

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

ALBERTSON'S, INC.

Employer

and

Case 19-UC-676

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL 38

Petitioner

ALBERTSON'S, INC.

Employer

and

Case 19-UC-677

UNITED FOOD & COMMERCIAL WORKERS
LOCAL 1105

Petitioner

DECISIONS AND ORDERS

Upon petitions duly filed under Section 9(b) of the National Labor Relations Act, as amended, a consolidated hearing was held before a hearing officer of the National Labor Relations 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 record¹ in this proceeding,² the undersigned finds:

¹ The parties filed briefs, which have been considered.

² Petitioners' Motion to Reopen Record is hereby denied. Section 102.65 (e)(1) of the Board's Rules & Regulations, Series 8, as amended, provides that a party to a proceeding may, "because of extraordinary circumstances," move for reopening of the record. The same section also provides that, "Only newly discovered evidence -- evidence which has become available only since the close of the hearing" will be taken at any further hearing. Attached to Petitioners' motion is the affidavit of a Union official who, on a day following the close of hearing in this matter, observed an e-shopper performing bargaining unit work (checking) on one occasion for about one half hour, and who was told by a presumed supervisor in the store that e-shoppers perform checking frequently. Clearly, if e-shoppers had been regularly performing checking,

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.³

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 organizations involved, respectively, claim to represent certain employees of the Employer. Questions concerning representation exist concerning said employees

The Employer is engaged in the operation of numerous grocery stores in several counties in the State of Washington, and in other states. The facilities involved herein are four stores in King County, and one in Snohomish County, Washington. Petitioners are seeking the accretion of employees called "e-shoppers" into their existing collective bargaining units.

The Employer is a member of a multi-employer bargaining group, Allied Employers, Inc., which includes, in addition to the Employer, Fred Meyer, Inc., Island Market Company (Vashon Thriftway), and Safeway, Inc. in King County; and Brown & Cole and Safeway, Inc. in Snohomish County. The Employer is the only member of either group that employs e-shoppers.

Petitioner UFCW represents "all" employees employed by the multi-employer group in King and Snohomish Counties, excluding employees represented by Petitioner Teamsters.⁴ The

such evidence was available to Petitioners prior to the hearing; indeed, in the hearing, Petitioners' own witness, who is employed in the same store later visited by the Union official, was asked whether e-shoppers performed checking.

³ At hearing, the Employer objected to the introduction of certain correspondence into the record, claiming that it is privileged from disclosure because it deals with a proposed settlement agreement. It is unnecessary for me to make any findings here regarding this issue, inasmuch as I am relying on the disputed documents only to the extent that they establish that both parties were aware that accretion of the e-shoppers to the unit(s) was an issue at the time of the correspondence. I place no reliance on any "admissions" that might have been made during the correspondence, assuming arguendo that the communications constitute a "discussion of compromise". Note that FRE 408 does not exclude all evidence of matters that arise during a discussion of compromise of a claim. In particular, it can be used to negative a contention of undue delay, as it was here.

⁴ The full unit description in the collective bargaining agreement is:

All employees employed in the Employer's present and future grocery stores, including concessions under the direct control of the Employer party to this Agreement, located in King and Snohomish Counties, State of Washington, with respect to rates of pay, hours, and other conditions of employment except and excluding employees whose work is performed within a meat, culinary, prescription or bakery production department location of the retail establishment, supervisory employees within the meaning of the Labor Management Relations Act of 1947 as amended, and employees presently covered by a grocery contract between Allied Employers, Inc., and Teamsters Local No. 38 and employees coming under a grocery contract with Teamsters Local No. 38 pursuant to the application of the accretion clause. Subject to the preceding exclusions and the terms of Section 15.1 of Article 15, all work of handling and selling of merchandise in such retail stores covered by this Agreement shall be performed only by employees of the Employer within the unit referred to above for which United Food and

most recent contract had a term of May 3, 1999 to May 6, 2001. The parties have reached agreement on a new contract, to be effective May 6, 2001 through May 2, 2004. The new contract had not been signed at the time of the hearing. Petitioner Teamsters similarly represents "all" employees in Snohomish County, except those represented by Petitioner UFCW.⁵ The current contract has a term of August 2, 1998 to August 5, 2001. Either party may reopen the agreement upon written notice served 60 days prior to the expiration date. There is no evidence that the issue of e-shoppers was discussed in the recent King County negotiations. However, the Employer and Petitioner UFCW otherwise had an exchange of correspondence and both Petitioners had discussions with the Employer regarding inclusion of e-shoppers in the Unit during the period January to April, 2001. In addition, Petitioner UFCW had filed a unit clarification petition in November or December, 2000, regarding the e-shoppers at "Crossroads",⁶ but later withdrew it.

