

Safeway Stores, Inc. and United Food and Commercial Workers Union, Local 537, AFL-CIO & CLC. Case 7-CA-6393

June 24, 1981

DECISION AND ORDER

On October 1, 1980, Administrative Law Judge Jerrold H. Shapiro issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief and Respondent filed cross-exceptions and a brief in response to the General Counsel's exceptions.

The Board has considered the record and the attached Decision in light of the exceptions, cross-exceptions, and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

On June 15, 1979, Respondent entered into a prehire contract with Bakery, Confectionary & Tobacco International Union Local No. 401, AFL-CIO, herein called Bakery Workers Local 401, recognizing Bakery Workers Local 401 as the collective-bargaining representative of the employees in a newly planned delicatessen department in Respondent's Bountiful, Utah, store. The delicatessen department opened on June 28 and was staffed by five employees, none of whom had previously worked for Respondent. Under the terms of the June 15 prehire contract these employees would be represented by Bakery Workers Local 401 and their wages, hours, and conditions of employment would be established by the bakery sales agreement existing between Bakery Workers Local 401 and Respondent.

On the basis of the foregoing facts, it is clear that Respondent's prehire agreement with Bakery Workers Local 401 would, in usual circumstances, constitute unlawful premature recognition of that Union even in a situation where the action was taken in good faith and in the absence of a question concerning representation.¹ The exception, of course, is in a situation where the new department or facility is a proper accretion to an existing bargaining unit. The Board's fundamental concern, however, is to insure that in cases where such an issue is raised the right of interested employees to determine their own bargaining representative will not be thwarted. For this reason the Board has treated accretion as a narrow exception to the general rule against prehire or premature recognition.²

¹ *General Cinema Corp.*, 214 NLRB 1074, 1075 (1974).

² *The Kroger Co., Houston Division*, 211 NLRB 363, 377 (1974); *The Wackenhut Corporation*, 226 NLRB 1085, 1089 (1976).

Pursuant to this policy the Board has found a valid accretion only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit³ and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted.⁴

Under these principles, we find, contrary to the Administrative Law Judge, that the newly established delicatessen department is not an accretion to the existing Bakery Workers unit.

The Administrative Law Judge found that accretion was warranted on the basis of the geographic proximity of the delicatessen to the bakery department; the interchange of employees; the functional integration of the departments; and the similarity of skills and responsibilities of the two groups of employees, in particular that employees in both the delicatessen and bakery departments are primarily engaged in waiting on the public and that no previous experience is required for work in either department. Initially, we note that many of the duties of the delicatessen employees, such as the slicing of meats and the handling of cheese and salads, are more similar to the duties of employees in the meat department than to the duties of the bakery department employees. Indeed, as the Administrative Law Judge observed, for approximately a 5-year period ending in early 1979 the meat department employees prepared barbecued chicken and ribs for display and sale in that department. This work has now been transferred by Respondent to employees in the delicatessen department.

We also note that the ability to meet and deal amicably with the public is a listed job description requirement for the positions of meatcutter, meatwrapper, produce clerk, and food clerk, and is not a skill required solely by employees in the delicatessen and bakery departments.

In addition, our analysis of the interchange of employees does not convince us that this factor supports accretion of the delicatessen employees into the bakery department unit. There was no scheduled interchange of employees between the delicatessen and bakery departments during the first 5 months of the delicatessen department's operation or prior to the filing of the complaint in this case. While there was some unscheduled interchange of employees between the bakery and delicatessen departments, employees from the grocery department also worked in the delicatessen department on an unscheduled basis. The interchange of

³ *Melbet Jewelry Co., Inc.*, 180 NLRB 107 (1969).

⁴ *N.L.R.B. v. Food Employers Council, Inc.*, 399 F.2d 501 (9th Cir. 1968), enf. 163 NLRB 426 (1967).

employees, therefore, does not support accretion into the bakery unit.

Moreover, we feel compelled here to give little weight to the other factors stressed by the Administrative Law Judge since the record clearly indicates that Respondent consciously manipulated these factors for the purpose of justifying its prehire recognition of Bakery Workers Local 401 as the collective-bargaining representative of the delicatessen employees and preventing representation by the Amalgamated Meat Cutters, predecessor of United Food and Commercial Workers Union.

Respondent's management first discussed plans to open delicatessen departments in several stores in its Salt Lake division in February 1979. The division's manager asked the division's labor relations manager, William Daly, to determine Respondent's best labor relations approach toward the new delicatessen employees. Daly reported that no jurisdictional clause in any of Respondent's current collective-bargaining agreements required Respondent to recognize a particular union as the representative of the employees in the projected delicatessen departments.

On April 13, 1979, Daly wrote to the division manager and stated, *inter alia*:

Since I am reluctant to extend recognition to the Amalgamated Meat Cutters, because of their high rates, I feel it is in our best interest to get the most competitive rates possible. . . . We should also make sure all equipment used in connection with the deli sales operation is kept away from the Meat Department, and use bakery coolers and storage as appropriate. Our bakery sales rates are very favorable and it would be our intent to negotiate comparable rates for Deli Sales Clerks. We, of course, would not do this until we have heard from the unions claiming jurisdiction. By following the above procedures we may end up with either the Retail Clerks having jurisdiction, or Bakery Sales. Either of these would be more desirable than tying in with the Meat Cutters.

Daly then proceeded to contact Bakery Workers Local 401 in order to establish that union as the collective-bargaining representative of the delicatessen employees. On May 16 Daly informed Terry Powell, secretary-treasurer of Local 401, that Respondent intended to institute an over-the-counter operation in conjunction with the in-store bakeries and requested a meeting where the utilization of bakery sales employees in this operation could be discussed. On May 29 a meeting with Powell was held in Daly's office. At this meeting Daly showed the Bakery Workers Local 401 representative a floor plan of the new delicatessen department and

indicated that it would be located immediately adjacent to the bakery department. Daly further indicated that sales employees would be interchanged between the delicatessen and bakery departments and asked Powell whether he could see any problems with an accretion of the delicatessen employees into the bakery unit represented by Bakery Workers Local 401. Powell approved of the idea and agreed with Daly that the delicatessen employees would be covered by the bakery sales contract. On June 15 Daly and Powell added an addendum to the bakery sales agreement which established the rates of pay for delicatessen employees and declared that all other terms and conditions incorporated in the bakery sales agreement would be fully applicable to the employees in the delicatessen department.

