

Bashas', Inc. and United Food and Commercial Workers' International Union Local 99, AFL-CIO, CLC, Petitioner. Case 28-RC-5973¹

June 26, 2002

DECISION ON REVIEW AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND COWEN

On August 23, 2001, the Regional Director for Region 28 issued a Decision and Direction of Election in which he found appropriate the petitioned-for multifacility unit of meat department and wall-deli department employees in the Employer's 17 "Food City" stores located in Maricopa County, Arizona. Thereafter, in accordance with Section 102.67 of the Board Rules and Regulations, the Employer filed a timely request for review. The Employer contends that the petitioned-for multifacility unit is inappropriate and that a unit of all stores in its Food City administrative division is appropriate. The Petitioner filed an opposition.

On October 5, 2001, the Board granted the Employer's request for review.² The Employer and the Petitioner filed briefs on review.

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

Having carefully considered the entire record in this proceeding, including the parties' briefs on review, we reverse the Regional Director's finding that the Maricopa County unit is appropriate.

I. FACTS

The Employer, headquartered in Chandler, Arizona, operates 101 grocery stores, primarily in the State of Arizona. The stores are organized into separate administrative divisions based largely on marketing format. Twenty-two stores currently operate under the Food City format. Four stores operate as "Bashas' Mercado" and will soon be added to the Food City format. These 26

stores comprise the Food City division, which is headed by a single vice president.³

The 17 petitioned-for Food City stores operate in Maricopa County, which is situated in south central Arizona and which includes Phoenix. The five remaining Food City stores operate in three other Arizona counties. Two stores operate in Pinal County, which is adjacent to Maricopa County: the Casa Grande store, which the Petitioner does not seek to represent, and the Apache Junction store, which the Regional Director found to be an appropriate single-store unit in Case 28-RC-5974. South of Pinal County is Pima County, the location of the Tucson store, which the Regional Director found to be an appropriate single-store unit in Case 28-RC-5975.⁴ The final two Food City stores are located in Mohave County, in northwestern Arizona, along the California border, in the towns of Bullhead City and Lake Havasu.⁵ The four Bashas' Mercado stores that the Employer plans to add to the Food City format are located in southeastern Arizona, near the Mexican border in Santa Cruz and Cochise Counties.⁶

The Employer maintains common labor relations policies and has centralized management over all stores, regardless of format. However, the store manager at each store retains significant local autonomy over daily personnel and operational decisions. The store manager separately supervises the employees in each store and does not have supervisory authority over any other store. Although store groups share a certain format and common operational policies, each individual store functions independently.

The skills and duties of the meat department and wall-deli department employees, and their terms and conditions of employment, are largely uniform among all stores. Employees generally receive the same benefits. Wage rates vary among formats, with the Food City stores appearing to have the lowest average rate for comparable meat department and wall-deli department classifications. Some permanent interchange among stores has occurred, but temporary interchange is virtually nonexistent.

¹ This case was originally consolidated by the Regional Director with Cases 28-RC-5974 and 28-RC-5975. As explained below, the latter two cases were severed and remanded to the Regional Director by the Board on October 5, 2001.

² The Regional Director also found appropriate two petitioned-for single-store units of Food City meat department and wall-deli department employees: Apache Junction (Case 28-RC-5974) and Tucson (Case 28-RC-5975). The Board's Order of October 5, 2001, denied the Employer's request for review of these findings, severed the cases, and remanded them to the Regional Director. Further, the Board's Order of October 5, 2001, denied review of the Regional Director's finding that the meat and wall-deli departments constitute an appropriate unit.

³ In addition, six stores operate as "AJ's Fine Foods" and comprise the AJ's Fine Foods division, which is headed by another vice president. Sixty-eight stores operate as "Bashas'" and are administratively grouped into four regional divisions, each headed by a regional vice president. A single store operates as "Eddie's Country Store" and is included in one of the "Bashas'" regional divisions.

⁴ As noted above, on October 5, 2001, the Board denied the Employer's request for review of the Regional Director's finding that the single store units in Apache Junction and Tucson are appropriate.

⁵ The Petitioner does not seek to represent these stores.

⁶ The Petitioner does not seek to represent these stores.

II. ANALYSIS

The Regional Director found the petitioned-for Maricopa County Food City store unit appropriate, relying on the fact that all 17 stores are located in Maricopa County. He emphasized that the petitioned-for stores are relatively close to the Employer's Chandler headquarters, and pointed out that the furthest petitioned-for store from Chandler is less than 40 miles away. The Regional Director also relied on evidence that the Petitioner has bargained with other employers on a countywide basis and that many counties have separate food-handling laws that grocery store employees must observe.

We find, contrary to the Regional Director, that the petitioned-for multifacility unit of Food City meat department and wall-deli department employees in Maricopa County is not an appropriate unit for bargaining. Our reasons are as follows.

In determining whether a petitioned-for multifacility unit is appropriate, the Board evaluates the following factors: employees' skills and duties; terms and conditions of employment; employee interchange; functional integration; geographic proximity; centralized control of management and supervision; and bargaining history. *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *NLRB v. Carson Cable TV*, 795 F.2d 879, 884 (9th Cir. 1986). Evaluating these factors, we find that a unit limited to the Maricopa County Food City stores is an arbitrary grouping of employees inasmuch as the evidence fails to establish that the employees in the unit share a community of interest distinct from that shared by employees in all Food City stores.

