

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

TRI-WEST, LTD.¹

Employer

and

Case 21-RC-20308

WHOLESALE DELIVERY DRIVERS,
SALESPERSONS, INDUSTRIAL AND
ALLIED WORKERS, LOCAL 848,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO²

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, the undersigned finds:

¹ The Employer's name appears as amended at the hearing.

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. Petitioner is a labor organization within the meaning of Section 2(5) of the Act and seeks 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 an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers, warehouse employees, shipping department employees, customer service employees, and purchasing employees employed by the Employer at its facility located at 12005 East Pike Street, Santa Fe Springs, California; excluding all other employees, office clerical employees, janitorial employees, guards and supervisors as defined in the Act.

² The Petitioner's name appears as amended at the hearing.

The Employer is engaged in the wholesale distribution of floor coverings and other related manufactured goods. The Employer conducts its business operations at several facilities throughout the United States, including Santa Fe Springs, California, the only facility involved herein. The Employer has conducted business at this facility for nearly 20 years and presently employs 180 employees there who perform work in various capacities.

The Petitioner seeks to represent a unit of employees at the Santa Fe Springs facility consisting exclusively of full-time and regular part-time drivers, warehouse employees, and shipping department employees; excluding all other employees, office clerical employees, janitorial employees, guards and supervisors as defined in the Act.³ Contrary to the Petitioner, however, the Employer contends that the appropriate unit should also include the following classifications: customer service employees, purchasing employees, and a human resources employee.⁴ The Employer contends that the inclusion of these employees is appropriate because they are plant clericals, are part

³ The petitioned-for unit appears as amended at the hearing.

⁴ At the hearing, the Employer's counsel also referred to the human resources employee as a "payroll employee" and as the "paymaster." For purposes of this decision, the term "human resources employee" will be used.

of an integrated operation, frequently interact with unit employees, and are subject to the same terms and conditions of employment as unit employees. Thus, the sole issue under consideration herein is whether the Employer's customer service employees, purchasing employees, and human resources employee should be included in the petitioned-for unit.

The Employer's Santa Fe Springs operation is contained in a 300 by 500 feet two-story rectangular building. The record reveals that executives, sales personnel, accounting employees, information systems employees, data processing employees, administrative assistants, and a human resource employee are all assigned to the second floor of the facility. With the exception of the human resources employee, no other employees in the petitioned-for unit or in the additional classifications proposed by the Employer perform work on the second floor of the facility. Rather, these employees work on the first floor.

The first floor of the facility consists of a warehouse area, a shipping and receiving dock, a customer pick-up area, a will-call office, a shipping office, customer service and purchasing departments, and a lunchroom. The majority of the first floor is dominated by

the warehouse area which, according to the record, is principally used to store merchandise that the Employer distributes to its customers. The warehouse area also includes the shipping and receiving dock and the customer pick-up area. Assigned to the warehouse area are 26 drivers who are responsible for delivering merchandise and 50 to 55 warehouse employees who perform traditional warehouse work.

Immediately adjacent to the warehouse area are the will-call office, shipping office, and lunchroom. A glass partition separates the warehouse area from the will-call office and the shipping office. The record reveals that the shipping office is staffed with five employees who perform a variety of tasks including routing the Employer's delivery trucks and receiving cash deposits from customers.

The customer service and purchasing departments border the will-call office, shipping office, and employee lunchroom. The record discloses that 12 customer service employees, each of whom are supervised by Sonia Chavez, work in the customer service department. These employees primarily answer customer calls, receive customer orders, prepare customer orders utilizing the Employer's computer system, monitor the status of orders, and create computer-

generated labels that warehouse employees affix to all outbound merchandise.

While the vast majority of their time is spent inside the customer service department answering phones, the record reveals that customer service employees frequently interact with shipping department employees and warehouse employees. According to the record, customer service employees communicate with shipping department employees several times per day to discuss such matters as routing, shipping dates, delivery times, freight charges, common carrier charges, and issues pertaining to lost freight. Customer service employees also visit the shipping department for work-related reasons three to seven times per day and spend anywhere from 2 to 10 minutes per visit. Likewise, shipping department employees visit the customer service office three to five times per day in order to carry out their job duties.

Customer service employees also interact with warehouse employees. The record reveals that when customers modify or cancel their orders, customer service employees contact warehouse employees to notify them of the change. They also contact warehouse employees to inquire about the status of customer orders. Conversely, warehouse employees contact customer service employees when they are

unable to fill an order because the requested merchandise is damaged or cannot be located.