The Employer operates an e-commerce group (known as "Albertson's Dot Com") that sells groceries via the Internet. Internet orders are filled at four facilities in King County and one facility in Snohomish County, and delivered to customer's homes from those facilities. Customers may also choose to pick up their Internet orders. The five facilities involved herein are also regular retail stores operated by the Employer. These facilities are: store number 487 at 5530 East Lake Sammamish Parkway Southeast, Issaquah; store number 473 at 12725 First Avenue South, Burien; store number 491 at 1347 Auburn Way North, Auburn; and store number 410 at 13050 Aurora Avenue North, Seattle, all in King County covered by the UFCW contract; and store number 458 at 16304 Bothell-Everett Highway, Mill Creek, in Snohomish County covered by the IBT contract.

Spring Decker is the "supervisor of e-commerce fulfillment". She has an office in Bothell, Washington. She spends most of her time visiting the five stores where e-shoppers are employed.⁷ A lead shopper ("lead", herein) in each of the five stores reports to Decker. In turn, the e-shoppers in each store report to the lead.⁸ The store director in each store also has some supervisory authority over the leads and the e-shoppers. While the record is unclear as to the extent to which the store directors exercise supervisory authority over e-shoppers, it is clear that the store director is the ultimate authority present in each store. In the absence of Decker, and the lead, and the backup lead, the store director would give direction to the e-shoppers, a circumstance which had not arisen at the time of the hearing⁹. Decker testified that she is

Commercial Workers Union Local No. 1105 is recognized as the sole Collective Bargaining Agency by the Employers.

⁵ The unit description in Petitioner Teamsters' contract tracks the language of Petitioner UFCW's contract, to the point that it erroneously also excludes employees covered by a contract with Teamsters Local No. 38. A representative of Petitioner Teamsters testified without contradiction that the exclusion is an error to be blamed on careless proofreading, and that the exclusion in the Teamsters contract should be employees represented by UFCW? There is no dispute herein regarding the language of Petitioner Teamsters' contract with the Employer; i.e., there is no dispute that in fact the parties intended and the unit language should correctly substitute "UFCW Local 1105" in the exclusions.

⁶ Crossroads is discussed elsewhere below.

⁷ The stores are geographically scattered.

⁸ The Employer contends that the leads are statutory supervisors.

⁹ If one were drawing a traditional organization chart for the Employer, there would not be a straight line from the e-shoppers or Decker through the store director; perhaps a dotted or dashed line signaling some sort of indirect role.

responsible for hiring, terminating, and disciplining the e-shoppers, in addition to ordering products and inventory, although it does not appear that she hired many, if any, of the current e-shoppers and the record does not specify the products and inventory involved¹⁰. Most current e-shoppers were hired by the relevant store director; two, Jennifer Cotton and Marsha _____, were hired by lead Dea Parker in Auburn.¹¹ The record does not indicate if that was a stop-gap measure at the time of the changeover (see below) or will be the norm. Victor Maya, the Employer's labor relation's director, determined the wage rate for the e-shoppers.

E-customers place their orders online to a central electronic site. The orders are then routed electronically to the stores. At 5:00 a.m. each day, the lead, using a handheld computer called a "Telxon", which has a special software application developed for the e-commerce application, looks at the orders for the day, prints the orders ("pick sheets"), and organizes them by priority. The e-shoppers arrive at 5:30 a.m., collect their pick sheets, and log onto Telxons. They then go through the retail store with shopping carts, selecting the items for an order, using the Telxon to scan each item to verify that the pick is correct. As they go about their work, e-shoppers are expected to answer any questions from, or otherwise assist members of, the in-store shopping clientele; "not my job" responses are not permitted. When the e-shoppers have completed the order, they go to a regular check stand and check out in much the same manner as a retail customer, i.e., the items are scanned by a regular checker (a Unit employee). The e-shoppers bag the items, using special Albertson's Dot Com bags, separating frozen, refrigerated, and other items. After bagging, the order is taken to the rear of the store, where the bags are put into special totes: frozen items in one tote, refrigerated in another, the remainder in a third. The Dot Com bags are a different size from the normal grocery bags, so that they will fit into the totes. The totes are labeled and stored in the regular store storage freezer or cooler, or otherwise, until collected by the drivers for delivery¹² or transport to another store for customer pickup.

