

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

Omaha, Nebraska

CONAGRA FOODS, INC., d/b/a CASA DE ORO 1/

Employer

and

Case 17-RC-12218

UNITED FOOD AND COMMERCIAL WORKERS UNION
DISTRICT LOCAL 271, AFL-CIO, CLC

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 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.2/
3. The labor organization(s) involved claim(s) 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: 3/

All full-time and regular part-time production employees, including processing employees, packing employees, warehouse employees, sanitation employees and lead persons, employed by the Employer at its Omaha, Nebraska facility, but EXCLUDING all office clerical employees, maintenance employees, sales persons, professional employees, guards and supervisors as defined in the Act and all other employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) 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(s) 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. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. 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

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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

UNITED FOOD AND COMMERCIAL WORKERS UNION DISTRICT LOCAL 271, AFL-CIO, CLC

LIST OF VOTERS

In order to insure 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 which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. 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 election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge of the Subregion who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the **Regional Office**, 8600 Farley Street - Suite 100, Overland Park, Kansas 66212-4677 on or before **September 3, 2003**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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 **September 10, 2003**.

Dated August 27, 2003

at Overland Park, Kansas

/s/ D. Michael McConnell
Acting Regional Director, Region 17

- 1/ The Employer's name appears as amended at the hearing.
- 2/ The Employer is a corporation with an office and place of business in Omaha, Nebraska where it manufactures flour tortillas. Approximately 236 employees are employed in the unit found appropriate. There is no history of collective bargaining among these employees.
- 3/ The Petitioner initially sought an election in a unit comprised of all of the Employer's regular full-time and part-time production employees, excluding office clerical employees, sales persons, quality assurance employees, professional employees, guards, maintenance, lead people, and supervisors as defined by the Act. During the hearing, the Petitioner, without objection, amended the petition to seek to represent the previously excluded quality assurance employees. In addition, at the hearing the parties stipulated, and I find, that the warehouse employees and lead people, with the exception of those named as supervisors below, are properly included in the unit.¹

At issue is the placement of the maintenance employees. The Petitioner claims that the maintenance employees should be excluded from the unit. It argues that the maintenance employees have a distinct and separate community of interest from the petitioned-for employees, and that it is appropriate under current Board law to exclude them from the petitioned-for unit.

Contrary to the Petitioner, the Employer argues that the only appropriate unit would be a wall-to-wall unit that includes the Employer's maintenance employees. The Employer argues that a combined production and maintenance unit is presumptively appropriate, and that the

¹ The Employer indicated in its brief that, inasmuch as the parties stipulated to the inclusion of warehouse employees in the unit, even though they have little contact with the petitioned-for employees, inclusion of the maintenance employees in an overall unit is required since they have greater contact with the production employees. However, the record does not contain sufficient evidence concerning the warehouse employees to enable such a conclusion to be drawn. In any event, for the reasons set forth below, I have determined that combining the maintenance employees with the production employees is unwarranted.

Petitioner has failed to demonstrate that the maintenance employees have a sufficiently separate community of interest to warrant their exclusion from the unit.

Based upon a review of the evidence and relevant Board law, I find that the maintenance employees have a sufficiently separate community of interest from the petitioned-for production employees, and that the petitioned-for employees constitute an appropriate unit for the purposes of collective bargaining.

The parties stipulated that the following individuals possess the authority to hire, fire, transfer, lay off, recall, discipline, reward, suspend, and possess other indicia of supervisory status within the meaning of Section 2(11) of the Act: Jean Cooper, lead person; Teri Aguilera, lead person; Linda Hemminger, lead person; Scott Lippold, Plant Engineer/Maintenance Manager; Rod Hardenbergh, Operations Manager; Shawn Jones, Area Manager; Mike Doeden, Area Manager; Merrisa Retena, 2nd Shift Supervisor; Doug Caudillo, 2nd Shift Supervisor; Cara Pleiss, 3rd Shift Supervisor; and Joe Cobb, 3rd Shift Supervisor. Accordingly, the above-named individuals are excluded from the unit as statutory supervisors.

The Employer's Operations

The Employer has been engaged in the production of tortillas from its Omaha facility since approximately May 1992. In the operation of its business the Employer maintains a production department composed of the sub-departments of processing, packaging, and sanitation; a warehouse department; a quality assurance department; and a maintenance department.

Plant Manager Jon Heussner is responsible for the overall operation of the plant. Operations Manager Rod Hardenbergh is responsible for the overall production and maintenance departments. Those departments are further divided and separately supervised.

Area Manager Shawn Jones and supervisors Merrisa Retena, Doug Caudillo, Cara Pleiss and Joe Cobb supervise the employees in the production department. Operations Manager Rod Hardenbergh, Area Manager/Sanitation Supervisor Mike Doeden and supervisors Merrisa Retena, Doug Caudillo, Cara Pleiss and Joe Cobb supervise the employees in the packaging department. Plant Engineer/Maintenance Manager Scott Lippold is the immediate supervisor of the maintenance employees.