Additionally, the record discloses that one unnamed customer service employee devotes 70 percent of her time coordinating the shipment of samples of the Employer's merchandise. Sample merchandise is prepared and packaged by warehouse employees in the warehouse area and eventually shipped to customers in order to entice sales. In coordinating the shipment of samples, the customer service employees and warehouse employees will spend time in each other's respective work area. Specifically, this particular customer service employee spends 5 to 10 percent of her time on the warehouse floor. Conversely, 10 to 20 percent of warehouse employees' time is spent in the customer service office.

Based on the testimony of Operations Manager John Lubinski, the record reveals that in the past 5 years, three shipping department employees have transferred to the customer service department. During roughly the same time period, one employee transferred from the warehouse to a series of other departments before eventually arriving at the customer service department.

The record reveals that the Employer employs six purchasing employees in its purchasing department. These

employees work staggered shifts between 6:00 a.m. and 5:00 p.m. and during that time are supervised by Operations Manager Lubinski. According to the record, purchasing employees share a common lunchroom, restrooms, and parking lot with drivers, warehouse employees, shipping department employees, and customer service employees. Five of the six purchasing employees transferred to the purchasing department from the Employer's customer service department.

The record shows that the Employer classifies four of the six purchasing employees as buyers. The remaining two are classified as claims credit employees. The record reveals that buyers are responsible for purchasing inventory items and merchandise to satisfy special orders that customers place with the customer service department. Prior to purchasing inventory and specially ordered merchandise, buyers are required to create a "purchasing order" which, according to the record, triggers the shipment of merchandise to the Employer's warehouse. The record reveals that when the purchased merchandise is delivered to the warehouse, a warehouse employee (specifically, a receiving clerk) reviews the shipment and the paperwork accompanying the goods (i.e., shipping documents, manifest warehouse receipts, or packing lists) for accuracy. After completing the review, the

warehouse employee then hand-delivers the shipping documents to the shipping office. From there, the documents are forwarded to the purchasing department for processing. However, if a discrepancy is discovered between what was ordered and what was received, the record reveals that the warehouse employee will bypass the shipping department and hand-deliver the shipping documents directly to the purchasing department instead. Once there, buyers and warehouse employees may discuss the information contained in the shipping documents as is consistent with distribution industry practice. According to the record, warehouse employees and buyers interact under these circumstances throughout the day.

After shipping documents are received from warehouse employees, buyers input information into their computer terminal regarding the receipt of the shipment and its location in the warehouse. Upon the completion of this task, buyers then place the shipping documents in files housed in the purchasing department.

The record establishes that warehouse employees, drivers and shipping department employees spend between 5 and 15 percent of their time in the purchasing department on work-related business. Conversely, purchasing employees spend 5 to 20 percent of their time in either the shipping

office or the warehouse performing work throughout the day. In this regard, for example, the record reveals that buyers check inventory levels, "verify the accuracy of product," and inspect defective product on the warehouse floor three to five times per day. Depending on the product involved, these inspections can last anywhere from 5 minutes to 1 hour.

The record reveals that the Employer's two credit claims employees are responsible for coordinating the return of defective merchandise, and also issuing and monitoring claims regarding defective merchandise. According to the record, the former task requires them to arrange for drivers to retrieve merchandise that customers deem defective or otherwise flawed. Once retrieved and returned to the Employer's facility, the defective merchandise is immediately inspected by warehouse employees. After completing their inspection, warehouse employees communicate their findings to the claims credit employees. These findings form the basis of monetary refund claims that credit claims employees prepare and file with the manufacturers of defective products.

The record further discloses that there is one human resources employee. This position is occupied by Jo Taylor (herein called Taylor), a salaried employee who

works in an office on the second floor of the Employer's facility. In her role as a human resources employee, Taylor's duties are to process payroll and workers' compensation claims, handle all employee benefits issues, distribute paychecks to supervisors, and distribute time sheets to supervisors for their review and signature. According to the record, the latter two tasks require Taylor to leave her office.

Besides these tasks, the record also establishes that Taylor spends 10 to 40 percent of her time meeting with drivers, warehouse, shipping department, customer service, and purchasing employees to address their inquiries regarding vacation pay, sick leave pay, overtime pay, and workers' compensation. The record fails to disclose whether Taylor interacts with them in connection with the Employer's distribution process. Taylor is supervised by Tony Geiger, the Employer's controller.

With respect to benefits, the record reveals that drivers, warehouse, shipping department, customer service and purchasing employees all enjoy the same vacation benefits, holiday benefits, sick leave benefits, profit sharing benefits, group life insurance benefits, disability insurance program benefits, and health and welfare program benefits. These employees are also required to punch a

time clock, are paid by the hour, and receive their paychecks on the same day.

