

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FOUR

Hato Rey, PR

HOLSUM DE PUERTO RICO, INC.
Employer

and

Case 24-RC-8329

UNITED AUTOMOBILE, AEROSPACE, AND
AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA INTERNATIONAL UNION, AFL-CIO¹
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 May 30, June 10-13, June 20, June 23-25, July 1-2, July 8-11, July 21-24, August 15, August 18-20, and September 8-9, 2003, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.²

I. ISSUES

The Petitioner seeks an election within a unit comprised of the approximately 96 routed and non-routed commissioned sales employees employed by the Employer at its Toa Baja, Puerto Rico, facility (hereinafter referred to the "Toa Baja facility"). The Employer contends that only a multi-facility unit which includes its Ponce, Puerto Rico, facility (hereinafter referred to as the "Ponce facility"), its Aguadilla, Puerto Rico, facility (hereinafter referred to as the "Aguadilla facility"), its Virgin Islands facility, and all employees employed at the Employer's Tiendita stores throughout Puerto Rico constitutes an appropriate unit. Additionally, the Employer maintains that in addition to the routed and non-routed commissioned sales employees an appropriate unit must also contain employees at all of the above facilities in the classifications of merchandiser, area merchandiser, delivery person, sales employee supplied by a temporary employment agency, shipping and receiving employee, Tiendita sales clerk, transportation department

¹ The petition was amended to reflect the correct legal name of the Petitioner.

² Upon the entire record in this proceeding, the undersigned finds:

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

b. 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.

c. The labor organization involved claims to represent certain employees of the Employer.

d. 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.

employee, and custodian. The Employer also contends that any appropriate unit must also contain all sales personnel employed by the Employer and by the Employer's wholly owned subsidiary Caribe Bakers. The Petitioner contends that the single store is a presumptively appropriate unit and the other locations have not been so effectively merged with the Toa Baja facility as to destroy its separate identity and that the other classifications described above do not share a sufficient community of interest with the routed and non-routed commissioned sales employees to require their inclusion in the bargaining unit.

II. DECISION

For the reasons discussed in detail below, including the absence of contact between the employees of each store; insignificant employee interchange; and the geographic distance between stores, it is concluded that the routed and non-routed commissioned sales employees at the Employer's Toa Baja facility only, constitute a unit appropriate for purposes of collective bargaining.

In addition, it is concluded that the positions of merchandiser, area merchandiser, delivery person, sales employees supplied by a temporary employment agency, custodian, transportation department employees, shipping and receiving employees, Tiendita sales clerk, and employees employed by Caribe Bakers do not share a sufficient community of interest with routed and non-routed commissioned sales employees employed by the Employer at its Toa Baja facility to require their inclusion in the bargaining unit.

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:

All permanent routed and non-routed commissioned sales employees employed by the Employer at its Toa Baja, Puerto Rico, facility; BUT EXCLUDING all merchandisers, area merchandisers, delivery employees, transportation department employees, custodians, shipping and receiving employees, Tiendita sales clerks, guards and supervisors as defined in the Act, and all other employees.

The unit found appropriate herein consists of approximately 96 employees for whom no history of collective bargaining exists.

A. Statement of Facts

The Employer, Holsum de Puerto Rico, Inc. (hereinafter referred to as "the Employer") is engaged in the manufacture of bakery-related products and the sale of those products throughout Puerto Rico and the Virgin Islands. The Employer's headquarters is in Toa Baja, Puerto Rico, and that is also the site of the Employer's manufacturing facility. The Employer's human relations department is also located at the Toa Baja facility. Nelson Velez is the Employer's Director of Human Relations. Velez reports to Victor Mena, the Employer's Vice President of Industrial Relations. Mena in turn reports to Ramon Calderón, the Employer's President. All of the Employer's human relations functions including the hiring and discharging of employees at all of its facilities are centralized at the Toa Baja facility. All of the Employer's records for all of its employees at all of its facilities are maintained in Toa Baja. Employees are issued an employee ID number at the time they are hired. The human relations department in

Toa Baja, regardless of the facility for which the employee is being hired, gives those numbers sequentially.