The sequence of events described above reveals a conscious plan on the part of Respondent to stage manage the location, operations, and employee working conditions of the delicatessen department for the express purpose of choosing a collective-bargaining representative for its delicatessen employees. Under these circumstances, we cannot rely upon the factors stressed by the Administrative Law Judge to permit the delicatessen employees to be accreted into the bakery sales bargaining unit. On this basis, and for the reasons stated above, we hold that Respondent's delicatessen employees do not show a sufficient community of interest with its bakery sales employees to justify the accretion of the delicatessen employees into the bakery sales unit.

Finally, we find, contrary to the statement of Daly, that the plain language of the jurisdictional clause in the collective-bargaining agreement between Respondent and the Meat Cutters Union contemplates coverage of all employees, such as those in the delicatessen department, who are engaged in "receiving, handling, cutting, selling, processing, wrapping, pricing or displaying of meat, poultry, sausage, or fish, frozen, chilled, or smoked."

Accordingly, we conclude that the delicatessen employees in Respondent's Bountiful, Utah, store are not a lawful accretion to the bakery sales unit and that by entering into a prehire agreement with Bakery Workers Local 401 and prematurely recognizing that union as the collective-bargaining representative of the delicatessen employees Respondent has interfered with the employees' Section 7 rights to self-organization and violated Section 8(a)(1) and (2) of the National Labor Relations Act, as amended.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Safeway Stores, Inc., Bountiful, Utah, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Contributing support and assistance to Bakery, Confectionary & Tobacco International Union Local No. 401, AFL-CIO, or any other labor organization of its employees.

(b) Recognizing Bakery, Confectionary & Tobacco International Union Local No. 401, AFL-CIO, as the representative of employees in its delicatessen department in its Bountiful, Utah, store for the purpose of dealing with Respondent concerning grievances, labor disputes, wages, rates of pay, or other conditions of employment, unless and until the said labor organization shall have demonstrated its exclusive majority status pursuant to a Board-conducted election among the employees.

(c) Giving effect to the current collective-bargaining agreement between Respondent and Bakery, Confectionary & Tobacco International Union Local No. 401, AFL-CIO, effective March 17, 1978, and expiring May 2, 1981, or to any extension, renewal, or modification thereof by applying such agreement, extension, renewal, or modification to the employees in the delicatessen department in its Bountiful, Utah, store, *provided*, however, that nothing in this Order shall require Respondent to vary or abandon any wage, hour, seniority, or other substantive features of its relations with said employees which Respondent has established in the performance of this agreement or to prejudice the assertion by said employees of any rights they may have thereunder.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Withdraw and withhold all recognition from Bakery, Confectionary & Tobacco International Union Local No. 401, AFL-CIO, as the representative of the employees in the delicatessen department of its Bountiful, Utah, store for the purpose of dealing with Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment of the employees, unless and until the said labor organization will have demonstrated its exclusive majority status pursuant to a Board-conducted election among the employees.

(b) Post at its Bountiful, Utah, store copies of the attached notice marked "Appendix."⁵ Copies of said notice, on forms provided by the Regional Director for Region 27, after being duly signed by the appropriate representative of Respondent, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 27, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁵ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT contribute support and assistance to Bakery, Confectionary & Tobacco International Union Local No. 401, AFL-CIO, or any other labor organization.

WE WILL NOT recognize Bakery, Confectionary & Tobacco International Union Local No. 401, AFL-CIO, as the representative of our employees in the delicatessen department in our Bountiful, Utah, store for the purpose of dealing with us in regard to grievances, labor disputes, wages, rates of pay, or other conditions of employment, unless and until the said labor organization shall have demonstrated its exclusive majority status pursuant to a Board-conducted election among employees.

WE WILL NOT give effect to the current collective-bargaining agreement with Bakery Workers Union, Local 401, by applying such agreement, extension, renewal, or modification to the employees in the delicatessen department of our Bountiful, Utah, store; however, we will not vary or abandon any wage, hour, seniority or other substantive feature which has been established thereunder or prejudice the employees' assertion of any rights they may have.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL withdraw and withhold all recognition from Bakery, Confectionery & Tobacco International Union Local No. 401, AFL-CIO, as the representative of the employees in the delicatessen department of our Bountiful, Utah, store, for the purposes of collective bargaining unless and until the said labor organization shall have been duly certified by the Board as the exclusive bargaining representative of such employees.

SAFeway STORES, INC.

DECISION

STATEMENT OF THE CASE

JERROLD H. SHAPIRO, Administrative Law Judge: This proceeding, in which a hearing was held on April 24 and 25, 1980, is based upon an amended unfair labor practice charge filed against Safeway Stores, Inc.,¹ herein called Respondent, by United Food and Commercial Workers Union, Local 537, AFL-CIO & CLC, herein called Meat Cutters Local 537, and a complaint issued against Respondent on December 13, 1979, by the Regional Director for Region 27 of the National Labor Relations Board, on behalf of the Board's General Counsel, alleging that Respondent violated Section 8(a)(1) and (2) of the National Labor Relations Act, as amended, herein called the Act. The complaint in substance alleges that Respondent recognized and signed a contract with Bakery, Confectionery & Tobacco International Union Local No. 401, AFL-CIO, herein called Bakery Workers Local 401, covering Respondent's delicatessen department employees at a time when Respondent had not hired any delicatessen department employees, thereby violating Section 8(a)(1) and (2) of the Act. Respondent filed an answer denying the commission of the alleged unfair labor practices.

The essential question presented for decision,² as posed by the pleadings and litigated at the hearing, is whether Respondent's newly established delicatessen department located in its Bountiful, Utah, store is a true bargaining accretion to the store's preexisting bakery department, thereby allowing Respondent to enter into a prehire collective-bargaining agreement with Bakery Workers Local 401 extending the coverage of Respondent's bakery sales contract with Bakery Workers Local 401 to the delicatessen department employees.