The typical e-shopper order is 60 to 100 items; it takes about an hour for an e-shopper to pick one order. Each store fills 15 to 35 e-shopper orders per day. In addition to leads, there are three to six e-shoppers in each store. There are about 25 e-shoppers in all, plus the five leads. Each store employs approximately 50 to 60 conceded Unit employees. Three e-shoppers transferred to the position from Unit positions.

About 20 percent of e-customers pick up their orders at one or another of the Employer's 35 retail stores in the local area. The customer goes to the courtesy booth in the store, and the person working in the booth (non-Unit) calls a courtesy clerk (Unit) to go to the rear of the store

¹⁰ The record does not reflect what "products or inventory" she might order, since it appears all merchandise is ordered and stocked by Unit personnel. Perhaps she orders e-commerce-specific supplies, such as distinctive bags, and totes?

¹¹ Apparently Parker decided on her own that she had authority to hire and exercised such authority. This circumstance is not fully explained in the record, except for the following testimony:

Q Okay. Now, nobody ever told Dea she had the authority to hire, did they?

A No.

Q She is a pretty strong-willed person, is she not?

A Yes.

Q Yes. Let the record reflect the smile on the witness' face and she just went up and did it, did she not?

A Yes.

¹² The home delivery drivers, who report to e-commerce transportation manager Wayne Saglio, are represented by Teamsters Local 763.

to pick up the relevant totes and take them out to the customer's car. If for some reason the customer wants to exchange an item - perhaps for a different brand - the courtesy clerk makes the exchange.

Administratively, e-commerce is a separate function of the Employer. It has its own logo, uses a separate advertising agency, and handles its own vendor relations directly with manufacturers such as Kraft and Proctor & Gamble. However, the record does not explain what type of vendor relations are involved, inasmuch as the e-customers' orders are selected directly from the regular store-floor shelves of retail grocery stores used by the public, and not from any segregated inventory. About 15,000 items are offered online, of the 45,000 items each retail store offers. The reason the e-shoppers check out at the store's check stands is to delete the items from the store's computerized inventory.¹³ E-customers receive a distinctive bill prepared on e-commerce equipment, not the standard checkstand receipt. The checkout procedure will cease with Version II of the Telxon software, which will be able to communicate directly with the store's inventory system. The Employer expects to implement Version II in late summer or early fall, 2001.

E-shoppers are paid \$7.90 per hour.¹⁴ Leads are paid about \$8.00 per hour more than e-shoppers. Leads schedule the e-shoppers and have authority to grant time off, including a full day. There are assigned back-up persons to cover for leads on their days off. There is no further evidence in the record regarding such back-ups. In the absence of a lead, the store director has authority over the e-shoppers. E-shoppers receive special training in using the Telxon and bagging. The training lasted about one day for each individual. It is the Employer's intention to outfit all e-shoppers in distinctive aprons with the Dot Com logo, and distinctively colored polo shirts, although supplies of such clothing have not yet arrived; at the time of the hearing most e-shoppers were wearing the same color polo shirts as bargaining unit employees.

The Employer's e-commerce function commenced operations in the greater Seattle area in about November 1999. At that time, a retail store (Crossroads) located at the intersection of 156th Avenue and Northeast 8th Street in Bellevue, was set up as an e-commerce warehouse, in the same structure as a small retail store. The retail and e-commerce portions were separated by an interior wall. E-commerce orders were stored, picked and processed from the e-commerce warehouse, not from store-floor inventory. All operations at the Crossroads facility ceased on April 12, 2001, when e-commerce operations were re-structured and de-centralized to the five retail stores named above. E-shoppers in the Crossroads facility were paid \$12.00 to \$15.00 per hour. They were invited to transfer to one of the five stores involved herein after April 12, where they would be paid those same wages for the first 30 days and in addition receive a \$300.00 bonus if they worked the full 30 days. After that date, their wages would be cut to the new scale. Only one former Crossroads employee is still employed as an e-shopper, Terri Thorpe in Auburn. Some of the other former Crossroads employees are now employed in one or another of the Employer's retail stores, after having applied and been hired.