The Employer has a variety of non-manufacturing employees who are based at the Toa Baja facility. These non-manufacturing employees include routed and non-routed commissioned sales employees who sell a variety of products manufactured by the Employer to customers of the Employer such as grocery stores, restaurants, gas stations, and hotels. These routed and non-routed commissioned sales employees are paid a salary plus a commission on all products they sell to their customers. Merchandisers and area merchandisers at the Toa Baja facility are also assigned specific customers.³ The merchandisers and area merchandisers visit these customers and make sure that the shelves are stocked with the Employer's products, that the area is neat and clean, and that the Employer's products are being properly displayed. Merchandisers and area merchandisers, who are paid an hourly wage, also remove outdated or damaged products from the shelves and place that product where it can be retrieved by the commissioned sales employees. Delivery employees deliver the Employer's product to various customers and place that product on the shelves. Delivery employees, who are also paid an hourly wage, also remove outdated and damaged product and return it to the Employer's retail stores known as Tienditas. This will be discussed more thoroughly below. Transportation department employees are responsible for maintaining the Employer-owned vehicles used by the commissioned sales employees and the delivery employees. If either commissioned sales employees or delivery employees experience a problem with their vehicle while on their route, they contact the Toa Baja facility and a transportation department employee is dispatched to fix the problem.

In addition to the facility at Toa Baja described above, the Employer also has non-manufacturing facilities in Ponce, Puerto Rico, Aguadilla, Puerto Rico, and the Virgin Islands. All of those facilities have routed and non-routed commissioned sales employees, merchandisers, area merchandisers, delivery employees, transportation department employees, and custodians. The job duties and method of payment for these classifications are the same at the non-manufacturing facilities as at the Toa Baja Facility. In addition to those classifications, the Ponce and Aguadilla facilities also have shipping and receiving employees. Since neither of these facilities actually manufactures the Employer's products, the products must be transported to those facilities from Toa Baja. The shipping and receiving employees unload the product from delivery trucks into a warehouse area at their respective facilities. The delivery employees and commissioned sales employees then load the product into their Employer-owned vehicles for delivery to their customers. The distance from the Ponce facility to the Toa Baja facility is 64 miles. The distance from the Aguadilla facility to the Toa Baja facility is 69 miles.⁴

In addition to the facilities described above, the Employer also maintains a number of retail stores called Tienditas. These Tienditas are located in Aguadilla, San Sebastián, Mayagüez, Carolina, Barceloneta, Ponce, and Toa Baja, Puerto Rico. The Tienditas are thrift stores that sell Employer products directly to the public. Both commissioned sales employees

³ The Employer also has several employees supplied to the Employer through a temporary employment agency. The Employer contends that it is a joint-employer along with the agency of those employees and that those employees should be included in the bargaining unit. The temporary employees in question perform the same job duties as merchandisers and as such will be included in any discussion of merchandisers.

⁴ Although the record does not reflect the distance from the Toa Baja facility to the Virgin Islands, administrative notice is taken of the fact that these are separate islands and that there is no bridge or tunnel connection between Puerto Rico and the U.S. Virgin Islands.

and delivery employees remove damaged or out-dated merchandise from their customers. This damaged or outdated merchandise is then transported to a Tiendita where it is sold at a discount to the public. The Tiendita also sells food products not manufactured by the Employer. There is only one employee classification at the Tienditas, sales clerk. The Tiendita sales clerk is responsible for checking merchandise when it is delivered by either a commissioned sales employee or delivery employees, stocking the Tiendita shelves with that merchandise, operating the cash register, and keeping the Tiendita clean. Tiendita sales clerks are paid an hourly wage and report to the supervisor of their individual Tiendita.

