

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

WESTFARM FOODS d/b/a DARIGOLD¹

Employer

and

19-UC-674

TEAMSTERS LOCAL 66, affiliated with
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) 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 Union is a labor organization within the meaning of the Act.

The Employer manufactures dairy products, including milk, ice cream, butter, cottage cheese, and powdered cheese. The Employer's corporate headquarters is located at 635 Elliott Avenue West, Seattle, Washington, in a building that also houses Group West Laboratories ("the lab," herein), a division of the Employer. Petitioner represents a unit of about eight laboratory technicians ("lab techs", herein) and working foremen, and is seeking to accrete to that unit one administrative assistant ("lab admin assistant", herein), who is assigned to the lab. The record does not reflect if the lab techs are professional microbiologists, or more in the nature of technical employees.

The current contract between Petitioner and the Employer has a term of August 1, 1999 to July 31, 2003. No issue as to unit inclusion of the lab admin assistant was raised during the negotiations for the contract. The record does not reveal how long the parties have had a collective bargaining relationship, but it appears that the most recent contract was not an initial

¹ The name of the Employer appears as corrected at hearing. It is "WestFarm".

² The parties filed briefs which have been considered.

contract. The lab admin assistant position has existed since 1965. Over the years, the position has evolved from purely general secretarial functions to include clerical duties associated with the work performed by the laboratory techs.

Raymond Fowler, who as a working foreman is included in the bargaining unit, is the manager of the lab. Fowler reports to Bjorn Sorensen, manager of manufactured products. The lab is located on the first floor of the Employer's corporate headquarters. There is a second lab area in the basement of the building. Also on the first floor of the building are the consumer sciences center, customer relations for WestFarm Foods, shipping and receiving, accounting, information technology, and telephone communications. Federal regulations require that the lab be segregated from other operations by physical barriers, positive airflow, and restrictions of personnel. Within the designated lab area on the first floor is a laboratory facility and an office area. The lab admin assistant has an office in the office area.

The incumbent lab admin assistant is Barbara Larson. Larson has been in the position since about June 2000. Her predecessor was an individual who occupied the position for only one month; prior to him, Terri Marr occupied the position from about 1993.

Fowler has been lab manager since the 1980s. Prior to his tenure, the lab admin assistant's job was entirely a personal executive secretary function. Under Fowler, the lab admin assistant also took on the functions of certified records administrator for the Interstate Milk Shipping program (IMS, herein). IMS is a federal regulatory program involving microbiological testing for antibiotic residues in milk and for semiotic cell counts or white blood cells. The program has certain requirements regarding chain of custody and a paper trail following milk from the dairy farm through to retail outlets. Marr had the title of certified records administrator. Larson performs the same work, but does not have the formal title. Maintaining the IMS certified records is Larson's primary responsibility.

In the past, the lab had two, "in-house" customers, the Northwest Dairy Association, which is a milk cooperative, and WestFarm Foods. In addition to the IMS testing for Northwest Dairy Association, the lab performs pathogen testing for salmonella and listeria for WestFarm Foods. Approximately two years ago, the lab became a business enterprise offering microbiological testing and chemical analysis services to outside customers; at present it has about 30 such customers. The record does not establish with certainty when the development of this business enterprise commenced; Terri Marr was employed as the lab admin assistant at the time and was involved in the preparation of the business plan and in setting up the basic clerical support, including billing and collecting, for it.

For the IMS program, a universal test sample is generated at the farm each time the milk is picked up. The hauler affixes a bar code label on the sample and notes on the label the date, time, and temperature at pick up. The sample is delivered to the lab. Lab techs pull samples and put them in a specific location. Larson goes to that location in the lab, and copies the information on the label to another document for the IMS report. In addition, for the pathogen testing, samples of environmental or finished product material arrive in plastic bags affixed with lot number labels, bag numbers, and dates; the lab adds its own lab number. Larson copies the information from the labels onto another document.

Lab manager Fowler described these two activities performed by Larson as "gray areas" of crossover into bargaining unit work. He said that the pathogen work was more "gray" because "the IMS program is of such vital importance to the operation of WestFarm Foods, people make reasonable exceptions to the protocols and rules in order to get the job completed and get the

product back to the regulatory community.” Fowler also said that if Larson were in the bargaining unit she could perform a “casual labor” function in the lab, performing such tasks as filling jars with media, do more write-up in the lab, get materials ready to test and then take care of the testing materials after testing--all tasks currently performed by lab techs themselves. Fowler said that the volume of work in the lab varies considerably, and that “it would be nice if [Larson] could be viewed as a casual labor pool to come in and help us ... on non-technical types of activities.” On brief, Petitioner states that, if the lab administrative assistant were accreted to the bargaining unit, “the jurisdictional problem would be resolved.”

Larson estimated that she spends approximately three and a half hours each day in the lab area away from her desk, doing the tasks associated with the IMS samples, and another two hours a day similarly doing the tasks associated with the pathogen and other samples. The remainder of her time she works at her desk performing typical general office functions such as filing, answering the telephone, faxing, photocopying, and dealing with customers, including explaining lab reports, providing testing fee schedules, billing, collecting, and general public relations. The customer relations function is a “new” part of the lab admin assistant job, in that the need for it arose when the lab began accepting outside customers. However, the record does not establish just when this function became part of the job, in relation to agreement having been reached on the current contract.

