a long time employee and he assists customers in locating merchandise. Sales associates also assist customers in locating merchandise in the store and retrieving stock from the stockroom.

Dubois fills out the same time sheet as the full and part-time sales associates and is supervised by Ward when working at the outlet store. Ward determines the amount of Dubois' wage increases. Like sales associates, Dubois is entitled to vacation benefits. While Dubois is classified as a salaried employee he is, in fact, paid on an hourly basis and earns nine dollars per hour. I note that one sales associate earns a comparable wage, eight dollars per hour. Other sales associates earn as much as \$6.70 to \$6.80 per hour. The record reveals that while Dubois earns an hourly wage, like salaried employees, he is paid twice a month. There is nothing in the record evidence to indicate that Dubois has any supervisory authority.

At times, Dubois works at the Libbey Warehouse which is in a separate location from the outlet store. The record reveals that Dubois works at the outlet store on weekends. During the week he reports to the warehouse location anywhere from two to five times. When he is not at the warehouse he is working at the outlet store. The record establishes that while Dubois is employed at the warehouse he does not interact with warehouse employees.⁵ Dubois works in a separate and distinct area of the warehouse reserved for goods that will be sold in the outlet store. Dubois sorts the items and otherwise prepares them for sale at the outlet location. Dubois does not load or unload trucks at the warehouse. Occasionally, Ward supervises Dubois while he is working at the warehouse. More often, Dubois is supervised by Ward's direct superior, Tom Lower. The record revealed that in the 15 days prior to the hearing Dubois worked at the outlet store five to six days.

As in the case of the greeters, the assistant sales room attendant shares a sufficient community of interest to warrant his inclusion in the bargaining unit. Like the greeters, he

⁵ The record indicates that Libbey manufacturing and warehouse employees are covered under a collective bargaining agreement. The record does not reveal the identity of the exclusive bargaining representatives of these employees.

interacts on a consistent basis with the sales associate performing many of the same duties, save for ringing the cash register. Like Dubois, sales associates also perform stock work. The sales associates and Dubois are commonly supervised by Ward. When Dubois is at the warehouse he is supervised by Ward's superior. Dubois salary and fringe benefits are not so dissimilar from sales associates as to require his exclusion from the unit. The work that Dubois performs while at the warehouse is functionally integrated with the duties performed by the sales associates at the outlet store. The merchandise that Dubois sorts and prepares for sale are the goods sold at the outlet store.

I do not find that Dubois' "paper designation" as a salaried employee to be of significance in the community of interest inquiry. Dubois is paid hourly and the foregoing recitation of facts establishes that he shares a community of interest with the sales associates. Salaried employees have been found to share a sufficient community of interest with non-salaried employees to permit their inclusion in a voting unit. **Libbey Glass Division, 211 NLRB 939 (1974)**.⁶ The fact that Dubois performs duties at the warehouse not shared by the employees at the outlet store is not dispositive. He works a substantial amount of time at the outlet store and shares a community of interest with those employees. **Berea Publishing Company, 140 NLRB 516 (1963)**. Accordingly, I shall include the assistant sales room attendant in the unit.

THIRD KEY

The Employer employs Kimberly Braden as the only employee in a position referred to as third key. Along with Store Manager Catherine Ward and Assistant Manager Todd Wilson, Braden possess a key that she uses to let employees into the store if the manager or assistant

manager is not present at the appropriate time. The record does not reveal, nor does the Petitioner assert, that Braden possesses any supervisory authority. Like sales associates, Braden's primary duty is to service customers. She performs in large measure, the same duties as the sales associates. Braden works the cash registers, locates stock for customers and generally performs all duties associated with the associate position.

In addition to performing the above described duties, Braden also is responsible for reconciling the money from the register with the days receipts. In performing those tasks Braden uses a computer. Her accounting function is typically performed in the morning when she balances the previous day's receipts. The record reveals that those duties can consume anywhere from one-half to three hours of her time. The balance of the day is spent performing sales associate duties. In performing the accounting duties Braden utilizes office space in the outlet store. Braden also handles phone sales from the office. Initially, the phone rings on the sales floor which is answered by the sales associate. If the sales associate is too busy to take the call they route the call into the office where Braden, Wilson or Ward can assist the customer.

Sales associates perform some of the same tasks as Braden. At times, sales associates are also brought into the office to assist with the phone sales. Approximately twice a month Sales Associate Joanne Snyder balances the receipts in addition to Braden. Three other sales associates have the ability to balance the cash receipts, however they do not perform the tasks as efficiently as Braden. Sales Associate Holly Egan also has a key with which to gain access to the store.

The third key employee is paid on an hourly basis. Braden, a 12 year employee, earns nine dollars per hour. Braden records her hours on the same time sheet as the full and part-time

⁶ I note the Dubois, like all of the outlet store employees, is on a single seniority list at the outlet

store.

sales associates. She is also supervised by Ward and Wilson. Although Braden earns a higher hourly rate, she is subject to the same range of percentage increases as the sales associates. Like the full-time sales associates she also receives paid vacation benefits. Braden covers employee lunches and when business is slow she is also responsible for performing duties contained on a list that sales associates also perform. Braden interacts with sale associates as she has knowledge of older Libbey merchandise and can assist associates with questions they may have about the merchandise. Braden uses the same break room as the full and part-time sales associates.

As in the case of the greeters and the assistant sales room attendant, Braden interacts to a significant degree with the sales associates. The third key additional duties, at most, are analogous to situations where employees who perform some clerical duties in close connection with the production processes of an employer are considered to be plant clericals and are included in the bargaining unit. **Brown & Root, Inc., 314 NLRB 19 (1994)**. Braden's additional duties do not consume a majority of her time and I note that other sales associates also perform these duties on occasion. Accordingly, I shall include the third key classification in the unit.

Pursuant to Board Exhibit No. 2 the Parties stipulated, and I so find, that Catherine Ward, store manager, and Todd Wilson, assistant manager, are ineligible to vote in the election directed 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 notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those 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. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **American Flint Glass Workers Union, AFL-CIO**.

LIST OF VOTERS

In order to ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. **Excelsior Underwear Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Co.**, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility**, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director 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, D.C. 20570-0001. This request must be received by the Board in Washington, by **September 17, 1999**.

Dated at Cleveland, Ohio this 3rd day of September 1999.

/s/ Frederick J. Calatrello

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

401-7500