Upon the entire record, from my observation of the demeanor of the witnesses, and having considered the

post-hearing briefs submitted by the General Counsel and Respondent, I make the following:

FINDINGS OF FACT

I. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Extension of the Bakery Sales contract to Employees in the Delicatessen Department*

1. The evidence

Respondent operates a chain of retail food stores nationwide. Since 1962 it has operated a store in Bountiful, Utah, which is the only store involved herein. In June 1979³ the Bountiful store was converted into a so-called superstore. Prior to its conversion into a superstore the Bountiful store was approximately 20,000 square feet and was divided into the usual food store departments: Meat, produce, and grocery. In addition, it had a bakery department. The conversion into a superstore increased the store's size from 20,000 to 44,000 square feet and added several new departments: Camera, gift, pharmacy, variety, hardware, and delicatessen. In addition, the bakery was changed from a so-called scratch bakery where the basic ingredients are mixed from scratch to a bake-off bakery where only a few items are baked using ingredients mixed from scratch. Now virtually everything is made with frozen dough and premixed icings.

All of the employees employed in the Bountiful store, prior to its June conversion into a superstore, were represented by two unions. The grocery and produce department employees were represented by Meat Cutters Local 537 and covered by the Food Handlers Agreement between that Union and Respondent, effective November 1, 1977, to October 31, 1980. The meat department employees were also represented by Meat Cutters Local 537 in a separate bargaining unit and covered by the Meat Cutters Agreement between that Union and Respondent, effective November 1, 1977, to October 31, 1980. The bakery sales employees were represented by Bakery Workers Local 401 and covered by the Handshop Bakery Sales Agreement between that Union and Respondent, effective March 17, 1978, to May 2, 1981. Likewise, the bakery production workers were represented by Bakery Workers Local 401 and covered by the Handshop Bakery Production Agreement between that Union and Respondent, effective March 17, 1978, to May 2, 1981.

The Food Handlers Agreement provides in pertinent part that "the bargaining unit shall consist of all Foodhandlers employed by the Employer in its Bountiful, Utah, retail stores, except meat department employees, bakery production and sales employees"

The Meat Cutters Agreement contains a jurisdictional clause which reads as follows:

This contract shall cover, and the Union which is a party thereto shall have jurisdiction over, all employees as defined by the National Labor Relations Act who are engaged on the premises in receiving,

¹ The initial charge was filed on October 18, and was amended on December 3, 1979.

² In its answer Respondent admits that Bakery Workers Local 401 is a labor organization within the meaning of Sec. 2(5) of the Act, and that Respondent meets the Board's applicable discretionary jurisdictional standard and is an employer engaged in commerce within the meaning of Sec. 2(6) and (7) of the Act.

³ Unless otherwise stated, all dates herein refer to 1979.

handling, cutting, selling, processing, wrapping, pricing or displaying of meat, poultry, sausage, or fish, frozen, chilled or smoked.

The Handshop Bakery Sales Agreement provides in pertinent part that "the Employer recognizes the Union as the sole collective-bargaining agent for the Respondent's journeyman and apprentice bakery sales employees and the head salesclerk employed in the Employer's bakery shops operated in Salt Lake County." The record establishes that in practice the parties have applied the Handshop Bakery Sales Agreement to Respondent's stores located in Davis County, Utah, where the Bountiful store is located, as well as in Salt Lake County, Utah.

The Handshop Bakery Production Agreement provides in pertinent part that "the Employer recognizes the Union as the sole collective bargaining agent" for journeyman and apprentice bakers, cake and roll icers, cake decorators, janitors, and pan cleaners employed in Respondent's bakery shops located within Salt Lake, Weber, and Davis Counties, Utah.

In February members of management discussed Respondent's plans to open several new superstores in Respondent's Salt Lake division, the division in which the Bountiful store is located. The division's manager, Gene Lawson, asked the division's industrial relations manager, William Daly, to determine the best labor relations approach for the Company regarding the union representation of the employees who would be employed in the new delicatessen departments which Respondent intended to open in the new superstores.⁴ Thereafter, on a date unspecified in the record, Daly advised Lawson that there were no specific jurisdictional clauses in any of Respondent's collective-bargaining agreements which required Respondent to recognize a particular union as the bargaining representative of the delicatessen department employees. Lawson advised Daly that Respondent planned to open its first delicatessen department in the Bountiful store in either late June or early July and asked him to recommend how Respondent should proceed in this matter with respect to union representation of the delicatessen department employees.

On April 13 Lawson received a memorandum from Daly which reads as follows:

In a recent discussion you inquired as to the proper way to handle Deli sales.

After checking all contracts of the Salt Lake Division, we find that no union has specific jurisdiction over the sale of deli items. Of course, we could expect the Clerks who formerly stocked the deli counter to claim work has been taken from them as a result of our change in deli sales.

Since I am reluctant to extend jurisdiction to the Amalgamated Meat Cutters, because of their high rates, I feel it is in our best interest to get the most competitive rates possible.

Initially we should take the position that employees serving deli customers are non-union, as long as we do not use current in-store union personnel. We

should also make sure all equipment used in connection with the deli sales operation is kept away from the Meat Department, and use bakery coolers and storage as appropriate.

Our Bakery Sales rates are very favorable and it would be our intent to negotiate comparable rates for Deli Sales Clerks. We, of course, would not do this until we have heard from the unions claiming jurisdiction.

By following the above procedures we may end up with either the Retail Clerks having jurisdiction, or Bakery Sales. Either of these would be more desirable than tying in with the Meat Cutters.

Should you require additional information, please let me know.

On April 16, 1979, Lawson received another memorandum from Daly on the subject of the "new deli operation," in which, among other things, Daly recommended that Respondent "use non-union clerks to sell deli items since no union has jurisdiction over this function."

On May 16 Daly wrote Terry Powell, the secretary-treasurer of Bakery Workers Local 401, as follows:

In the near future we are planning on instituting an over-the-counter operation in conjunction with in-store bakeries. I would like to meet with you at your earliest convenience to discuss this proposed operation and how we may utilize Bakery Sales employees in performing this function.

Please give me a call to set up a meeting.