In addition to the Employer's employees described above, employees of Caribe Bakers are also based at the Employer's Toa Baja, Ponce, Aguadilla, and Virgin Islands facilities. Caribe Bakers is a wholly owned subsidiary of the Employer. Caribe Bakers employees sell primarily cookies and crackers to customers. Some of these customers are the same customers who are sold Employer-manufactured merchandise by commissioned sales employees of the Employer. The Employer's human relations department also functions as Caribe Bakers' human relations department. The officers of the Employer are also the officers for Caribe Bakers.

As described above, the Employer employs routed and non-routed commissioned sales employees at its Toa Baja, Ponce, Aguadilla and Virgin Islands facilities. Routed commissioned sales employees are paid a weekly salary of approximately \$280 a week plus a per diem and a commission of 6-8 percent, depending on sales volume, of all merchandise they sell. A routed commissioned sales employee is assigned a route by the Employer. That route is made up of various customers. The sales employee is responsible for visiting that customer and attempting to sell Employer merchandise to the customer. The sales employee takes the customer's order and submits it to the Employer. The sales employee then loads the product onto his Employer-owned vehicle and delivers it to the customer. The sales employee is also responsible for stocking the merchandise on the customer's shelves and for taking outdated or damaged product from the customer to one of the Employer's Tienditas. Sales employees have two types of customers, authorized and nonauthorized. Authorized customers buy merchandise on credit from the Employer and are billed directly by the Employer. Nonauthorized customers pay the sales employee at the time the merchandise is delivered. The sales employee is responsible for ensuring that the customer has paid the correct amount. The sales employee is held responsible by the Employer for any shortfall in his or her collections. Sales employees can also negotiate special deals with their customers concerning the price of merchandise. These deals, however, must be approved by management.

All commissioned sales employees work five days a week, Monday, Tuesday, Thursday, Friday, and Saturday. They arrive at their respective facilities at approximately 4:00 am and load merchandise into their Employer-owned delivery van. They use a hand-held computer device called a Norand to assist them in doing this and it takes approximately 45 minutes. The commissioned sales employee then leaves the facility and begins visiting the customers on his route. There is no official stop time for the commissioned sales employees. They are required to work until they have completed their route. After the route is finished the sales employee returns to his facility and completes paper work regarding the sales and deliveries that he or she made that day. During the course of an average working day, a commissioned sales employee has little to no contact with employees in any of the other classifications described above.⁵ Commissioned sales employees wear a uniform consisting of an orange shirt with an Employer

⁵ It must also be noted that in the course of an average working day, a commissioned sales employee has little to no contact with other commissioned sales employees.

logo and blue pants. Commissioned sales employees are directly supervised by a supervisor who works at their facility. This supervisor is responsible for approving absences, assigning work, and issuing discipline. If a commissioned sales employee has a problem with a customer, he or she reports it to their supervisor.

Non-routed commissioned sales employees act as temporary replacements for routed commissioned sales employees. The typical pattern is that a non-routed sales employee will ride with a routed sales employee for a week in order to learn the route. The routed employee would then go on vacation for two weeks and during that time the non-routed employee would replace the routed employee. When a non-routed sales employee is filling in for a routed employee, the non-routed employee is paid the same commission as the routed employee for all merchandise sold, and their job duties are identical to those of the routed commissioned sales employee. For the week when they are simply riding with the routed employee, non-routed employees receive a salary alone.

Merchandisers' job duties consist of going to various customers of the Employer and making sure that the shelves are stocked with Employer merchandise. Frequently, a merchandiser will stock the shelves with merchandise that was delivered to the customer by a commissioned sales employee. Merchandisers are also responsible for making sure that the area in which the Employer's merchandise is displayed is clean and neat. Merchandisers also remove outdated and damaged product from the shelves and place them in an area where the commissioned sales employees can pick up the product and deliver it to the Tiendita. Merchandisers are not directly involved in the sale of any Employer product to customers or to the public. They are simply responsible for making sure that areas in which Employer products are being sold are kept stocked with that product and are maintained in an attractive fashion. Area merchandisers have the same job duties but generally have more customers than merchandisers. Neither area merchandisers or merchandisers drive Employer-owned vehicles. They also do not report daily to any of the Employer's facility. Merchandisers and area merchandisers are assigned to a specific facility and report there approximately once a week. Merchandisers and area merchandisers are paid an hourly wage and work a standard 40 hour work week. They wear the same uniform as commissioned sales employees. Merchandisers report to the same supervisor as the commissioned sales employees. Each facility has its own supervisor.