Regarding wages, the record reveals that drivers earn \$9.00 to \$14.50 per hour. The hourly rate for warehouse employees is from \$9.00 to \$13.00. Shipping department employees receive \$8.00 to \$12.00 per hour. Customer service and purchasing employees earn anywhere from \$9.50 to \$15.00 per hour. Employees in each of these categories are eligible to receive a \$50 per hour merit increase every 6 months.

The Board customarily excludes office clerical employees from units of production and maintenance employees, while plant clericals are generally included in such units. Hygeia Coca-Cola Bottling Co., 192 NLRB 1127 (1971); Westinghouse Electric Corp., 118 NLRB 1043 (1957); Raytec Co., 228 NLRB 646 (1977). The distinction between office clericals and plant clericals, however, is not always a clear one because the disputed employees often appear to share characteristics of both groups in the duties they perform and in their working conditions. A controlling factor in making this distinction is whether the disputed clericals perform work that is directly related to, and integrated with, the functional operation of the facility and the duties performed by other unit

employees. Ives Business Forms, Inc., 263 NLRB 286, 289 (1982). In making this determination the Board looks at factors such as whether the clericals have regular contact with unit employees; work in an area adjacent to unit employees; and share common wages, immediate supervision, working conditions, and fringe benefits with unit employees. American Parts System, Inc., 254 NLRB 901, 902 (1981). If such factors are present, the clericals are considered to be plant clericals. Jacob Ash Co., 224 NLRB 74, 75 (1976). If, however, the disputed employees have separate and distinct functions from unit employees; are separately supervised; physically separated; have minimal contact with unit employees; and limited transfer or interchange with unit employees, the clericals are found to be office clericals and excluded from the unit. Ives Business Forms, Inc., supra.

The record discloses that the customer service employees and purchasing employees are directly involved in the Employer's single highly integrated distribution process. As a result of this high degree of integration, customer service employees and purchasing employees have regular contact with employees in the petitioned-for unit for the purpose of ensuring that customer orders are filled and serviced. In addition, the record evidence shows that

customer service employees, warehouse employees, and those in the petitioned-for unit work on the same floor of the facility in close proximity to each other, receive the same benefits, enjoy similar wages, are paid on the same day, are required to punch a time clock, and also share a common lunchroom. Based upon the foregoing facts and the record as a whole, I find that the customer service employees and purchasing employees are plant clericals inasmuch as they share a sufficient community of interest with drivers, warehouse employees, and shipping employees. Accordingly, I shall include them in the petitioned-for unit. Exxon Co. U.S.A., 225 NLRB 10 (1976); S&S Parts Distributors Warehouse, Inc., 277 NLRB 1293 (1985).

As far as the human resources employee is concerned, the record reveals that her work is performed in an area that is physically removed from the other employees under consideration herein. The record also reveals that she, unlike those employees, is paid a set salary. Additionally, her job duties, to wit, processing payroll and other benefits, and distributing paychecks and time sheets, are characteristic of tasks performed by office clerical employees. The record is silent as to what role, if any, she plays with the other employees herein relative to the Employer's distribution process. Hence, it is

concluded that the human resources employee does not share a community of interest with the unit employees, and I shall exclude her from the unit. Container Research Corp., 188 NLRB 586, 587 (1971) (excluding employee responsible for collecting timecards and developing payroll); Dunham's Athleisure Corp., 311 NLRB 175 (1993) (excluding employee with payroll duties); PECO Energy Co., 322 NLRB 1074 (1997).⁵

There are approximately 95 employees in the unit.

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 the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic

⁵ The Employer's contention in its post-hearing brief that the human resources employee spends nearly half of her time in face-to-face contact with unit employees does not compel a different result. As the record reveals, her interaction with unit employees is limited to answering questions regarding benefits and, therefore, bears no relationship to the

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 **Wholesale Delivery Drivers, Salespersons, Industrial and Allied Workers, Local 848, International Brotherhood of Teamsters, AFL-CIO.**

LIST OF VOTERS

In order to ensure 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

Employer's distribution process. It should also be noted that the Petitioner did not submit a post-hearing brief.

their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an alphabetized election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in Region 21, 888 South Figueroa Street, 9th Floor, Los Angeles, California 90017, on or before March 16, 2001. No extension of time to file the list shall be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

NOTICE OF POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices to Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the 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.

RIGHT TO REQUEST REVIEW

Under the provision 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. 10570. This request must be received by the Board in Washington by 5 p.m., EDT, on March 23, 2001.

Dated at Los Angeles, California, this 9th day of March, 2001.

/s/Victoria E. Aguayo
Victoria E. Aguayo
Regional Director, Region 21
National Labor Relations Board

440-1760-2460