On May 29 Powell met with Daly at Daly's office at which time Daly indicated that Respondent intended to establish delicatessen departments in its new superstores. He showed Powell a blueprint outlining the floor plan of a delicatessen department which indicated that it would be located immediately adjacent to the bakery department. In describing the manner in which the delicatessen department would operate, Daly explained to Powell that Respondent intended to interchange sales employees back and forth between the bakeries and delicatessens and asked whether Powell could see any jurisdictional problems if the delicatessen department employees were accreted to the bakery sales contractual unit represented by Powell's Union. Powell indicated that he approved of this idea. Powell and Daly agreed that the delicatessen department employees would be covered by the bakery sales contract.⁵

⁵ Powell's and Daly's testimony about this meeting conflicts in only one significant respect. Daly testified that there was no agreement that the delicatessen department employees would be represented by Bakery Workers Local 401 and covered by its bakery sales contract. Powell testified that such an agreement was reached at this meeting. Powell impressed me as the more credible witness on this point, so I have credited his testimony. Moreover, the content of Daly's June 5 letter to Powell, which is set out in detail *infra*, supports Powell's testimony. The tenor of this letter is that the parties had already agreed that Bakery Workers Local 401 would represent the delicatessen department employees who would be covered by the parties bakery sales contract, and that all that was left was to reduce this verbal agreement into an addendum to the bakery sales contract.

⁴ Respondent previously had not operated delicatessen departments in any of its stores in this area of the country.

On June 5 Daly wrote Powell as follows:

Further to our meeting on May 29 in which we discussed the over-the-counter deli operation. We would like to proceed with this activity within the next few weeks.

You are to advise me as to what is required as an addendum to our current backpay contract in order to provide appropriate coverage for our employees under your bakery contract.

Initially we intend to begin deli operations at one of our stores in conjunction with the bakery, and subsequently plan to expand to other stores which contain in-store bakeries.

Please advise if we can proceed with this activity pending the addendum to our bakery contract.

On June 15 Daly and Powell entered into an addendum to the current Bakery Sales Agreement. The addendum reads as follows:

Bakery Sales Clerks will be used interchangeably between the Deli Sales operation and Bakery Sales operation. The function will entail over-the-counter sale of Bakery and Deli items. The rate of pay will be the same as the existing rate of pay for Bakery Sales Clerks, as follows:

[Pay rates for head deli and/or bakery clerk, apprentice, and journeyman positions, effective May 6 and November 4, 1979, and May 4 and November 2, 1980, omitted from publication.]

All other terms and conditions incorporated in our Bakery Sales contract with Local 401, effective 3-17-78 and expiring 5-2-81, will be in full force and effect for all employees engaged in the above classifications.

On June 28 the delicatessen department in the Bountiful store opened for business. It was staffed with five employees: Douglas Kay, Anita Whipple, Norma Treft, Mark Bigler, and Steven Louie. Louie was the department manager. The remaining four workers were salesclerks. None had worked for Respondent previously. Kay was hired June 16, Whipple and Treft were hired on June 17, and Bigler and Louie were hired on June 18. None of these employees were members of Bakery Workers Local 401 or had otherwise designated that Union to represent them as their collective-bargaining agent.

Early in October a representative from Meat Cutters Local 537 contacted Powell and Daly and, in essence, notified them that it was Meat Cutters Local 537's position that, pursuant to the jurisdictional provision in its current Meat Cutters Agreement covering Respondent's meat department employees, Meat Cutters Local 537, not Bakery Workers Local 401, had jurisdiction over the delicatessen department in the Bountiful store.

On October 8 Daly, by memorandum, notified Lawson about Meat Cutters Local 537's jurisdictional claim. This memorandum in pertinent part reads as follows:

Meat Cutters Local 537 called this morning regarding contributions into the Health & Welfare

fund for employees engaged in Deli operations in the Bountiful store. They are claiming jurisdiction of the Deli Sales operation on the premise that their jurisdiction language covers handling of all meat products within the store.

As you are aware, the reason we negotiated this agreement with Bakers Local 401 was to prevent having to pay Meat Cutter rates in our Deli Sales operation. I advised Bob Graham of Local 537 that I would get back to him regarding this matter.

I am of the opinion that since we have reached this agreement with Bakers Local 401 that any argument Local 537 has concerning jurisdiction would involve the right of Local 401 to claim jurisdiction over this unit. They will be notified accordingly.

On December 3, Powell wrote Meat Cutters Local 537, with a copy of this letter to Respondent's attorney, stating that Bakery Workers Local 401 was disclaiming its interest in representing Respondent's delicatessen department employees. The letter reads as follows:

This letter represents notice to Meatcutters Local 537 of the intention of Bakers Local 401 to withdraw as representative for Safeway Deli Employees. In researching the Meatcutters Contract with Safeway, we believe the Addendum Agreement between Safeway and Bakers Local 401 does not allow or give jurisdiction to Local 401. As the Business Representative for Local 401, I feel that due to my being new in this position at the time this Deli situation was presented to me by Mr. Daley [sic], Bakers Local 401 entered into an agreement unaware of the provisions provided for under the Meatcutters contract.

I hope this matter can be resolved between all parties involved and you can count on my full cooperation.

Best regards.

Bakery Workers Local 401 has in fact disclaimed its interest in representing the employees employed in the delicatessen department in the Bountiful store;⁶ However, Respondent has continued to abide by the terms of its agreement with Bakery Workers Local 401 covering those employees.

2. Conclusions

As discussed *supra*, Respondent recognized Bakery Workers Local 401 as the bargaining representative of its delicatessen department employees, and Respondent and Bakery Workers Local 401 extended their Handshop Bakery Sales Agreement to cover the delicatessen department employees at the Bountiful store even though the store was not open for business and no delicatessen employees were employed. Respondent in effect entered

⁶ On January 7, 1980, Powell, by letter to Respondent's attorney, reiterated Bakery Workers Local 401's position that it had disclaimed any interest in representing the delicatessen department employees employed by Respondent.

into a prehire contract which constitutes premature recognition in its barest form. It has long been settled that this type of conduct, absent accretion, unlawfully assists a union in violation of Section 8(a)(1) and (2) of the Act regardless of the employer's good faith or the absence of a question concerning representation. E.g., *Schreiber Trucking Company, Inc.*, 148 NLRB 697, 702-703 (1964); *General Cinema Corporation and Its Wholly Owned Subsidiary, Gentilly Woods Cinema, Inc.*, 214 NLRB 1074, 1075 (1974). Respondent's principal defense to this conduct is that the delicatessen department employees employed in the Bountiful store constitute an accretion to the unit of bakery sales employees covered by its Handshop Bakery Sales Agreement with Bakery Workers Local 401.⁷ The evidence pertinent to this defense has been set out and evaluated in the following section.

