

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

SEARS, ROEBUCK & COMPANY

Employer

and

Case 36-RC-5969

TEAMSTERS LOCAL 206, affiliated
with INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO¹

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 record² in this proceeding, 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.
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 purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees employed by the Employer at its Springfield, Oregon,
facility; but excluding all guards and supervisors as defined by the Act.

The Employer is engaged in the operation of a purely retail department store in Springfield, Oregon, one of a nation-wide chain of such stores. The petition requests a unit of about 10 shipping and

¹ The name of Petitioner appears as corrected at hearing.

² The parties filed briefs, which have been considered.

receiving employees. The Employer contends that the only appropriate unit is one including all employees, and further contends that the merchandise processing supervisor and three merchandise support supervisors are statutory supervisors.

The employees sought by the petition all report to the merchandise processing supervisor, Dan Baker. Baker, along with the other three “supervisors” at issue, reports to operations manager Brenda Barrett, who in turn reports to store manager Katherine Jacobson. Also reporting to Barrett is asset protection manager, Brian Antone. In addition, the human resources specialist, Lolete Petty, reports to Jacobson, as do the managers of the various sales departments: Grace Ditlefsen in men’s, children’s and footwear; Beckie Cooper in home fashions; Bob Van Camp in hardware; John Petty in automotive; Cindy Filip in women’s ready-to-wear; and Tricia Welch in “Brand Central³” (appliances and electronics).

Unit issue.

The shipping and receiving employees sought by the petition spend most of their time working in the main stockroom. The store, including the stockroom and loading dock, is all on one story of the building. The main stockroom, which opens onto a loading dock, is adjacent to the retail sales floor. One shipping and receiving employee works, alone, four hours a day, solely, at an off-site subsidiary warehouse primarily used for carpeting.

The shipping and receiving employees have the job title “merchandise support associate.” Replenishment employees, who re-stock merchandise on the sales floor and are not sought by the petition, are also called merchandise support associates. Shipping and receiving employees are supervised by Dan Baker; replenishment employees are supervised by Michael Albin, Karen Brown, and Joan Hass.

Shipping and receiving employees are responsible for unloading trucks. They place incoming merchandise on carts, organized by sales department, then take the carts to the appropriate department. The merchandise is placed on display by replenishment employees, who report to the three merchandise support supervisors. There are three small stockrooms on the sales floor; shipping and receiving employees also take merchandise on carts to those stockrooms. Shipping and receiving employees also move large and/or heavy items purchased by customers off the sales floor to the customer pick-up area. In addition, shipping and receiving employees man the customer pick-up area, picking purchased items from the stockroom and completing the turnover to the customers.

In addition to the shipping and receiving employees and replenishment employees, the store employs sales associates, office clericals, and asset protection agents. The sales associates report to the various department sales managers; the asset protection agents to Brian Antone, asset protection manager; and the office employees to Operations Manager Barrett.

The starting wage for shipping and receiving employees and sales associates is \$6.75 per hour. All employees are eligible for wage increases at the end of their first six months and annually thereafter. Wage increases are paid in accordance with nation-wide company policy. All employees receive the same benefits, including an employee handbook, and all, including non-selling employees, receive training in the company’s “peer selling environment” (PSE) program. Inventory is taken twice a year by an outside contractor. However, all employees in the store spend about two weeks prior to each inventory preparing for it. The hours of work available to non-selling employees is related to the amount of sales; that is, when sales are down, their hours are cut back. Store manager Jacobson conducts weekly meetings

³ Erroneously rendered in the transcript as “grand central.”

on Tuesdays or Wednesdays, which all employees on duty at the time attend. There are also PSE meetings twice a year which all employees attend.

The Board has long held that a store-wide unit in a retail department store is presumptively appropriate, but it may find appropriate a separate unit of warehousing employees if: (a) the employer's warehousing operation is geographically separated from its retail store operations; (b) there is separate supervision of employees engaged in warehousing functions; *and* (c) there is no substantial integration among the warehousing employees and those engaged in other store functions. Only where all three of these conditions are met will separate warehouse units be approved. *A. Harris & Co.*, 116 NLRB 1628 (1956); *Sears, Roebuck & Co.*, 117 NLRB 133 (1957); *Charrette Drafting Supplies*, 275 NLRB 1294 (1985). Warehouse work is not "geographically separated" if it is only physically separate from the sales area, but still in the same building. *Roberts, Inc.*, 272 NLRB 1318 (1984). See also *A. Russo & Sons, Inc.*, 329 NLRB No. 43, fn. 10.

The unit of shipping and receiving employees requested herein does not meet at least two of those conditions. First, although the Employer has an off-site warehouse, only one of the requested employees works there; and it is only a part-time position. Thus, almost all warehouse work is accomplished in the store building; all other work takes place in the store building. Accordingly, there is no substantial geographic separation. Second, the warehouse work is integrated with that of other store employees: they deliver merchandise to the sales floor; they go onto the sales floor to remove heavy or large items purchased by customers; and they complete the sales transaction by picking merchandise from the storage area and turning it over to customers at the customer pick-up point.⁴

Accordingly, the unit requested by Petitioner is not an appropriate unit for collective bargaining, and I find that the minimum appropriate unit includes all employees employed by the Employer at its Springfield, Oregon facility.

Supervisory issues.