Delivery drivers, as their title implies, deliver product to the Employer's customers. They also stock customers' shelves with that product. Delivery drivers sometimes make deliveries to customers who are normally serviced by commissioned sales employees if that sales employee is unable for some reason to make the delivery. The commissioned sales employee does receive a commission on the product delivered by the delivery driver. In such situations the delivery driver can receive payment from the customer, in which case the delivery driver is responsible for ensuring that correct payment has been made, although this is not a normal part of the delivery driver's duties. A delivery driver is assigned to a specific facility and reports to that facility each day at varying times. The delivery driver loads the product into his Employer-owned vehicle and also uses a Norand to assist in this. Delivery drivers unlike commissioned sales employees usually drive large diesel vehicles called Hinos. Commissioned sales employees generally drive vans on their route. Both delivery drivers and commissioned sales employees are required to be certified by the Department of Transportation. Delivery drivers are assigned a route by the Employer although their route differs from that of a commissioned sales employee because delivery drivers do not visit the same customers each week. Delivery drivers also take outdated or damaged product from the customers to the Employer's Tienditas. At the end of the day delivery drivers return to their facility to complete paperwork involving the

product they delivered that day. They complete this paperwork in the same room and on the same computers as those used by the commissioned sales employees to complete their paperwork. Delivery drivers are paid an hourly wage, wear the same uniform as commissioned sales employees and merchandisers, and report to the same supervisors as those job classifications.

The Employer employs approximately 25 total transportation department employees at its three Puerto Rico facilities. These transportation department employees are responsible for maintaining the Employer-owned vehicles. Commissioned sales employees and delivery drivers visit the transportation department daily to obtain fuel for their vehicles, and if they have a mechanical problem with the vehicle while on their route, they contact the facility and a transportation department employee is dispatched to correct the problem. The record does not reflect how transportation department employees are paid, what type of uniform they wear, or who supervises them.

The Employer employs a custodian at its Aguadilla facility and one at its Ponce facility. The record contains no evidence regarding the job duties of these custodians or how they are paid. The record also does not reflect their normal work hours, uniform, or supervisory structure.

The Employer employs four shipping and receiving employees at its Ponce facility and four at its Aguadilla facility. The Employer's products originate in Toa Baja and are then trucked to Ponce and Aguadilla. The shipping and receiving employees off-load product from the delivery trucks and place it on the loading platform. Commissioned sales employees and delivery drivers from those facilities then load the product into their vehicles for delivery to customers. The record does not indicate how shipping and receiving employees are paid, what hours they work, what type of uniform they wear, or their supervisory structure.

The Employer maintains a number of retail stores called Tienditas. These Tienditas are located in Aguadilla, San Sebastián, Mayagüez, Carolina, Barceloneta, Ponce, and Toa Baja, Puerto Rico. There are approximately 40 total employees at these Tienditas. Tienditas are thrift stores where the Employer sells outdated or damaged products at a reduced price. The Tienditas also sell products not manufactured by the Employer. All of the employees at the Tienditas are classified as sales clerks. The sales clerks perform all the functions normally associated with a retail grocery operation. The sales clerks stock the shelves, make sales to the public using a cash register, and clean the store. The sales clerks also check in the merchandise delivered to the Tiendita by commissioned sales employees and delivery drivers. Tiendita sales clerks are paid on an hourly basis. They wear the same shirt as commissioned sales employees. Tiendita sales clerks work a normal 40 hour week and report to the supervisor of the Tiendita. Each of the Tienditas has a supervisor and it is that person to whom the sales clerks direct inquiries regarding absences or problems at the store.