B. Accretion of the Delicatessen Department Employees to the Unit of Bakery Sales Employees

1. Applicable principles

The accretion issue has been aptly described by the court in *Lammert Industries, a Division of Componetrol, Inc., a Subsidiary of I-T-E Imperial Corporation v. N.L.R.B.*, 578 F.2d 1223, 1225, fn. 3 (7th Cir. 1978), in these terms:

An accretion is simply the addition of a relatively small group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity. The additional employees are then properly governed by the unit's choice of bargaining representatives. *N.L.R.B. v. Food Employers Council, Inc.*, 399 F.2d 501, 502-503 (9th Cir. 1968).

The question of "whether a group of employees [constitutes] an 'accretion' to an existing unit, so that the group is governed by the larger unit's choice of bargaining representatives, is similar to the issue of a particular unit's 'appropriateness' for purposes of bargaining." *N.L.R.B. v. Food Employers Council, Inc.*, 399 F.2d at 502. "Whether or not a particular operation constitutes an accretion or separate unit turns, of course, on the entire congeries of facts in each case." *The Great Atlantic and Pacific Tea Company Family Savings Center*, 140 NLRB 1011, 1021 (1963). In deciding whether a new group of employees is in an accretion to an existing bargaining unit, the Board not only considers such factors as functional integration, level of management control, similarity of working conditions, bargaining history, employee interchange, job skills and functions, and physical proxim-

ity, but also gives special weight to the interests of the unrepresented employees in exercising their own right to self-organization. See *N.L.R.B. v. Food Employers Council, Inc.*, 399 F.2d at 504. The Board, with court approval, has restrictively applied the accretion principle because it operates to abrogate the accreted employees' Section 7 rights; thus, an accretion, unlike an ordinary unit determination, requires a showing not only that the expanded unit is appropriate, but also that the smaller group of added employees would *not* itself constitute an appropriate unit. See *Sheraton-Kauai Corporation v. N.L.R.B.*, 429 F.2d 1352, 1354, 1355-57 (9th Cir. 1970), citing *Melbet Jewelry Co., Inc.*, and *I.D.S.—Orchard Park, Inc.*, 180 NLRB 107, 109-110 (1969). Accord: *N.L.R.B. v. Security Columbian Banknote Company, a Division of U.S. Banknote Corporation*, 541 F.2d 135, 140 (3d Cir. 1976); *Retail Clerks Local 588, Retail Clerks International Association, AFL-CIO [Raley's] v. N.L.R.B.*, 565 F.2d 769, 773 (D.C. Cir. 1977); *Meijer, Inc., a Michigan Corporation v. N.L.R.B.*, 564 F.2d 737, 742-743 (6th Cir. 1977). As the Board explained in *Melbet Jewelry*, 180 NLRB at 110, even though it might find an overall unit appropriate on a representation petition and, thus, give all employees included an equal voice in the initial representation decision, it will not, "under the guise of accretion, compel a group of employees, who may constitute a separate appropriate bargaining unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret ballot election or by some other evidence that they wish to authorize the [u]nion to represent them." Likewise, the court in *Westinghouse Electric Corporation v. N.L.R.B.*, 440 F.2d 7, 11 (2d Cir. 1971), in discussing the applicability of the accretion doctrine declared:

As a general rule, the accretion doctrine should be applied restrictively since it deprives the new employees of the opportunity to express their desires regarding membership in the existing unit. . . . And when the relevant considerations are not free from doubt, it would seem more satisfactory to resolve such close questions through the election process rather than seeking an addition of the new employees by a finding of accretion.

2. The evidence

a. Geographic proximity

The delicatessen and bakery departments are located immediately adjacent to one another in the front corner of the store, apart from the other food departments. However, they are separated by a wall.

b. Skills, duties, and functions

The bakery department sells bakery products, i.e., breads, cakes, rolls, doughnuts, pies, cookies, etc., which are prepared in the bakery. Virtually all bakery sales are made across the counter by bakery salesclerks who take the customers' orders, and then package and price the orders. There are only a minimal number of prepackaged items stocked in the bakery department and sold on a

⁷ I reject Respondent's further contention that the Board should defer to the arbitral process under *Collyer Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837 (1971), as, in my opinion, the underlying issue presented by this controversy is not contractual but, rather, relates solely to a question of accretion, which the Board has held is a matter solely within its competence to decide and, further, because, in view of the absence of any contractual provision providing for tripartite arbitration, Bakery Workers Local 401 and Meat Cutters Local 537 would not both be parties to the arbitral process. See *Retail Clerks Local 588, Retail Clerks International Association, AFL-CIO (Raley's)*, 224 NLRB 1638, 1640 (1976).

self-service basis during the time that bakery sales employees are on duty.

The delicatessen department sells 40 different kinds of luncheon meats and 125 other delicatessen items such as cheeses, fish products, hard boiled eggs, olives, pickles, salads, and hot items such as barbecued chicken, ham, or turkey, barbecued spareribs, macaroni and cheese, and hotdogs, all of which are prepared in the delicatessen department. In addition, sandwiches are prepackaged or made to order. All items in the delicatessen department are sold across the counter by the delicatessen employees. Nothing is sold on a self-service basis. The luncheon meats and cheeses are sliced to order and then weighed, priced, and packaged. Likewise, virtually all of the other delicatessen items are sold in bulk and weighed, priced, and packaged for the customers by the delicatessen department employees. The various hot foods are prepared by the delicatessen department employees, who also prepare the prepackaged sandwiches.

The record also establishes that on a self-service basis either the grocery and/or the meat department sells fish products, cheeses, and salads which are prepackaged, priced, and displayed by meat department employees. Also, these departments carry a variety of luncheon meats of which 95 percent have been prepackaged at various packing houses, but which are price marked and stocked by meat department employees. The only luncheon meats cut to order for customers by meatcutters are salami and bologna. The rest is sold on a self-service basis. Finally, the record also reveals that for approximately a 5-year period ending early in 1979 chicken and ribs were barbecued in the meat department by meat department employees and displayed in that department.