The parties stipulated that the department managers (Grace Ditlefsen, Beckie Cooper, Bob Van Camp, John Petty, Cindy Filup and Tricia Welch) are statutory supervisors, as well as store manager Katherine Jacobson and Asset Protection Manager Brian Antone. The record supports that stipulation, and I find they are statutory supervisors excluded from the Unit.

The Employer contends that the merchandise processing supervisor, Daniel Baker, and the three merchandise support supervisors, Michael Albin, Karen Brown, and Joan Hass, are statutory supervisors, while Petitioner contends that they are not.

About nine shipping and receiving employees report to Baker. About five replenishment associates report to Albin; about two report to Brown; and about four report to Hass. The four supervisors schedule their respective employees on a bi-weekly basis, in accordance with a budget of hours given to them by Barrett.

Applicants for hire fill out applications and are given a preliminary test of an unspecified nature by Loleta Petty, the store's human resources specialist. Applicants are then interviewed by the relevant

⁴ I note that the Petitioner contends (erroneously, as I find below) that the Merchandise Processing Supervisor and the Merchandise Support Supervisors are not supervisors. If that were true, then the third, "separate supervision" requirement would also be lacking, since the first level of supervision would be the Operations Manager, whose jurisdiction extends well beyond the warehouse.

supervisor, who has the authority to make the decision to hire. Baker testified that he hired an unspecified number of persons for his team, but that one person he wanted to hire was rejected. He said that when he interviewed applicants, if he decided he wanted to hire a person, he took them to Petty and told her he wanted to hire the person. He said that in one instance, an applicant named Travis had a low score on the preliminary test and Jacobson refused to make an exception to policy.

Supervisors schedule the hours of work of the employees on their teams. No higher authority reviews or revises such schedules. Supervisors can allow an employee to leave work early, or take a day off, or can refuse such requests, without consulting any higher authority. They can ask one employee to work more hours to cover for another employee. Baker testified that on one occasion, one of the employees on his team wanted a day off, but there was no one to cover, and Baker refused permission. He said that if an employee is at work and asks to leave early, he can decide whether to let them leave, and that he usually tries to arrange for someone else to come in early as a replacement.⁵

The supervisors prepare written evaluations of the employees on their teams. The evaluation forms have a numerical rating system. The supervisors are given written guidelines on scoring. Barrett does not revise the evaluations after they have been completed by the supervisors. Employees receive wage increases based on their scores. The wage increases are determined by a company-wide formula.

Store Manager Jacobson has authority to approve terminations of employees who have been employed less than one year; for employees who have been employed longer, she is required to get approval from the company's district human resources manager. Recommendations by supervisors for termination must be properly documented, and the supervisor must have followed certain steps with the employee, including coaching and verbal warnings. Barrett testified that she follows such recommendations from her supervisors without further investigation. Both Baker and Albin have recommended terminations of employees, who were terminated based upon those recommendations.

Section 2(11) of the Act defines a "supervisor" as:

. . .[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The record herein establishes that the four "supervisors" at issue have authority to effectively recommend hire and termination, to reward employees, and to responsibly direct them. In this regard, I note that the supervisors interview applicants and choose which ones they wish to hire. Such authority has not been shown to be derogated by the one instance of Jacobson refusing to approve the hire of an applicant whose score on the preliminary test was too low. In addition, the supervisors fill out the evaluation forms for their employees, and the ratings given on those forms by the supervisors determine the wage increases received by the employees. Where there is a direct correlation between evaluations and merit increases awarded, the Board finds that the persons who perform the evaluations have statutory supervisory authority. *Beverly Enterprises - Massachusetts*, 329 NLRB No. 28 (1999). Further, the supervisors independently schedule the employees' hours of work, and have authority to grant time off.

I conclude, therefore, that the merchandise processing supervisor and the merchandise support supervisors are supervisors within the meaning of the Act.

⁵ Seven shipping and receiving employees work part-time.

There are approximately 150 employees in the unit.⁶

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 TEAMSTERS LOCAL 206, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure 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 to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge within 7 days of the date of this Decision and Direction of Election.⁷ *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. This list may initially be used to assist in determining an

⁶ Inasmuch as I have found appropriate a unit larger than that requested by Petitioner, in accordance with established Board practice, I shall allow Petitioner fourteen (14) days from the date of this Decision and Direction of Election in which to perfect its 30 percent showing of interest. In the event Petitioner does not establish a proper showing of interest in the larger unit within the 14-day period, I shall dismiss the petition, unless it is withdrawn. Should Petitioner not wish to participate in an election in the unit found appropriate herein, it may withdraw its petition without prejudice by giving notice to that effect to the Regional Director within ten (10) days from the date of this Decision and Direction of Election.

⁷ The list will not be forwarded to Petitioner unless and until it presents a sufficient showing of interest.

adequate showing of interest. The list shall, in turn, be made available to all parties to the election, but only after it has been determined that there is an adequate showing of interest among the employees in the unit found appropriate.

In order to be timely filed, such list must be received in the **new** Subregional Office, 601 S.W. Second Avenue, Suite 1910, Portland, Oregon 97204-3170,⁸ on or before March 10, 2000. No extension of time to file this list shall be granted nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized.

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. This request must be received by the Board in Washington by March 17, 2000.

DATED at Seattle, Washington, this 3rd day of March, 2000.

/s/ PAUL EGGERT

Paul Eggert, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174

440-1760-6701
177-8520-0800
177-8540-5300

⁸ After March 5, 2000.