Caribe Bakers is a wholly owned subsidiary of the Employer. Caribe Bakers also manufactures different food products, primarily cookies and crackers. Caribe shares corporate officers with the Employer and its labor relations functions are administered by the Employer's human relations department. Caribe also employs commissioned sales employees, merchandisers, and delivery drivers. These positions function in the same fashion as they do for the Employer. The difference is Caribe employees are employed by Caribe and they sell and deliver Caribe products. Caribe employees frequently service the same clients serviced by employees of the Employer except they service them with Caribe products. Caribe sales employees operate out of the same facilities as the Employer's employees but Caribe sales

employees unlike the Employer's sales employees drive their own vehicles and do not wear a uniform. Caribe employees are paid in the same manner as the Employer's employees and receive the same benefits.

B. Discussion

1. The Single Facility Issue

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act," NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting; it need not choose the most appropriate unit, American Hospital Association v. NLRB, 499 U.S. 606, 610 (1991); Overnite Transportation Co., 322 NLRB 723 (1996).

When an employer operates multiple facilities, a single-facility unit is presumptively appropriate for purposes of collective bargaining, unless a functional integration between two or more of the facilities can be shown, Globe Furniture Rentals, Inc., 298 NLRB 288 (1990). The party seeking to rebut the presumption of a single facility unit must show that the day-to-day interests of the employees of one facility have merged with those of the other facility, Beckett Aviation Corporation, 254 NLRB 88, 89 (1981). To determine whether the presumption has been negated, the Board analyzes such factors as the centralized administration and control of labor relations, the skills and work functions of the employees, the commonality of daily supervision, the similarity of employees' terms and conditions of employment, the extent of operational and employee interchange, and the geographical proximity of the facilities, D&L Transportation, Inc., 324 NLRB 160, 161 (1997); Globe Furniture Rentals, Inc., *supra*.

In the present case, there exists centralized administration over the operations of all facilities, and employee wages, benefits and other terms and conditions of employment are uniform for all facilities. Common indirect supervision exists in the person of the Director of Human Resources. Other factors, however, such as separate local supervision; the relative autonomy of that supervision; the lack of meaningful contact and interchange among employees of the various facilities; and the geographic distance between facilities, fails to establish that the employees of the different facilities have become so effectively merged that they have lost their separate identity, J & L Plate, Inc., 310 NLRB 429 (1993); Foodland of Ravenswood, 323 NLRB 665 (1997).

The Board has recognized that certain factors such as common daily supervision have a greater impact upon creating a community of interest among employees than other factors such as common indirect supervision. Common daily supervision has a greater impact upon the creation of a community of interest than other factors because it has a direct impact upon employees work lives, and employees with different supervisors may not necessarily share similar problems or concerns, D & L Transportation, Inc., *supra*; Towne Ford Sales, 270 NLRB 311 (1984). In the case at hand, the direct supervisors at each facility of the commissioned sales employees, the merchandisers and the delivery drivers enjoy autonomy in their approval of leave requests, their issuance of minor discipline, and their ability to resolve employee conflicts and complaints.

The total absence of contact between the employees at the various facilities during the course of performing their daily activities also contributes to a single, rather than multi-facility,

community-of-interest. The insignificant degree of employee interchange that has occurred between facilities also fails to support a multi-facility unit. Lastly, the geographic distance between facilities mitigates against a multi-store unit, AVI Foodsystems, Inc., 328 NLRB 426 (1999); Red Lobster, 300 NLRB 908 (1990).

Accordingly, it is concluded that only employees at the Toa Baja facility shall be included in the bargaining unit found appropriate herein.