¹³ The store obviously needs to account for that portion of the inventory withdrawn by the e-shopper for e-commerce, a profit center or accounting entity separate from the store. The Telxon system "knows" the identity and quantity of that inventory selected by the e-shoppers, but apparently is not able to interface with the store system to transfer that information. Thus the need to scan through the checkstands -- an otherwise unnecessary operation soon to be eliminated.

¹⁴ The recently negotiated King County contract provides for wages of about \$6.82 to \$7.29 for beginning grocery employees, ranging up to about \$11.70 to \$16.20.

When selecting orders for customers, e-shoppers are working in the same aisles of the retail stores where many Unit employees regularly work. However, the record does not reflect if these same aisles are being worked during the same hours by the Unit employees, or to what degree. E-shoppers are subject to the same general work rules as Unit employees, and have access to the same amenities in the facilities. Both e-shoppers and Unit operations are staffed seven days per week. The store is open and staffed 24 hours per day by Unit employees, but e-shoppers work only one shift, from 5:30 a.m., presumably until about 1:00 or 2:00 p.m.

Bargaining unit employees principally scan groceries, receive customers' payments, place groceries in bags, place the bags in carts, take the carts out to the customers' cars, help customers in the store locate items, move incoming inventory and stock shelves, and arrange produce displays (not all such functions are performed by each employee). Unit employees use Telxons when receiving stock, but they use different software than do e-shoppers.

A former e-shopper who is now employed as a checker in the Issaquah store has been asked on at least three occasions by the front-end manager to pick an e-shopping order. The record does not reveal when this occurred. The store director in the Mill Creek store on one occasion offered an e-shopper extra work stocking frozen food (Unit) for about an hour. During the first week and a half of e-commerce operations in the five stores involved herein, there were not enough e-shoppers to fill all the orders, and they were assisted by the store directors, grocery managers, and in one store (Auburn) a checker.¹⁵

E-shoppers have random contacts with Unit employees in the stores, in addition to their current regular contacts with checkers. There is no specific evidence as to the frequency or duration of such random contacts, which sometimes involve the e-shopper asking a Unit employee the location of a particular grocery item on the shelves. At the time of the hearing, the e-shoppers had only been working in the five stores for about one month, and were still learning the stores' wares and locations. In at least two stores, shortly before the hearing, the store directors conducted storewide meetings attended by Unit employees, e-shoppers, and home delivery drivers, during which, among other things, the e-shoppers were welcomed to the stores, and reminded that they, too, were expected to be friendly and helpful to retail customers in the store. The meetings lasted about two hours. The record does not indicate the frequency (if any) or purpose of these meetings and whether e-shoppers will attend future meetings.

In the five stores involved herein, employees in the courtesy booth and prescription drug departments are unrepresented. Production bakery employees are represented by the Bakery, Confectionery, and Tobacco Workers Union; meat, Butcher Block, and meat-deli employees are represented by United Food and Commercial Workers.

Timeliness.

The Employer contends that the petition filed by Petitioner UFCW is untimely. The Employer bases its contention on the lack of record evidence that the issue of inclusion of e-shoppers in the Unit was raised during the recent contract negotiations between Petitioner UFCW and Allied Employers.

I note that such negotiations were conducted on behalf of all employers in the multi-

¹⁵ It is apparent that the changes from the centralized warehouse operation to the decentralized in-store operation, produced some rough edges at first, requiring brief ad hoc solutions to immediate problems.

employer bargaining group, and that the Employer herein is the only employer in that group that employs e-shoppers. It is apparently conceded by all concerned that the topic was not raised in the formal multi-employer negotiations. The Union had filed a UC petition during negotiations, but later withdrew it. This was during the time that the Crossroads system was still in operation. The record demonstrates that there were discussions between the Employer and Petitioners' counsel in the December 2000 - April 2001 time frames (the time frame when UFCW agreement was reached and Petitioners were staking their claims to the e-shoppers).