In *Union Electric Company*, 217 NLRB 666 (1975), the Board said:

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, *within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category - excluded or included - that they occupied in the past.* Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent. [Emphasis added.]

In *Bethlehem Steel Corporation*, 329 NLRB No. 32 (1999), the Board declined to accrete customer service employees to a unit of office and technical employees, finding that the customer service employees had been historically excluded from the bargaining unit, and no party had established that recent and substantial changes had occurred, even though the excluded employees had been relocated and now worked side-by-side with Unit employees as part of a “team concept”. (Previously, they had performed these functions remotely, via phone or computer.)

The record lacks any specific description of the lab administrative assistant’s duties as they were prior to August 1, 1999, the effective date of the current contract. Thus, the record does not clearly demonstrate that Larson’s current duties are at all different from those performed by her predecessor, Terri Marr, in the first half of 1999 before renegotiations of the contract. Indeed, it appears that Larson’s job now is basically the same as Marr’s was then, with a little expansion here and there, including additional clerical duties. Larson spends a substantial

amount of time in the actual lab performing clerical tasks there, but there is no evidence in the record that Marr did not likewise perform such tasks in the lab itself. The evolution of the lab from a strictly in-house facility to a business accepting outside customers has added additional clerical and PR duties to Larson's job, but there is no evidence that such additional duties are significantly different from the clerical duties performed by her predecessor. Moreover, Larson, the current lab admin assistant is employed in the same facility under the same supervision as were her predecessors for many years, and is performing essentially the same duties as those performed by Terri Marr for several years. Any changes that have occurred are merely a matter of degree; this record does not establish that there has been any fundamental change in job duties. I would also note that some of the changes in degree might make Larson more "Unit-like", while others make her more "office-clerical-like". Moreover, she is not a certified record keeper, unlike her predecessor.

It appears that Petitioner perceives an incursion by the duties of the lab admin assistant on duties traditionally performed by Unit employees, and, further, foresees future work jurisdiction issues,³ which Petitioner would like to see resolved by the instant proceeding. However, a Unit clarification proceeding is not the proper forum for resolution of work assignment disputes. *Pacific Northwest Bell Telephone*, 211 NLRB 1021 (1974).

Petitioner's witness, Fowler, testified that prior to the time he became lab manager in the 1980s, the lab admin assistant job was entirely a typical secretarial position. He said that he made changes in the job's duties after he became manager, but he did not say specifically what changes he instituted or when, except that he assigned Marr the task of keeping the certified records for IMS. He did not say when Marr began keeping these records. The IMS record keeping is clearly closely related to the work of the lab techs (indeed, it appears that it was one of *their* duties prior to the assignment to Marr), and distinct from the general office duties to which the work of Marr's predecessors was confined. This task is now the primary responsibility of the lab admin assistant, requiring a greater proportion of her time than any other single task. It appears, therefore, that the assignment of the IMS record keeping to the lab admin assistant quite likely amounted to a substantial change in job duties, and could have resulted in an accretion *if* done timely. However, there is no evidence in this record that such change occurred "recently," that is, after agreement was reached on the current contract. To the contrary, the record suggests that the change occurred long before.^{4 5}

There is evidence of a second substantial change – the conversion of the lab from an entirely in-house facility to a business with a customer base of outside entities. However, this change is a change in the function of the lab as a whole, and does not represent a significant change in the job duties of the lab admin assistant; rather it has merely expanded those duties somewhat, in the area of record keeping of samples and additional clerical duties. Cf. *Bethlehem Steel*, *supra*. Moreover, the changes in the lab's function were instituted about "two years ago" -

³ On brief, Petitioner asserts that if Larson is not accreted into the unit, "grievances as to work jurisdiction will become more and more frequent as the Employer attempts to assign more functions to the laboratory administrative assistant that have traditionally and historically been performed by bargaining unit employees."

⁴ Marr was employed as the lab admin assistant beginning in 1993. Her immediate predecessor was Frances Rockie. Fowler testified that he tried to teach Rockie certain scientific calculations she would need to understand in order to do the IMS record keeping, but she was unable to understand them.

⁵ It is the petitioner that bears the burden of demonstrating that the (limited) accretion exception to the general rule of employee free choice has been met.

seemingly prior to the current contract, although, there is no specificity as to changes and their dates.

The circumstances herein resemble those found in *Bethlehem Steel*, supra, in that here, as in that case, Petitioner is seeking the accretion of a classification that has historically been excluded from the unit, and no party has established that recent and substantial changes have occurred. Therefore, I shall dismiss the petition, as it raises a question concerning representation.⁶

ORDER

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

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 May 24, 2001.

DATED this 10th day of May, 2001.

Paul Eggert, Regional Director
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385-7533-2020

⁶ While accretion at this point is not available to the parties, they are not "trapped". It likely would be possible for the Union to file an RC petition to add Larson to the unit by election, as a "residual voting group". Or, the parties could agree to a card check and add her position to the unit if she desired representation. The parties might also agree to substantial changes to Larson's position, of the kind envisioned as "creating jurisdictional disputes," adding substantially more test-related functions, and/or deleting substantial secretarial functions, thereby arguably creating a current substantial change sufficient for an an accretion.