The job duties of the delicatessen department employees are as follows: They prepare coffee, salads, and the hot deli items described previously, and display the food sold in the department. While waiting on customers, they slice cheeses and luncheon meats, make sandwiches to order, dish out salads or hot meals, prepare party trays, or simply sell prepackaged sandwiches or doughnuts and coffee. They are also responsible for keeping the department clean. The department contains the following equipment used by the delicatessen employees: A hotdog rotisserie, steam table, coffeemaker, soda dispenser, rotisserie oven, and slicer. The employees employed in the delicatessen department spend most of their time waiting on the public.

The job duties of the bakery salesclerks are to display the bakery products, clean the department, and wait on the customers. While waiting on the customers, they package and price the bakery goods. On rare occasions they will decorate a cake or ice doughnuts. They also use the bread slicer in the department to slice bread upon the customer's request. Like the delicatessen department employees, they spend most of their time waiting on the public.

The record also establishes that no prior experience is necessary for either a delicatessen or a bakery salesclerk and that the skills necessary for either position are acquired by on-the-job training in a short period of time. The most important skill required for both jobs is the ability to meet and deal with the public.

c. *Interchange of employees*

The bakery department's sales employees frequently work in the delicatessen department on an unscheduled basis performing the usual duties of delicatessen department employees. Likewise, the delicatessen department employees work frequently in the bakery department on an unscheduled basis performing the usual duties of the bakery salesclerks. Thus, during busy periods bakery sales employees help out in the delicatessen department and employees from that department help out in the bakery department. Also, since there is usually only one salesclerk employed in the bakery and one in the delicatessen during the 8-hour night shift, the bakery salesclerk takes care of the delicatessen's customers as well as the customers from the bakery when the delicatessen department employee has a coffee or meal break. Likewise, the delicatessen department employee takes care of the bakery's business as well as that of the delicatessen when the bakery salesclerk on the night shift takes a coffee or meal break or otherwise leaves the department. In addition to the aforesaid unscheduled interchange between the bakery sales and delicatessen department employees, which occurs on a regular basis, there is employee interchange between these two departments which occurs less frequently on an emergency basis; i.e., when an employee is absent from work due to illness or for personal reasons. If a bakery sales or delicatessen department employee is not available in these emergency situations, a grocery clerk is called upon to work either in the bakery or delicatessen, whichever department is short-handed.

Initially, during the first 5 months of the delicatessen department's operation, there was no *scheduled* interchange between the bakery sales employees and delicatessen department employees.⁸ The only interchange was the above-described regularly unscheduled interchange and emergency interchange. It was not until the week ending November 24, 1979, that the first instance of scheduled interchange took place when delicatessen department employee Kelly was scheduled to work 20 of her 37 scheduled hours in the bakery department.⁹ Thereafter, two of the store's three bakery sales employees were regularly scheduled to work in the delicatessen department and two of the store's five delicatessen department employees were regularly scheduled to work in the bakery department.¹⁰ They did in fact work in the

⁸ Store Manager Lefevre testified that initially there was no regularly scheduled interchange between the bakery sales and delicatessen department employees because the Company was training employees in both departments to assume the positions of delicatessen department manager and bakery department manager in other superstores which were scheduled to open in the immediate future; thus, there was a surplus of help during this period in the delicatessen and bakery, and as a consequence it was unnecessary to regularly schedule bakery sales employees to work in the delicatessen and delicatessen department employees to work in the bakery. I have credited this testimony inasmuch as Lefevre impressed me as an honest witness and his testimony, considered in the context of the whole record, is not inherently implausible.

⁹ Kelly did not in fact work in the bakery department that week inasmuch as Respondent's records show that she worked all of her scheduled hours in the delicatessen.

¹⁰ The four employees who interchanged were employees who normally worked on a regular part-time basis. Those bakery salesclerks and delicatessen department employees employed on a full-time basis are not

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bakery and delicatessen departments as scheduled and perform the work normally performed in those departments.

There has been no permanent or temporary transfers of employees between the bakery and delicatessen departments.

One grocery department employee, Moss, transferred permanently into the bakery as a salesclerk and another grocery department employee, Meachum, permanently transferred into the delicatessen. Also, a meat department wrapper, Long, worked regularly as a management trainee in the delicatessen for the first 4 or 5 months of its operation. No delicatessen department employee or bakery sales employee has transferred into the grocery or meat department or otherwise has been assigned to work in those departments.

d. *Functional integration*

Respondent's retail operations manager, Michelson, testified that the reason the delicatessen in the Bountiful store was placed adjacent to the bakery was that Respondent's in-store bakeries were marginal operations and management thought that by placing a delicatessen next to the bakery it would make the bakery a more profitable department. Michelson further testified that it was management's expectation that, because the items offered for sale by these two departments are compatible and similar in nature, the sales made in one department would stimulate sales in the other. It is management's intent, Michelson testified, to eventually integrate the operations of these two departments into one. Presently, however, the bakery and delicatessen departments are treated in a number of significant respects by Respondent as separate and distinct departments. Like the store's other departments, as described *infra*, they have separate department managers and merchandising managers. Employees are classified as either bakery or delicatessen department employees. Each department maintains its own employee work schedule and separate books of account and business records which deal with such matters as labor costs, purchases, and sales. Further, when the delicatessen uses bread or rolls from the bakery to make sandwiches, they are shown as a purchase on the delicatessen's books and as a sale on the bakery's books. Also, all items purchased by customers in the bakery are checked out on the cash registers as bakery items, whereas all items purchased in the delicatessen are checked out as delicatessen items.

The evidence of operational integration between the bakery and delicatessen departments is as follows: As discussed *supra*, there is interchange between the employees employed in those departments on a regular basis during the ordinary course of business; a half-dozen pastries prepared in the bakery department are displayed for sale in the delicatessen department; sandwiches prepared to order in the delicatessen are made with bread or rolls baked in the bakery; the prepackaged sandwiches displayed in the delicatessen are made with bread or rolls

baked in the bakery;¹¹ customers who purchase items in the delicatessen or bakery pay for their purchases at a cash register located in the delicatessen if they intend to eat them on the premises, and even when they make purchases to take home they may pay for them at the delicatessen's register, whereas all other purchases made in the store must be checked out via the general checkout cash registers at the front of the store.