Effective April 1, 2001, the Employer restructured its e-commerce set-up in a substantial way. In short, the central warehouse concept was aborted in favor of five no-warehouse in-store sites. E-employees, inventory, workspace and operators were no longer segregated from represented employees. The former crew largely quit before or shortly after the changeover, when their pay was substantially cut. The store pickup option was introduced. E-employees now worked on the regular sales floor -- not in a separate warehouse -- and were expected to interact with in-store customers. Overall, the walls -- both literal and metaphorical -- around their separate operation were substantially reduced.

As a general proposition, a new classification created during the life of an agreement can be clarified by a UC during the life of the agreement, or even "shortly" after a successor agreement is reached, if the issue has been kept alive during the negotiations, and not dropped as part of reaching an agreement. Beyond that time frame, the accretion issue is deemed to be waived, and the employees can be added only by representation procedures. See, *The Brookdale Hospital*, 313 NLRB 592 (1993).

Here, the Unions kept the e-shopper issue alive through the negotiating period by its side discussions with the Employer, the only employer that had such an operation. They never abandoned the issue. The UFCW filed the instant petition about the time agreement was reached. Thus, the UFCW petition is timely.

As to the Teamsters, they are still in their "current agreement"; negotiations had not yet started for a new agreement by the time of their petition. Their petition is indisputably timely.

More importantly, even *assuming* the Union(s) had waived their claim to the e-shoppers under the Crossroads Operation by inaction or by filing an UD and then withdrawing, it is clear that very substantial changes in the e-shoppers' work were made about the time the petitions were filed. These substantial changes¹⁶ in effect created new positions that would permit raising of a UC issue, regardless of any past waiver during the Crossroads period.

Accordingly, for all of these independent reasons, I find the petitions to be timely.

Leads

On brief, the Employer contends that the leads are statutory supervisors, primarily on grounds that leads responsibly direct the e-shoppers in that they schedule them on a weekly basis and can grant time off, including full days. In scheduling employees, the leads must make some

¹⁶ For example, no longer a centralized warehouse, with all e-shoppers working together. Customer interaction. Grossly reduced wage. Work rules consistent with an in-store, customer-contact context, as opposed to a warehouse setting. In fact, conditions were changed so substantially that a bonus was required to maintain a work force during the seemingly sudden changeover.

prediction regarding the amount of orders that might be reasonably expected during the week. In April, the leads received special training regarding their responsibilities as leads, including their responsibility to assure that all orders were completed in a timely manner. There is no specific evidence regarding the leads' scheduling duties, and the record does not reveal whether any independent judgment is required in that regard. For example, is staffing based on a simple volume/payroll formula, as is often found in retail food cases? The leads are also responsible for printing out the pick sheets and prioritizing them for the e-shoppers, but again there is no evidence that any independent judgment is required.¹⁷ It is clear that the granting of time off and likewise the authorization of overtime are governed by the number of orders which must be picked on a given day, and whether there are enough employees available to complete those orders. Decker and the lead in the Issaquah store together gave a written warning to an e-shopper regarding attendance problems after the lead had reported the on-going problem to Decker. The record is insufficient to establish whether the lead's participation on this occasion amounted to effective recommendation of discipline, or merely a repeat of a problem which prompted an investigation by Decker, or perhaps met with Deckers' own personal experience.¹⁸ There have been no terminations of e-shoppers. Decker testified that leads' recommendations for termination would be given weight. As has been said, lead Dea Parker in Auburn hired two employees, but the record seems to reflect that Parker is perhaps permitted more latitude in her actions than are other leads, or more likely, her ultra vires self-help was tolerated on those occasions.

I conclude that the record does not establish that leads are statutory supervisors. The evidence is insufficient to demonstrate that they are required to use independent judgment in the exercise of any supervisory authority, or that they have authority to effectively recommend any action included in the indicia of supervisory authority set forth in the Act.¹⁹

In this regard, I have considered the issue of "responsible direction" of the workforce, using "independent judgment", as discussed by the Supreme Court in *NLRB v. Kentucky River community Corp, Inc.*, _____ U.S. _____ (May 29, 2001). In that case the Court held that judgment was not routine, and therefore not "independent," merely because the judgment was judgment acquired by specialized training and/or lengthy experience.

