

**Community Tele-Communications, Inc., d/b/a Helena Cable T.V. and Patricia A. Boerner, Petitioner and International Brotherhood of Electrical Workers, Local No 185, AFL-CIO. Case 19-UD-236**

May 15, 1980

**DECISION ON REVIEW, ORDER, AND  
DIRECTION OF ELECTION**

**BY CHAIRMAN FANNING AND MEMBERS  
JENKINS AND PENELLO**

On November 6, 1979, the Regional Director for Region 19 of the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding finding that Patricia A. Boerner, the Petitioner, is a supervisor and ineligible to file a union-security deauthorization petition under Section 9(e)(1) of the National Labor Relations Act, as amended, and accordingly dismissed the petition herein. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner filed a timely request for review of the Regional Director's decision.

By telegraphic order dated December 18, 1979, the Board granted the Petitioner's request for review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review and finds that there is insufficient evidence to establish that Patricia A. Boerner is a supervisor. Hence, we find that the Regional Director erred in dismissing the petition.

The Employer is a Nevada corporation engaged in the installation and servicing of cable television systems, with a facility at Helena, Montana. The Union has represented a unit of office employees at the Helena, Montana, facility since 1971. The Employer and the Union have negotiated several collective-bargaining agreements covering the office employees. The most recent agreement became effective on July 1, 1978, and is due to expire on June 30, 1980. Included, *inter alia*, in the current agreement is a union-security clause requiring all employees in the unit to become and remain members of the Union as a condition of employment during the term of the agreement.

On September 21, 1979, the Petitioner filed a petition herein seeking a withdrawal of union-shop authority under Section 9(e)(1) of the Act. Following a hearing on October 12, 1979, the Regional

Director issued his Decision and Order herein finding that Boerner is a supervisor based on evidence that she has the authority to conduct hiring interviews and to make effective recommendations on hiring.

The record shows that, in the Employer's Helena, Montana, office, there are four office employees. Boerner, who has worked for the Employer for approximately 10 years, is the most senior employee. The other three employees had worked for the Employer for 12, 10, and 6 months, respectively, as of the date of the hearing herein. In filing the petition, Boerner identified herself as the "office manager." The record fails to establish, however, that this title carries any authority. Instead, the record shows that the office work is fairly routine, that each employee is assigned certain functions such as mail, bookkeeping, or waiting on customers, and that they help each other when one of the employees gets bogged down.

With regard to Boerner's involvement in the hiring of the other three clericals, the record shows that Shirley Nichols was hired in October 1978 by the marketing administrator without any input by Boerner. A second employee, Cynthia Coonis, was hired in December 1978 at a time when the Employer desperately needed another employee. Coonis, the only applicant, was interviewed by Office Manager Poore.

Boerner responded to an inquiry by Poore about Coonis by commenting that "she sounds allright." Finally, Lynn Lucas was employed in April 1979 as a part-time employee. Again Poore first interviewed her. Thereafter, Boerner reviewed her application, talked to her for a few minutes, and contacted one of the references Lucas gave on her application. Later, Boerner and Poore discussed Lucas' qualifications. Although Boerner thinks Poore probably asked her for a recommendation, Boerner testified that it was "more or less informally decided that she was the one we'd hire."

Contrary to the Regional Director, we find that the record fails to establish that Boerner has authority effectively to recommend hire. Any support for such finding based on Boerner's conversation with Poore concerning Lucas' capabilities is undercut by the minor role Boerner played in hiring Coonis and the absence of any role in hiring Nichols. Nor is there evidence that Boerner has authority responsibly to direct employees, or that she has exercised other supervisory functions defined in Section 2(11) of the Act. Rather, it is clear from the routine nature of the work performed by the office employees that Boerner's authority, at most, is that of a leadman based on her experience and familiarity with the Employer's operation. Thus,

we find that Boerner is not a supervisor within the meaning of Section 2(11) of the Act,<sup>1</sup> that she is an employee in the bargaining unit,<sup>2</sup> and that she is eligible to file a petition under Section 9(e)(1) of the Act. Hence, we find that the Regional Director erred in dismissing her petition.

Having dismissed the petition, the Regional Director found it unnecessary to pass on the Union's contention that the appropriate unit should include both office employees and installers and technicians. Thus, the Union contends that, although the two units were separately certified, the pattern of bargaining has been to include both groups under one contract. We find no merit in the Union's unit contention.

The record shows that the pattern of bargaining has been for the Employer and representatives from Local Unions 44, 185, and 532 (IBEW), representing the Employer's installers and technicians at the Employer's Butte, Helena, and Billings, Montana, facilities, respectively, to meet and negotiate the terms of a new contract for the installers and technicians. Upon completion of the installers and technicians negotiations, the representatives of Locals 44 and 532 leave,<sup>3</sup> and the Employer and Local 185 negotiate the wages and other terms and

conditions of employment for the office employees unit at Helena. W. H. Sexton, the Employer's district manager, testified without contradiction that in recent years, for convenience and to avoid the cost and time of drafting and executing separate documents, a separate supplement to the master agreement covering wage rates and other specific terms and conditions of employment for the office employees has been executed. Sexton also testified that there was no intention to merge the two units into a single bargaining unit. In addition, we note that article 1, section 5, of the supplement states: "This agreement covers all employees in unit 2 and their functions as described in National Labor Relations Board case 19-RC-5949"; and article VI, section 1, states in part: "Overtime provisions same as in Technicians Agreement, Unit 1."

On the record here, we find that the technicians unit and the office employees unit have not been merged into a single overall unit. Accordingly, we find that the appropriate unit for an election is the office employees unit, as described in article 1, section 5, of the supplemental agreement referred to above. Having determined that Boerner is an employee eligible to file the petition, and that the office employees unit is the appropriate unit for the election, we shall reinstate the petition and direct an election.

#### ORDER

It is hereby ordered that the petition herein be, and it hereby is, reinstated.

[Direction of Election and *Excelsior* footnote omitted from publication.]

<sup>1</sup> See *The Capitol Times Company*, 234 NLRB 174 (1978).

<sup>2</sup> At the hearing, testimony was taken on the question as to whether Boerner was a confidential employee and, as such, ineligible to file a petition under Sec. 9(e)(1) of the Act. Since the record clearly shows that Boerner is not a confidential employee, we express no opinion with regard to the eligibility of a confidential employee to file a petition under Sec. 9(e)(1) of the Act.

<sup>3</sup> No evidence was presented that Local 44 or Local 532 represents office employees at their respective locations, or that either has participated in bargaining for the office employees in Helena.