2. Community of Interest Between Commissioned Sales Employees and Other Classifications⁶

Because a single facility unit is appropriate in the instant case, the remaining question to be determined is if an appropriate bargaining unit must contain other employees at the Toa Baja facility in addition to the routed and non-routed commissioned sales employees. The job classifications in question are merchandiser, area merchandiser, delivery driver, transportation department employee, Tiendita sales clerk at the Toa Baja Tiendita, and employees of Caribe Bakers. In determining an appropriate bargaining unit, the ultimate question is whether the employees share a sufficient community of interest to require their joinder within one unit, Alois Box. Co., Inc., 326 NLRB 1177 (1998); Washington Palm, Inc., 314 NLRB 1122, 1127 (1994). In determining whether employees share such a community of interest, the Board weighs a variety of factors, including differences in wages or method of compensation; different hours of work; different employment benefits; separate supervision; the degree of similar or dissimilar qualifications, training and skills; differences in job functions; the amount of working time spent away from the facility; the integration of work functions; the degree of interchange between employees as well as the degree of employee contact; and the history of bargaining, NLRB v. Action Automotive, Inc., 469 U.S. 490 , 494-97 (1985); Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962). In addition, the petitioner's desire as to the unit is a relevant consideration in the determination of the unit. Mark Oxygen, 147 NLRB 228 (1964) Each of the classifications in question, none of which share a sufficient community of interest to require their inclusion in the bargaining unit, will now be addressed.

a. merchandisers and area merchandisers⁷

Merchandisers and area merchandisers are clearly compensated in a different manner than commissioned sales employees. Merchandisers are paid an hourly wage while commissioned sales employees, routed and non-routed, are primarily paid by commission along with a small salary. The classifications also have different hours of work. Commissioned sales employees begin their day at approximately 4:00 am and have no set quitting time. Commissioned sales employees are expected to work as long as it takes to complete their route. Merchandisers begin much later in the day and work a standard 40 hour work week. All commissioned sales employees work the same days of the week with Wednesdays and

⁶ Because the record fails to show that the Employer employs any shipping and receiving employees or custodians at the Toa Baja facility and having previously determined that a single facility unit at Toa Baja is an appropriate bargaining unit, the community of interest of those two classifications will not be discussed.

⁷ As previously mentioned, the Employer contends that employees assigned to work for the Employer by an agency must also be included in the appropriate collective bargaining unit. The employees in question perform the same duties as merchandisers and their community of interest with commissioned sales employees will, therefore, be addressed in the general discussion of the merchandisers' community of interest with commissioned sales employees.

Sundays being their days off. This is not true for merchandisers or area merchandisers who work varying schedules. In addition merchandisers and area merchandisers spend far less time at the Toa Baja facility than commissioned sales employees. Merchandisers and area merchandisers only come to the facility about once a week. Commissioned sales employees must go to the facility every working day.

In addition, the position of commissioned sales employees requires different skills than those required by merchandisers. The primary duty of a commissioned sales employee is to sell the Employer's products to its customers. Those customers then turn around and sell that product to the public. Commissioned sales employees are expected to negotiate with customers and work with those customers in an effort to convince the customer to buy as much Employer product as possible. Commissioned sales employees are also expected to try and obtain new customers for the Employer's products. The skills of a merchandiser or area merchandiser are not the same. Merchandisers and area merchandisers are not responsible for selling product. As employees of the Employer they are expected to encourage individuals to purchase the Employer's products, but they are not salesmen. Merchandisers and area merchandisers stock shelves and make sure the Employer's products are being presented in an attractive way, but this is far different than the duties of a commissioned sales employee. Finally there is little to no daily contact between merchandisers and area merchandisers and commissioned sales employees. There is also no evidence that merchandisers or area merchandisers ever temporarily assume the responsibilities of a commissioned sales employee.

The above differences between merchandisers and area merchandisers and commissioned sales employees far outweigh the fact that the classifications share common supervision, benefits and uniforms. The case of Home Depot USA, 331 NLRB 1289 (2000) supports the exclusion of merchandisers. In that case a unit of drivers and dispatchers was found appropriate since they were found to be a functionally distinct group with a distinct community of interest despite overlapping job functions, employee interchange and common supervision with a larger group of employees that provide special services to customers. The merchandisers and area merchandisers are thus excluded from the appropriate bargaining unit in this case.

b. delivery drivers

Delivery drivers are also compensated in a different manner than commissioned sales employees. Delivery drivers are paid an hourly wage rather than the salary and commission used to compensate commissioned sales employees. The two classifications also have different hours of work. While delivery drivers do work a more flexible schedule than merchandisers, it is not the same one as commissioned sales employees. Delivery drivers begin each work day at approximately 4:00 am as do commissioned sales employees, and they begin their work day at the Toa Baja facility as do the commissioned sales employees. Delivery drivers, however, generally complete their route and return to the Toa Baja facility earlier than commissioned sales employees. Delivery drivers also do not work the same schedule as commissioned sales employee who, as stated earlier, never work on Wednesday and Sunday.