In the instant case, there is no specialized training other than the April 2001 training given leads. Nor is there any experience acquired over a lengthy tenure, since the leads had been on the job only a month by the time of the hearing. What we are left with is the "judgment" involved in predicting order volume, and then scheduling crew hours premised on those

¹⁷ In submitting their orders, customers designate a 90-minute window for delivery. Presumably the prioritization merely involves arranging the orders chronologically for processing.

¹⁸ Authority to "effectively recommend" generally means that the recommended action is taken without any independent investigation by higher authority, not simply that the recommendation is ultimately followed. *Children's Farm Home*, 324 NLRB 61 (1997); *Hawaiian Telephone Company*, 186 NLRB 1 (1970); *Polynesian Hospitality Tours*, 297 NLRB 228, 234 (1989)

¹⁹ 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."

predictions. Based on this record and the leads' brief experience and training, it is not possible to determine the source of the judgment - is it pure guesswork, finger-crossing, using the numbers that worked the previous week or some similar formula, experience gained in prior related employment or? The record does not reflect independent judgment in any event.

Conclusions as to accretion issue.

Petitioners contend that the Unit is defined in terms of work functions, not by job classifications, i.e., as Petitioners state on brief, each Union's unit "is defined as *all employees* employed in the Employer's *retail* grocery stores who are *engaged in the handling and selling of merchandise.*" [Emphasis in original.] I disagree. The plain language of the UFCW contract defines the Unit as "All employees employed in the Employer's present and future grocery stores, including concessions under the direct control of the Employer party to this Agreement, located in King and Snohomish Counties, State of Washington," excluding employees in certain departments and those represented by Petitioner Teamsters. IBT's Unit is described in the same terms in relevant part. The contractual language on which Petitioners are relying to show "function" language instead of a "classification" language is an added sentence, which by its language is clearly not part of the unit description itself. That is, the sentence states: "Subject to the preceding exclusions and the terms of Section 15.1 of Article 15, all work of handling and selling of merchandise in such retail stores covered by this Agreement shall be performed only by employees of the Employer *within the unit referred to above...*" [Emphases added.]²⁰ Thus, Board's ruling in *The Sun*, 329 NLRB No. 74 (1999), cited by Petitioners, does not apply here.²¹

Thus we have a new group of employees in two job classifications, and the issue is whether they should automatically be merged into the relevant Unit without the right to an election.

The Board has permitted accretions only when a) the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and b) the additional employees share an overwhelming community of interest with the existing unit. *Safeway Stores, Inc.*, 256 NLRB 918 (1981). Employees are not included solely on the basis that they fall within the Unit's language of "all employees". It is well-established that in making an accretion determination, the Board considers as relevant the usual community of interest factors, as common supervision, interchange, similarity of terms and conditions of employment; similarity of skills and functions; physical, functional, and administrative integration; and bargaining history. The Board follows a restrictive policy in finding accretion because accretion forecloses the statutory right of employees to select their bargaining representative. *Towne Ford Sales*, 270 NLRB 311 (1984). In *Towne Ford*, the Board said that two factors are especially

²⁰ If this alone were not enough evidence of the "unit," I also note that the Unions' own petitions themselves describe the present and clarified unit in the "all employee" terms quoted above, without mention of the supposedly controlling "handling and selling" function language.

²¹ In the event the Board were inclined to reverse me on this point, I recommend that the record be re-opened to take testimony on the history and meaning of these clauses. The issue in this case was not cast by Petitioner as presenting a *Sun* situation. Rather, the Petitioner showed a typical "classification" unit. I believe the Employer was understandably misled. The misleading may have been an intentional "hide in the weeds" strategy, or perhaps just a post-hearing afterthought, but nevertheless whatever happened *was* misleading in my view.

important in a finding of accretion: the degree of interchange and common day-to-day supervision.

Here, many factors favor accretion, at least at first glance, but most only in an attenuated fashion. There is some degree of functional integration, in that e-shoppers pick items from shelves that were stocked by Unit employees at some point. And, when an e-customer picks up an order, instead of having it delivered, it is a Unit employee who retrieves the order from the back of the store and assists the customer (but not a Unit employee who collects). However, only 20 percent of e-customers pick up their orders in person. E-shoppers and Unit employees perform their work in the same areas of the same facilities, and may have some casual contacts with each other in the aisles of the stores -- such as a new e-shopper asking a Unit employee about the location of an item -- but there is no specific evidence with respect to the frequency or duration of such contacts. The record does *not* reflect that e-shoppers and Unit personnel routinely work in the aisle simultaneously, one stocking, the other picking; certainly they do not work jointly.