The 17-store unit found appropriate does not conform to any administrative function or organizational grouping. The unit employees at the 17 stores do not share common supervision separate from employees at other stores. The employees in each store are supervised separately from all other stores by a local store manager who has significant local autonomy. No significant interchange occurs among the Maricopa County unit stores⁷ and the stores are not functionally integrated. Finally, there is no significant evidence of bargaining history. While the employees in the unit found appropriate are subject to common labor relations policies and centralized management, so are all the Food City store employ-

ees. While they share common skills, duties, and similar terms and conditions of employment, so do the employees in all Food City stores.

The Regional Director gives significant weight to the geographic location of the stores, emphasizing that they are all located in Maricopa County and clustered near the Employer's Chandler headquarters. We find, however, that grouping stores on a countywide basis in this case does not constitute a coherent geographic unit, where there is at least one other store—the Casa Grande Store—in close geographic proximity to other stores in the unit, and where there is no other basis for excluding the Casa Grande store other than the fact it is not in Maricopa County. Although stores within a coherent geographic grouping, such as a countywide store unit, may in certain circumstances constitute an appropriate multifacility unit,⁸ we find it significant that the unit here fails to include the Employer's close by Casa Grande store. Located in the county adjacent to Maricopa County, the Casa Grande store is only 32 miles from Chandler⁹ and is part of the same "metropolitan statistical area" as Maricopa County.¹⁰ The proximity of Chandler to the Casa Grande store is comparable to the 30 miles from Chandler to Glendale, site of a Food City store included in the petitioned-for unit.¹¹ In these circumstances, the mere fact that the 17 petitioned-for stores are all in the same county is insufficient to establish the appropriateness of this unit.

We also find that the evidence of countywide bargaining is insufficient to render the petitioned-for unit appropriate. The Petitioner presented evidence of countywide bargaining with other employers, but the Petitioner is not following that pattern with this Employer. In Pinal County, the Petitioner elected to seek a single-store unit of the Apache Junction store rather than a countywide unit that includes the Casa Grande store, the only other Food City store in Pinal County. The Petitioner's organizing of the Pinal County stores in this manner is inconsistent with a pattern of countywide bargaining. We find, therefore, that the evidence of bargaining patterns

⁸ See, e.g., *See's Candy Shops*, 202 NLRB 538 (1973).

⁹ *Rand McNally Standard Highway Mileage Guide*, 445 (17th ed. 1997).

¹⁰ Maricopa and Pinal Counties constitute the Phoenix-Mesa, Arizona "metropolitan statistical area" as applied by the U.S. Census Bureau. See U.S. Census Bureau, *Statistical Abstract of the United States 2000* 916 (120th ed. 2000). A metropolitan statistical area is a statistical measure used by the U.S. Census Bureau to collect information about a metropolitan area. *Id.* at 908. A metropolitan area such as the Phoenix-Mesa, Arizona statistical area is defined as a "core area containing a large population nucleus, together with adjacent communities having a high degree of economic and social integration with that core." *Id.*

¹¹ *Rand McNally Standard Highway Mileage Guide* at 445.

⁷ It is undisputed that there is virtually no temporary interchange among the petitioned-for stores. The Petitioner emphasizes evidence of permanent transfers, noting that of the approximately 50 transfers involving the petitioned-for unit, only 4 were to or from stores outside the unit (3 were to the Tucson store and 1 to the Casa Grande store). However, permanent interchange is a less significant indicator of community of interest, and thus is given less weight by the Board in deciding unit scope issues. See, e.g., *Red Lobster*, 300 NLRB 908, 911 (1990).

does not support a countywide unit in Maricopa County.¹²

In conclusion, we find that the evidence fails to establish that the petitioned-for Maricopa County unit employees share a sufficient community of interest based solely on the fact that they are in the same county. The unit does not conform to any administrative function or grouping. The stores share no common supervision. There is no substantial functional integration or significant interchange among the 17 stores. And the stores are not a geographically coherent group in light of the exclusion of the nearby Casa Grande store. We conclude, therefore, that in these circumstances, the petitioned-for Maricopa County unit does not constitute an appropriate multifacility unit. See *Alamo Rent-A Car*, 330 NLRB at 898 (two of four facilities in San Francisco not appropri-

ate absent evidence of administrative or functional grouping of the proposed unit, substantial interchange or significant functional integration between the two facilities, and common supervision between the two facilities); *Acme Markets*, 328 NLRB 1208 (1999) (statewide units not appropriate).

We find it unnecessary to decide the appropriate unit or units, since the Petitioner has not indicated a willingness to proceed to an election in a unit different than the one found appropriate by the Regional Director. We, therefore, remand the case to the Regional Director for further appropriate action.

ORDER

The Regional Director's Decision and Direction of Election is reversed. This case is remanded to the Regional Director for further appropriate action.

¹² In the face of otherwise uniform terms and conditions of employment, we find the evidence that counties have separate food handling laws insufficient to require a countywide unit.