The skills required of the two classifications are also different. As stated above, commissioned sales employees are in effect salesmen. They have a direct financial stake in trying to convince customers to buy as much of the Employer's products as possible. Delivery drivers, as their title implies, are not salesmen. They simply deliver the Employer's products to its customers. They drop those products off, have the customer sign an invoice, and then move on to the next stop. There is very little daily interaction between commissioned sales

employees and delivery drivers except when they are in the same general area loading their vehicles in the morning. This loading occurs without assistance among the classifications. There is also minimal interchange at the end of the day when the paperwork is completed because delivery drivers generally return to the facility before commissioned sales employees.

Delivery drivers do share common supervision with commissioned sales employees. They also wear the same uniforms and receive the same benefits. Delivery drivers also occasionally will temporarily substitute for a routed commissioned sales employee if there is no non-routed commissioned sales employee available to fill in. Both commissioned sales employees and delivery drivers are required to load their vehicles using a Norand device. In addition, commissioned sales employees generally hold the position of delivery driver before being promoted to commissioned sales employees. However, these similarities do not outweigh the different methods of compensation, different skills and responsibilities, and the absence of daily interaction between the two classifications. Home Depot USA, Id. Therefore, delivery drivers will not be included in the bargaining unit.

c. transportation department employees

Transportation department employees clearly do not share a community of interest with commissioned sales employees. The record does not reflect the method of compensation for transportation department employees or their supervisory structure, but the difference in job duties of the two classifications and the lack of meaningful interaction between the two clearly demonstrate that there is no community of interest. Transportation department employees are primarily mechanics that maintain the Employer's vehicles. The record does not demonstrate that they have any contact with customers or that they play any role in the selling process. Commissioned sales employees are required to make daily reports to the transportation department employees concerning the condition of their vehicles, but that is the only regular interaction between the two classifications. Transportation department employees are dispatched to repair a commissioned sales employee's vehicle if there is a problem, but one driver testified that this happened approximately six times in the course of a year. Commissioned sales employees also fuel their vehicles daily in the transportation department, but there is no evidence that transportation department employees play any role in this. Due to the differences in job duties and lack of meaningful interaction, transportation department employees will not be included in the appropriate bargaining unit.

d. Tiendita sales clerks

The Tiendita sales clerks at the Toa Baja Tiendita are compensated differently than commissioned sales employees. Tiendita sales clerks are paid an hourly wage. Tiendita sales clerks also work a different schedule than commissioned sales employees. Tiendita sales clerks work a standard 40 hour work week and do not have Wednesdays and Sundays off, unlike commissioned sales employees. Tiendita sales clerks also have different direct supervision. The Tiendita has a supervisor, and the sales clerks report to that supervisor regarding absences or problems with the Tiendita. The Tiendita supervisor also issues discipline to the sales clerks. Obviously, the job duties of Tiendita sales clerks and commissioned sales employees are also far different. Tiendita sales clerks essentially operate a retail sales facility. They deal directly with the public just as any normal grocery clerk would. They are responsible for opening and closing the Tiendita and making sure that it is clean. The Tienditas also sell products not manufactured by the Employer. Commissioned sales employees are engaged exclusively in the non-retail sale of Employer products. Tiendita sales clerks also spend all of their time at the Tiendita while commissioned sales employees spend a

majority of their time on their route dealing with customers. The only interaction between the classifications occurs when the commissioned sales employee delivers outdated or damaged product from his customers to the Tiendita. This is not a lengthy process, and there is no evidence that Tiendita sales clerks ever temporarily replace commissioned sales employees.