The Unit cashiers do scan every e-order, while the e-shopper bags, but there is no record evidence with respect to the length of time a checker and an e-shopper would spend working side-by-side scanning an order and bagging it. I take administrative notice of everyday life activities, and note that such tasks in a typical grocery store generally require no more than, say, 5 - 12 minutes, even for a full grocery cart. It is to be noted that the e-commerce checkout scenario would have to be somewhat abbreviated from the typical checkout procedure, since there would be no need for the customer greeting/chitchat, or the collection process; moreover, there is a guaranteed bagger (the e-shopper), which would speed the entire process. In any event, these 15 - 35 daily checkout operations/store will cease in the near future when Version II of the Telxon software is implemented.²²

E-shoppers have many of the same skills as Unit employees, and perform some similar functions, in that both groups handle grocery items, and scanning and bagging. On the other hand, e-shoppers do not interact with customers in the checking process, nor do they have any heavy lifting of dirty cases, such as stockers would. E-shoppers' wages are commensurate with those of some Unit employees. As is true of other unrepresented employees and employees in other bargaining units, e-shoppers are expected to assist in-store retail customers upon request, are subject to the same general work rules, attend store-wide meetings, and share the same store break room, restroom

There are also many factors that augur against accretion. Spring Decker is the immediate supervisor of the e-shoppers, with day-to-day authority over them. Decker does not supervise any Unit employees. There is a separate e-commerce chain of command all the way to headquarters, which never passes through the store director. The store directors do have some authority over the e-shoppers, in that the store directors are the ultimate authority in their stores, and could provide direction to the rank-and-file e-shoppers if necessary. However, the record does not establish that the store directors exercise any immediate or routine authority over the e-shoppers. There is no evidence of any significant interchange between e-shoppers and Unit employees. During the early days of the e-commerce operations, store supervisors and a few Unit employees were asked to assist in filling e-shopping orders, but there is no evidence that this is a continuing practice. There is no evidence that Unit employees are directed to fill e-shopping orders on a regular basis, or that e-shoppers are directed on a regular basis to perform any work normally performed by Unit employees.

²² This procedure obviously was not planned as a permanent step, and will surely be supplanted, since it is so clearly a redundant process.

Further, e-shoppers and Unit employees perform different functions. Unit employees service a typical retail environment for on-site customers: they stock shelves, answer questions, check out and bag, accept payment, and assist customers out to cars. The essence of shoppers is the opposite, to act as surrogates for off-site customers: they go up and down the aisles of the store pushing a cart, selecting items from a shopping list, bag the items and place them in totes in the back of the store for delivery to the customers, usually by trucks. The Unit employees are in the store to serve those who shop there. The e-shoppers are in the store to serve a geographically broader group of customers who elected to avoid the in-store experience. E-shoppers receive some special training, but this amounts to only about one day, and does not distinguish them as any "quasi-craft" group.

In conclusion, the e-shoppers *totally* lack common day-to-day supervision and any regular interchange with Unit employees, the factors which the Board considers most important in assessing an accretion issue.²³ Further, the e-shoppers are engaged in a separate function, have relatively "light duty"²⁴, work a limited portion of the day. There is limited functional integration, limited contact between the groups and minimal overlap of duties. Accretion is not appropriate.²⁵

ORDER

IT IS HEREBY ORDERED that the petitions filed herein be, and they hereby are, 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 July 13, 2001.

DATED at Seattle, Washington, this 29th day of June, 2001.

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

385-7533-2020
385-7533-4060
177-8580-5400

²³ I place no reliance in the minimal interchange that took place during the temporary changeover in operation.

²⁴ Lifting a can of peas, scanning it, and placing same in the cart would appear substantially lighter, cleaner work than lifting a case of peas from a pallet, carrying same to the peas spot, and placing them on the shelf.

²⁵ They all can provide on-floor assistance to in-store customers. Unit members bag, as do e-shoppers; otherwise, each group is totally unique.