

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

SAFEWAY, INC.

Employer

and

Case 36-RD-1594

MELINDA MARTINEZ, an Individual

Petitioner

and

BAKERY CONFECTIONERY, TOBACCO
WORKERS AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL 393

Union

DECISION AND ORDER

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.

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, 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. No 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)(7) of the Act, for the following reasons:

¹ The parties waived the filing of briefs.

The Employer is engaged in the operation of a chain of retail grocery stores, including the facility involved herein, located in Pendleton, Oregon. The Employer and the Union have been parties to a single-store collective bargaining relationship for some time.² The bargaining unit involved includes all bakery production employees, and excludes all other employees. The sole issue in the hearing is whether Petitioner is the only member of the bargaining unit.

Store manager Tad Primus testified that the bakery department in the store has a manager, bakery sales employees (not included in the bargaining unit herein), and one bakery production employee, Melinda Martinez. Martinez is a cake decorator and does some baking. About two years ago, there were two or three bakery production employees, depending on sales. Martinez has been the only bakery production employee for the past year or so. The number of bakery production employees depends on sales volume. Primus testified that he does not expect any increase in sales sufficient to require a second bakery production employee at any time in the foreseeable future. No other evidence was offered by any party in the hearing.

It is contrary to Board policy to certify a single person unit. *Mount St. Joseph's Home for Girls*, 229 NLRB 251 (1977). In deciding whether a bargaining unit consists of only one employee, it is the permanent size of the unit that is controlling. *Copier Care Plus*, 324 NLRB 785 (1997).

Here, the only evidence regarding the permanent size of the unit is Primus' testimony that it has been a one-person unit for over a year, and there is no expectation of any increase in the size of the unit. Therefore, I conclude that the bargaining unit herein is a permanent one-person unit, and, in accordance with *Mount St. Joseph's Home*, supra, I shall dismiss the petition.

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 December 26, 2001.

DATED at Seattle, Washington, this 11th day of December 2001.

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

347-8040

² At hearing, the parties stipulated that the current collective bargaining agreement is not a bar to an election in this case because the instant petition was filed during the "window" period.