Logistics Manager Mary Van Surksun supervises the approximately 12 employees employed in the warehouse. Director of QA/RD Charlie Kraut supervises the quality assurance employees.

The Production Process

The ingredients for the tortillas are received into a small warehouse where they are weighed and loaded into various bins, or stored in large containers. The materials are then loaded into mixers where a batch of dough is made. The dough is then taken to one of eight production lines and put into a hopper. The production line then forms the dough into balls. The balls are placed in a press and then baked in an oven. After baking, the tortillas go onto a cooling conveyor and into the packaging department. In the packaging department the tortillas are put into bags for the Employer's customers. The bags are then sealed and date coded, put in corrugated cases and transferred via a conveyer into a warehouse where the cases are loaded onto pallets. The warehouse employees then place the pallets onto racks according to customer orders. Finally, the pallets are loaded into trucks for shipment to customers.

The work performed by the employees involved in the production process is unskilled labor. As a result, the wages for these employees range between \$7.35 per hour and approximately \$11.78 per hour depending upon years of service with the Employer.

Quality Control

As discussed previously, the Employer also maintains a quality assurance department. The quality assurance lab is located next to the packaging department. The record is unclear regarding the job functions or number of the quality assurance employees. Additionally there is no evidence concerning the wage rates for these employees.

The Maintenance Department

The maintenance department is located adjacent to the last production line. The department maintains an office and shop area separate from the production area. There are 13 maintenance mechanics and 1 maintenance-purchasing clerk in the maintenance department. It is the task of the maintenance employees to repair and maintain the equipment and property of the Employer. This may include working on equipment such as motors, conveyor systems, and production devices. In addition, maintenance employees may be asked to participate in the upkeep of the facility and its grounds including repairing paint, patching walls, and some groundskeeping duties.

A work order process determines much of the work of the maintenance employees. This process may be initiated in a number of different ways: maintenance employees may canvass the facility, notice specific problems with equipment, and then generate their own work order, or a problem with equipment may be brought to their attention by a production manager, supervisor or employee, thereby generating a work order. The record evidence indicates that a majority of the time, maintenance employees create their own work orders. Maintenance

employees also perform routine preventative maintenance. Finally, maintenance employees participate in a process called a “changeover.” A changeover involves a maintenance employee helping a production operator to change out equipment, for instance, to start producing a different sized product. The maintenance mechanic may then assist the operator in starting up the machine and insuring that it is running properly. If the changeover process has caused product to back up, the maintenance employee may assist the production employee in bagging product or other related functions.

In the performance of their duties, the maintenance mechanics utilize basic hand tools, as well as electrical meters, drills and other power tools. These tools are provided by the Employer. Maintenance employees may from time to time used more specialized tools that they provide themselves.

The Employer prefers, but does not require, that maintenance mechanics have a 1 year certificate from a college or technical school, or 3-6 months of related experience or training. The maintenance-purchasing clerk must have college course work or equivalent work experience, and computer, reading and writing skills. In addition, maintenance employees are highly encouraged to participate in job-related classes and training programs. The maintenance department maintains a separate budget in order to pay for the cost of such training that is separate from the \$1500 that is offered to all employees for job-related education expenses. There is no evidence that any other department has a similar training and education budget.

As a result of the maintenance employees’ higher degree of skills and training, they receive substantially higher wages than the Employer’s other employees. Maintenance employees’ wages are based upon their skill level and range from \$11.10 per hour to \$18.55

per hour. Shift leads, specialists and assistants may earn an additional \$1.00 per hour.

Currently, the maintenance-purchasing clerk earns \$12.36 per hour.

Maintenance employees are distinguishable from other employees by the orange hard hats that they wear. Forklift drivers, and occasionally sanitation employees, wear hard hats, but theirs are blue and green.

There is no evidence of interchange between the production and maintenance departments. However, over the life of the facility approximately six to seven employees were hired out of production for permanent positions in maintenance. Currently, there are four maintenance mechanics who were formerly employed as production workers.

All hourly employees are subject to the Employee Handbook and share the same working hours, benefits package, and work rules. In addition, all hourly employees share the same locker rooms, restrooms and break rooms. All employees use the same time card machine, and are paid at the same time.

There is no collective-bargaining history at this facility. A different union has filed two previous petitions seeking to represent the employees at this facility. The petitions sought and the parties agreed by stipulation to hold elections in combined production and maintenance units. I take official notice that the petitioning union was not certified as the employees' collective-bargaining representative in either election. In neither of these cases did the Region or Board address the appropriateness of separate production and maintenance units. The Employer introduced evidence that a Casa de Oro plant in Kentucky was organized as a combined production and maintenance unit. However, there is no evidence that the appropriateness of separate units was considered. Therefore, I find that the previous petitions,

and the bargaining history at the Kentucky facility, shed no light on whether or not to grant this Petitioner's request for a separate production unit.

