Albertson's, Inc. *and* Dorothy Robinson, Petitioner and United Food and Commercial Workers Union Local No. 1439, chartered by United Food and Commercial Workers International Union, AFL–CIO, CLC. Case 19–RD–2920

April 28, 1992

DECISION ON REVIEW AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

Pursuant to a petition for decertification filed on October 24, 1990, by Dorothy Robinson, an individual (the Petitioner), on February 6, 1991, the Regional Director for Region 19 of the National Labor Relations Board issued a Decision and Order dismissing the petition for a decertification election in a unit of customer service employees at three stores of Albertson's, Inc. (the Employer).[1]

Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision. On May 3, 1991, the Board granted the request for review, finding that it raised substantial issues warranting review.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The petition seeks a decertification election in a unit of all customer service employees, also known as courtesy booth employees, employed by the Employer at three of its seven stores in the Spokane, Washington area. The Union contends that the certified unit has been merged into a larger, previously existing unit of grocery, produce, bakery sales, delicatessen, and general merchandise employees employed by the Employer in its Spokane stores. The most recent contract between the Employer and the Union for the larger unit had a term of October 4, 1987, to October 6, 1990.

Following the August 10, 1989 certification of the unit of customer service employees, the Employer and the Union exchanged correspondence with regard to the merging of the newly certified unit into the larger preexisting unit. By letter dated November 28, 1989, the Employer proposed a merger of the units, and stated its intention to apply to the customer service employees the contractual wage rates stated in appendix D of the contract. The parties met on December 5, 1989, to discuss the merger and the Union (apparently objecting to the proposed wage rate) allegedly threatened a strike. The Employer filed a grievance with respect to this threat. By letter dated December 12, 1989, the parties agreed to a merger of the units. The parties disagreed, however, as to the rate the customer service employees should be paid. The Union contended that the higher wage scale set forth in appendix A of the contract rather than the rate in appendix D was applicable to those employees. On August 22, 1990, the parties agreed to submit the issue of the appropriate wage rates to an arbitrator and the Employer agreed to withdraw its grievance concerning the threat. Thereafter, in a June 27, 1991 opinion Arbitrator Ross R. Runkel ruled that the Employer's failure to pay appendix A rates did not violate the collective-bargaining agreement.[2]

Undisputed testimony establishes that the Employer has applied all the other terms and conditions of employment of the collective-bargaining agreement to the customer service employees, and has been making trust fund payments, including pension fund payments, on their behalf since 1989.

The Regional Director dismissed the petition because he found that there had been a merger of units and, accordingly, the petition for an election in the smaller, recently certified unit of customer service employees was inconsistent with the Board's longstanding policy as to the appropriate unit in a decertification election must be coextensive with the currently recognized and established bargaining unit.

Recently in *West Lawrence Care Center*, 305 NLRB 894 (1991), we found that the unusual circumstances of that case brought it within the exception to the aforementioned policy. The unit in *West Lawrence* had been a single-employer unit for approximately 15 years. For less than a year prior to the filing of the decertification petition, the unit was included in what purported to be a multiemployer unit. In directing an election in the single-employer unit, we balanced the interest in stable collective-bargaining relationships with the interest in assuring freedom of choice for unit employees. We struck the balance in *West Lawrence* in favor of freedom of choice because of the comparative length of time in which the employees had been a single-employer unit (15 years) versus the time they were actually part of the multiemployer unit (9 months). In doing so, we distinguished *Wisconsin Bell*, 283 NLRB 1165 (1987), where the Board had dismissed a petition for an election in a smaller, previous unit. There, the smaller unit existed for only 11 days prior to the merg-

[1] The unit consists of:

All customer service employees (also called courtesy booth employees) employed by the Employer at the Northwest Boulevard store, the Pines Road store, and the Hastings store, located in Spokane, Washington, but excluding all other employees, office clericals, guards and supervisors as defined in the Act.

[2] We grant the Employer's motion, to which there are no objections, to make the arbitrator's opinion and award part of the record. The parties limited the question before the arbitrator to whether the Employer must pay Appendix A rates. The arbitrator did not decide what the proper rate was because he concluded that issue was not presented to him.

er into the larger unit. The larger or merged unit functioned thereafter for more than a year and a half before the petition was filed.

The instant case is factually similar to *Wisconsin Bell*. The customer service unit here was in existence for only 4 months before its merger into the larger unit, and that merged unit functioned for 10 months before the instant petition was filed. In contrast to *West Lawrence*, where the smaller, single-employer unit was merged into an alleged multiemployer unit, the larger unit here like the larger unit in *Wisconsin Bell* is composed entirely of the Employer's employees.

The relative duration of the units was not the only factor we considered in striking the balance in *West Lawrence*. As we stressed in *West Lawrence*, the facts there were ''unusual to say the least.'' Thus, notwithstanding the appearance of a multiemployer bargaining unit, the parties actually bargained on a ''coordinated'' rather than multiemployer basis. In contrast, the instant case, like *Wisconsin Bell*, involves nothing less than a full merger of the units. Indeed, here the parties agreed on merger and bargained consistent with that agreement.

The larger unit here is composed entirely of the Employer's employees and has existed longer than the smaller unit. Thus, where the balance in *West Lawrence* was struck in favor of the smaller unit with its 15-year longer history, the balance here favors the merged unit with its longer collective-bargaining history in much the same way and for the same reasons as it favored the merged unit and its history in *Wisconsin Bell*.

Accordingly, as the current larger unit has existed longer than the smaller unit, as there is a fully agreed-upon merger of the units, and as there is no significant history of bargaining on a narrower basis, we find that the balance here, like the balance in *Wisconsin Bell*, must be struck in favor of the current larger unit.[3] We find that the larger, currently recognized unit contract bars the processing of this petition and, accordingly, we shall dismiss this petition.

ORDER

The decision of the Regional Director is affirmed and the petition is dismissed.

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[3] For the reasons noted in his dissent in *West Lawrence*, Member Devaney would have dismissed the petition there based on *Wisconsin Bell*. As the result here is consistent with that position, Member Devaney concurs in the result here.