In connection with the subject of food consumption on the store premises, the record reveals that in approximately January 1980, when Respondent discovered that its delicatessen department was losing money, it decided to try to increase business in both the delicatessen and bakery by encouraging customers to eat delicatessen and bakery items on the premises. It did this by installing a soft drink dispenser, a coffeemaker, a hotdog rotisserie, and a display of several pastries from the bakery in the delicatessen, and setting up a table with chairs in the area in front of the bakery and delicatessen and ordering an additional table with chairs. Since it was necessary to have customers who ate their food on the premises pay for it immediately, a cash register was installed in the delicatessen which, as described above, was also used for other delicatessen or bakery purchases instead of the general checkout registers. Thus, a customer may now purchase a pastry from the bakery or from delicatessen, a cup of coffee or soft drink from the delicatessen, or a sandwich which is made with bakery bread or rolls from the delicatessen, and sit down at a table situated in the area of the bakery-delicatessen to eat his purchases.

e. *Working conditions*

The terms of employment of the bakery sales employees and delicatessen department employees, i.e., wages and fringe benefits, are identical because they are governed by Respondent's Handshop Bakery Sales agreement with Bakery Workers Local 401. As noted previously, the reasons Respondent's Industrial Relations Manager Daly contacted Secretary-Treasurer Powell of Meat Cutters Local 401 and suggested that Powell agree to accrete the delicatessen department employees to the unit of the Company's bakery sales employees and cover them under the Handshop Bakery Sales Agreement "was to prevent having to pay Meat Cutters rates in [Respondent's] Deli operation." Also, Powell testified that the reason he agreed to this suggestion was that it afforded Meat Cutters Local 401 an opportunity to enlarge its membership. Under these circumstances I do not believe that the similarity of the wages and fringe benefits being paid to the delicatessen department and bakery sales employees is a significant factor in determining whether the delicatessen department employees constitute a normal accretion to the unit of bakery sales employees.

The delicatessen department and bakery sales employees wear the same uniforms which differ from the uniforms worn by the store's other employees.

The store is open 24 hours daily. The bakery, delicatessen, and meat departments are staffed with salesper-

scheduled to work in departments other than their own, but regularly interchange, as described above, on an unscheduled and emergency basis.

¹¹ This practice commenced on April 23, 1980, the day before the hearing in this case.

sons during approximately the same hours, from about 7 or 8 a.m. to 9 or 10 p.m.

All of the store's employees, including the bakery sales employees and delicatessen department employees, share common break and restroom facilities and use the same timeclock.

f. Supervision

Each department in the store has its own department manager who is responsible to the store manager. The bakery sales manager, who is the baker covered by the bakery production contract between Respondent and Bakery Workers Local 401, spends most of the time doing bakery production work. The delicatessen department manager spends most of the time performing the same work as the other employees in that department. In addition, the bakery sales manager and the delicatessen department manager order the supplies for their departments and train and direct the work of the employees in their departments. They also make out their employees' work schedules¹² and have the authority to allow employees in their departments to leave work early. The bakery manager and delicatessen manager, like the other department managers, are responsible to the store manager. It is the store manager who polices the work in the various departments to make sure that it is being performed in conformance with the Respondent's policies. He has the sole authority to discipline employees. All interviewing and hiring of job applicants is done by the division's employment representative.

Each of the store's departments, including the bakery and delicatessen, has its own divisional merchandising manager who provides the departments with technical assistance. When the delicatessen department first opened, late in June 1979, its merchandising manager was present in the department regularly, until the fall, training the employees in their work and assisting the delicatessen manager.

g. The size of the delicatessen department's employment complement

The parties stipulated that on June 28, 1979, the date the delicatessen department opened for business, it employed five employees, including the department manager, and the bakery department employed four salesclerks.

Respondent's records show that for the weeks ending July 21 and 29 the delicatessen department employed five employees, which included the department manager and a management trainee, and that the bakery department employed five salesclerks.

Respondent's records show that during November and December the delicatessen department employed five employees, which included the department manager and

¹² Since December 1979, when the interchange between the bakery sales and delicatessen department employees commenced on a regularly scheduled basis, the managers of these departments have prepared their weekly department work schedules only after consulting with one another.

a management trainee,¹³ and the bakery department employed three salesclerks.

In summation, the record, when viewed most favorably to Respondent, that is, by excluding the manager of the delicatessen department and the management trainee, reveals that the Bountiful store's delicatessen department normally employs either the same number or a greater number of employees than the number of salesclerks employed in the bakery. However, as described previously, the bargaining unit of Respondent's bakery salesclerks represented by Bakery Workers Local 401 encompasses not just the Bountiful store employees, but all of the bakery salesclerks employed by Respondent in its several stores located in Salt Lake and Davis Counties, Utah. Under these circumstances I agree with Respondent that the General Counsel has not established that this is a situation where the employees sought to be accreted numerically overshadow the existing bargaining unit.

h. Bargaining history

The delicatessen department in the Bountiful store was the first one operated by Respondent in this area; thus, there is no history of bargaining for these workers between Respondent and a labor organization.

3. Conclusions

The evidence herein when evaluated in the light of the applicable legal principles has led me to conclude that the Bountiful store's delicatessen department employees are an accretion to the bakery sales bargaining unit represented by Bakery Workers Local 401. In reaching this conclusion, I was influenced by the following considerations taken in their totality:

(a) The delicatessen department evolved out of Respondent's genuine desire to make its bakery department into a more profitable operation by placing it immediately adjacent to the newly opened delicatessen department in order to stimulate sales in the bakery department and vice versa.

(b) The delicatessen department is situated immediately adjacent to the bakery department at the front corner of the store and these departments are located apart from the other food departments.

(c) The degree of employee interchange to and from the bakery and delicatessen departments is substantial and takes place not only in emergency situations, but on a daily and scheduled basis during ordinary business conditions and involves 11 of the employees employed in these departments.¹⁴ The extensive interchange between the employees in the delicatessen and bakery, the close proximity of these two departments, and their separation from the other food departments, when taken together, is

¹³ Department Manager Trefl's name does not appear on Respondent's records for November, and appears in only one of the weeks in evidence for December due to the fact that during the latter part of 1979 and in 1980 she was absent from work for a significant period of time due to an injury.

¹⁴ Although only regular part-time employees are regularly scheduled to interchange, the record shows that the full-time bakery salesclerks regularly work in the delicatessen and that the full-time delicatessen workers regularly work in the bakery during busy periods and during the night shift.

calculated to create significant common employment interests and a sense of solidarity among the employees employed in the bakery and delicatessen.