The Petitioned-For Unit is Appropriate

The Employer argues that a combined production and maintenance unit is presumptively appropriate. However, while the Board has traditionally found production and maintenance units to be appropriate, the Board utilizes the community of interest test in determining whether all production and maintenance workers should be combined in a single unit. The Board has determined that separate production and maintenance units may be appropriate. See American Cyanamid Co., 131 NLRB 909 (1961); Lawson Mardon USA, 332 NLRB 1282 (2000). The Board has found such separate units appropriate where the facts demonstrate the absence of a more comprehensive bargaining history, and where the maintenance employees have the requisite community of interest. Ore-Ida Foods, Inc., 313 NLRB 1016, 1019 (1994) *en'd* 66F.3d 328 (7th Cir. 1997). As discussed previously, there is no bargaining history among the Employer's employees. While the Employer seeks to rely on the bargaining history of one of its plants in Kentucky, this reliance is misplaced as there is no evidence in the record as to how that unit was derived or whether that unit represents a broader industry practice.

In evaluating whether a sufficiently separate community of interest exists, the Board consider such factors as: degree of skill and common functions; commonality of supervision; the frequency of contact and interchange with other employees; and functional integration. Capri Sun, Inc. 330 NLRB 1124 (2000). Although the Employer argues to the contrary, a review of these factors shows that the maintenance employees have a distinct and separate community of interest from the petitioned-for production employees.

Mutuality of Interests in Wages, Hours, and Other Working Conditions

Maintenance employees' wages are considerably higher than the wages of the employees in the petitioned-for unit. The highest paid production worker earns \$11.78 per hour while the lowest paid maintenance employee earns \$12.36 per hour with earning potential in excess of \$19.00 per hour. While production employees repeatedly perform the same task, maintenance employees' work is determined by the type and volume of work orders generated. In addition, while maintenance employees perform some of their work on the production floor, they also have their own shop, which is physically separated from the rest of the facility. It is undisputed that maintenance employees share common hours with the petitioned-for employees. This is to be expected as the facility runs 24 hours a day, and maintenance employees need to be present in case equipment breaks down.

Commonality of Supervision

While the Operations Manager has ultimate authority over both the production and maintenance departments, those departments have separate immediate supervision. In addition, there was no evidence at the hearing that the maintenance manager has any authority over production employees or that production supervisors have any authority over maintenance employees.

Degree of Skill and Common Functions

Contrary to the Employer's contention, maintenance employees are significantly more highly skilled than the petitioned-for production employees. Many have maintenance experience when they are hired, and then continue to receive training not offered to other employees. Maintenance employees use tools not used by any other employees, including power tools and meters, and perform work on complex machinery and conveyor systems.

There is no record evidence that the petitioned-for employees perform similar work. The degree of the maintenance employees' advanced skill is evident in the dramatically higher wages that they receive. I do not find that the maintenance employees' skills are a conglomeration of skills adapted to the particular needs of the company as suggested by the Employer, as many of the skills that these employees possess could readily be transferred into other industries and settings.

Frequency of Contact and Interchange and Functional Integration

Maintenance employees have frequent contact with some of the petitioned-for employees while they canvass the plant and perform repair and other duties. At least three times a day a maintenance employee may be involved in a changeover with a production operator.² A maintenance mechanic may even lend a hand to the operator while the machine is starting back up. Despite these factors the Board has routinely held that regular contact, without more, will not preclude the establishment of separate units. The Board has noted that, by the nature of their work, maintenance employees are likely to have regular contact with the production force. Therefore, the relevant inquiry is whether there is a segregation of work function between the maintenance and production employee, for if mere contact were enough, separate units would never exist. See Sundor Brands, 334 NLRB 755 (2001); Lawson Mardon, supra. There is no evidence in the record that production employees perform maintenance duties, and maintenance employees only infrequently lend a hand to production for a few minutes performing duties ancillary to their maintenance duties.

² The Employer has placed a heavy reliance on the fact that maintenance employees participate in the changeover process. This reliance is misplaced, as testimony indicates that the entire changeover process takes about 20 minutes, and there may be only one changeover per shift. This constitutes only a small fraction of a maintenance employee's day. In addition, the Board has addressed such help in changeovers, and has determined that such contact is not so significant as to preclude a separate unit. Ore-Ida, supra.

There is no evidence of regular temporary interchange among employees. While there have been a few permanent transfers from production to maintenance, there have been no permanent transfers from maintenance to production. This is not the kind of interchange that the Board has found significant when determining whether separate units are appropriate. See Capri Sun and Ore-Ida, supra.

The Employer's argument that the maintenance employees are functionally integrated with the petitioned-for production employees because it is their job to keep the machinery running lacks merit. The same could be said for every maintenance employee in every maintenance unit which the Board has found to be a separate appropriate unit.

Conclusion

Maintenance employees enjoy significantly higher wages than the petitioned-for production employees, are separately supervised, exercise a higher degree of skill than other employees and have no significant interchange and integration with the petitioned-for employees. Under all these circumstances, and based on the record as a whole, I find that the petitioned-for production employees constitute an appropriate unit for the purposes of collective bargaining.

As stated previously, at the commencement of the hearing the Petitioner amended its petition without objection to include quality assurance employees. As no stipulation was reached concerning their inclusion or exclusion, and there is no evidence as to their number or job functions, these employees will be allowed to vote subject to challenge.

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