These differences far outweigh the fact that Tiendita sales clerks wear a similar uniform as the one worn by commissioned sales employees and that they receive the same benefits. Given the above, Tiendita sales clerks will not be included in the appropriate unit.

e. Caribe Bakers employees

The Employer contends that all of the sales employees of Caribe Bakers should be included in any unit found appropriate herein. Its argument is two-fold, first that the Employer and Caribe Bakers are a single integrated employer and second, that the employees of both companies share a community of interest such that they should all be included in the unit.

The Board considers a variety of factors in determining whether two or more companies constitute a single employer, including whether they are affiliated business enterprises with common ownership, officers, directors, management and supervision; whether they formulate and administer a common labor policy; share common facilities; provide services for and sales to each other; have interchanged personnel with each other; and whether they hold themselves out to the public as a single company, Radio and Television Broadcast Technicians Local Union 1264, 380 US 256 (1965). In making its assessment the Board gives special weight to the centralized control of labor relations, Masland Industries Inc. and Masland Transportation, 311 NLRB 184 (1993). In the present case, Caribe Bakers is wholly owned by the Employer. The Employer's human relations department also performs the same functions for Caribe Bakers. The two companies also share the same corporate officers. They operate out of the same facilities, and there is evidence of employees being transferred from one of the companies to the other. There is no evidence, however, that the Employer and Caribe Bakers hold themselves out to the public as a single entity, and their products are marketed under different brand names. Nonetheless, in light of the characteristics which are present and indicative of a single enterprise, and in the absence of challenge from the Petitioner to the Employer's assertion that it is a single employer, it is concluded that Holsum de Puerto Rico and Caribe Bakers constitute a single integrated enterprise.

First it must be noted that for the reasons set forth above, merchandisers, area merchandisers, and delivery drivers employed by Caribe Bakers will be excluded from the unit. The only question to be determined is whether commissioned sales employees of Caribe Bakers must be included in the unit. Caribe Bakers sales employees are paid in the same manner as the Employer's commissioned sales employees, and they receive the same benefits. The Employer's director of Human relations testified that non-routed commissioned sales employees of the Employer substitute for Caribe commissioned sales employees when those employees are on vacation or ill. However, no evidence was presented of any specific instance when such a substitution actually took place.⁸ There was also no evidence offered on whether the Caribe Bakers commissioned sales employees share common direct supervision with the Employer's commissioned sales employees or of the work schedule of Caribe Bakers employees. Caribe commissioned sales employees visit many of the same customers as employees of the Employer, but Caribe employees handle a different product, primarily cookies

⁸ There was no testimony at the hearing from any individual who had ever been employed by Caribe Bakers as a commissioned sales employee.

and crackers and in much larger volumes. In addition Caribe commissioned sales employees do not wear uniforms and they drive their own vehicles. There is also no evidence of any regular interaction between Caribe commissioned sales employees and those of the Employer. Thus, even assuming the Caribe Bakers sales employees share supervision with the commissioned sales employees employed by the Employer, in view of this lack of interaction, the other differences in job duties between Caribe employees and those of the Employer, specifically that they sell a different product and do not wear uniforms nor use Employer-owned vans, the commissioned sales employees of Caribe Bakers will not be included in the bargaining unit. Home Depot USA, supra.

III. 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 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 unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit 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 United Automobile, Aerospace, and Agricultural Implement Workers of America International Union, AFL-CIO.

IV. NOTICE OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

V. LIST OF VOTERS

To insure that all eligible voters 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); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 24's Office, La Torre de Plaza, Suite 1002, 525 F.D. Roosevelt Avenue, Hato Rey, Puerto Rico 00918-1002, on or before **November 25, 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. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VI. 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, DC 20570. This request must be received by the Board in Washington by December 2, 2003.

DATED AT Hato Rey, Puerto Rico, this 18th day of November 2003.

Marta M. Figueroa
Regional Director
National Labor Relations Board
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