(d) The delicatessen and bakery departments are operationally integrated in certain significant respects: the delicatessen department employees give assistance to, and receive the same from, employees in the bakery department during the ordinary course of business.¹⁵ The delicatessen department obtains its bread and rolls from the bakery; the weekly work schedules of the departments are prepared jointly; the customers who make purchases from the delicatessen or the bakery may check out their purchases from these departments using a cash register located in the delicatessen, whereas all other food purchased in the store must be checked out through the general checkout registers; and a customer who has a meal or snack seated at the table in the bakery-deli area may have purchased a pastry which originated in the bakery, a drink which originated in the delicatessen and a sandwich or hot dog which originated in the delicatessen but was made with bread or rolls which originated from the bakery.

(e) The employees employed in the delicatessen department wear the same uniforms as the bakery sales employees and work the same hours.

(f) The bakery sales employees and delicatessen department employees are not required to have prior experience, but, rather, are trained on the job and acquire the skills of their job after a short period of training. Their jobs are unskilled. Besides waiting on customers they stock display cases, do cleanup work, and price and wrap customer's purchases. I recognize that the delicatessen department employees, as described in detail *supra*, have a number of duties not performed by the bakery sales employees. However, in evaluating whether delicatessen department employees have a community of interest with bakery sales employees by virtue of their common skills and job functions, the fact that delicatessen department employees perform certain duties not done by the bakery sales employees is outweighed by the fact that bakery sales and delicatessen department employees, unlike the store's other food department employees, constantly wait on customers and fill their special orders. The primary duty of the bakery sales employees and the delicatessen department employees is the same—to wait on customers and to fill their special orders. This is in sharp contrast to the primary duties of the employees employed in the other food departments in the store who, since they work in self-service departments, are only incidentally involved in customer service.

(g) Although the bakery and delicatessen departments, like the other departments, have their own department managers, neither manager exercises more than minimal authority in personnel matters.¹⁶ Their authority is limited

¹⁵ This occurs during busy periods, and, more significantly, since there is only one salesperson employed in each department on the night shift, it is essential for the continued operation of these departments for the employees to assist one another when they leave their departments for coffee or meal breaks or for whatever reason.

¹⁶ There is insufficient evidence to establish that they have a single indicia of a statutory supervisor within the meaning of Sec. 2(11) of the Act.

ed to preparing the employees' weekly work schedules, training new employees, permitting employees to leave work early, and directing the work of the employees.¹⁷ The division employment representative interviews and hires applicants for employment, and the store manager otherwise exercises authority over personnel matters, including the disciplining of employees.

On the basis of the foregoing, I find that the delicatessen department employees employed by Respondent in its Bountiful store constitute a normal accretion to the existing bargaining unit of bakery sales employees represented by Bakery Workers Local 401, and were properly treated as such by Respondent and Bakery Workers Local 401.¹⁸ I recognize, as pointed out by the General Counsel, that the delicatessen department was initially staffed by a new work force which numerically outnumbers the bakery sales employees;¹⁹ that each department has a separate manager, purchases its own merchandise, maintains separate books of account, sells different products, that a certain amount of interchange exists between the grocery and delicatessen departments;²⁰ and that the bakery sales and delicatessen employees share common break and restroom facilities with the other store employees and use the same timeclock as the other store employees. Nevertheless, the other considerations discussed *supra*, have persuaded me that the delicatessen department employees do not constitute an appropriate bargaining unit, either by themselves or together with the meat department employees,²¹ and those same consider-

¹⁷ Since the work performed by the employees in the bakery and delicatessen departments is of a routine nature, the department managers spend very little of their working time directing the employees' work. In this regard it is undisputed that the delicatessen department manager spends most of the time doing the same work as the other employees and that the bakery sales manager, who is a baker, spends most of the time performing the duties of a baker.

¹⁸ In evaluating the evidence to decide whether the delicatessen department employees constitute an accretion to the unit of bakery sales employees, I have not given any weight to Bakery Workers Local 401's subsequent disclaimer because its basis for disclaiming its representative status stemmed from its belief that the delicatessen department employees fell within the jurisdiction of Meat Cutters Local 537. In similar circumstances the Board has held: "We are not bound by jurisdictional arrangements of unions." *Seaway Food Town, Inc.*, 171 NLRB 729, 730 (1968). See also *East Manufacturing Corporation*, 242 NLRB 5 (1979).

¹⁹ Even though the delicatessen department employees outnumber the bakery sales employees at the Bountiful store, the General Counsel has not established that delicatessen department employees numerically overshadow the unit of bakery salesclerks involved herein inasmuch as, as found *supra*, the bakery sales unit is larger than the number of bakery sales employees employed in the Bountiful store. In any event, even assuming that the unit of bakery sales employees is limited to the Bountiful store, I am persuaded that the disparity in numbers between the delicatessen department employees and bakery sales department employees employed in that store is not so significant so as to preclude a finding of an accretion under all of the circumstances of this case.

²⁰ This interchange occurs only during emergency situations and is only from the grocery department into the delicatessen. There is no evidence of delicatessen employee's working in the grocery department or any department other than the bakery.

²¹ A unit of delicatessen and meat department employees is not an appropriate one where, as here, there is a lack of interchange between these departments, they are located in different areas of the store, they have different managers, and the delicatessen department employees need not possess, and do not in fact utilize in their work, the skills and knowledge required of the meat department employees. In this last regard, although the delicatessen department employees handle and slice luncheon meats

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ations demonstrate that the community of interest of the delicatessen department employees is so clearly identified with the bakery sales employees so as to require their inclusion in that bargaining unit.

It is for the reasons set forth above that I find that the delicatessen department employees are so clearly identi-

and cheeses and perform their work which the meat department employees perform now or have done in the past, they have neither the training in, nor the need to use, the skills required of the employees in the meat department. Rather, their primary function is to wait on customers and prepare customers' special orders, whereas this duty is only incidental to the primary functions of the meat department employees.

fied with the bakery sales employees so as to require their inclusion in that bargaining unit.

It is for the reasons set forth above that I find that the delicatessen department employees employed by Respondent at its Bountiful store do not constitute a group entitled to separate representation or representation with the meat department employees, and that their employment interests are such as to constitute them an appropriate part of and an accretion to the bakery sales unit represented by Bakery Workers Local 401.

[Recommended Order for dismissal omitted from publication.]