

**Muncie Newspapers, Inc. and Muncie Typographical Union No. 332, International Typographical Union, AFL-CIO, Petitioner. Case 25-RC-7031**

December 14, 1979

DECISION AND DIRECTION

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered a determinative challenge in an election held December 21, 1978,<sup>1</sup> and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief and hereby adopts the Hearing Officer's recommendation only to the extent consistent herewith.

The Employer publishes a daily newspaper, The Muncie Star, in Muncie, Indiana. The Petitioner filed a petition seeking to represent all full-time and regular part-time employees of the Employer's editorial departments.<sup>2</sup> Petitioner challenged the ballot of part-time sports reporter Kerry Arter on the ground that Arter was a casual employee. The Employer contended that Arter was a regular part-time employee, and therefore that his ballot should be counted. Following an investigation, the Regional Director for Region 25 found that substantial issues of fact existed with respect to Arter's status which could best be resolved by a hearing. On February 9, 1979, a hearing was conducted on Arter's ballot. In her report of April 2, 1979, the Hearing Officer recommended that the challenge to Arter's ballot be sustained because Arter did not share a sufficient community of interest with unit employees to warrant his inclusion in the unit. Specifically, the Hearing Officer found that: (1) Arter worked substantially fewer hours and days than order part-time employees and he did not work on a fixed schedule; (2) unlike other unit employees, Arter's pay was guaranteed and not based on the number of hours he actually worked; (3) his actual work was very "limited" compared to other part-time reporters; and (4) he did not have a reasonable expectation of continued employment after the winter of

1978-79. Contrary to the Hearing Officer, we find that Arter is a regular part-time employee and that the record clearly demonstrates that Arter possesses the requisite community of interest to be included within the appropriate unit. Therefore, we find that the challenge to his ballot should be overruled.

The record indicates the Employer employs both full- and part-time reporters. Arter, a student at nearby Ball State University, was hired by the Employer in August 1978 as a part-time sports reporter to cover scholastic sports in the Muncie area. Like other sports reporters, Arter received his assignment from either Sports Editor Barnett or Assistant Sports Editor LeMaster and, upon completion of an assignment, was obligated to comply with the 11:30 p.m. copy deadline. The record reveals that Arter's assignments, primarily on Friday nights and weekends, generally required him to average from 5 to 10 hours of work per week, and that except for 1 week Arter worked at least 5 hours in every week from his date of hire to the election.

The Employer allots approximately 5 hours for coverage and reporting of evening sports events; i.e., from 7 to 12 p.m. This guideline was applied to all employees, including Arter. According to LeMasters, if an assignment required additional time, Arter, like any other reporter, would be compensated for the additional time. Managing Editor Shore testified that Arter was not guaranteed a minimum number of hours per assignment and the 5-hour figure was only meant to serve as a guide for payroll purposes. Arter, like all the Employer's part-time employees, was paid on an hourly basis. Payroll figures were required to be submitted by Friday of each week and, inasmuch as Arter normally worked Friday evenings, it was necessary for Shore to submit an estimated figure for Arter. Shore used the traditional figure of 5 hours for that purpose. In the event that Arter worked in excess of the estimated amount, the additional hours would appear on the following week's payroll.

While the Hearing Officer found that, as of the election, Arter's work responsibilities, outside of sports reporting, were somewhat limited in comparison with other part-time reporters, such a circumstance appeared attributable solely to Arter's status as a relatively new employee. Further, the record establishes that Arter did have a reasonable expectation of continued employment with the Employer following the completion of the winter sports schedule. Barnett testified that, when he interviewed Arter, he indicated that the position would encompass the coverage of sports events for the entire scholastic year, including spring sports. While there was no discussion of summer assignments at that time, Barnett expected that Arter would return the following academic year. Indeed, the record indicates that this had been the

<sup>1</sup> The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 20 votes for, and 19 against, the Petitioner; there was 1 challenged ballot, a number sufficient to affect the outcome of the election.

<sup>2</sup> The appropriate unit as set forth in the stipulation was:

All full-time and regular part-time employees of the editorial departments of the Employer at its Muncie, Indiana, facility, including the photographers and librarians; but excluding all office clerical employees, all confidential employees, all professional employees, guards, and supervisors as defined in the Act, and all other employees.

practice with other part-time student reporters. Barnett also noted that, following graduation from school, part-time reporters were often offered full-time positions and that, in the past, at least two individuals had accepted such offers.

In view of the above, we conclude that the Hearing Officer's recommendation to sustain the challenge to Arter's ballot is not supported by the record. We find that Arter's hours, work responsibilities, method of compensation, and expectancy of continued employment indicate that he was a regular part-time employee with a sufficient community of interest to be included in the unit. In concluding otherwise, the Hearing Officer relied on a misplaced comparison, i.e., she consistently compared Arter's hours of work and work duties with those of other part-time employees and concluded that Arter did not have a sufficient community of interest with unit employees because he worked fewer hours or had duties different from those of other part-timers. But the test for whether an employee is a regular part-time employee as opposed to a casual employee takes into consideration such factors as regularity and continuity of em-

ployment, tenure of employment, similarity of work duties, and similarity of wages, benefits, and other working conditions.<sup>3</sup> Using these standards, we find that the record demonstrates Arter was a regular part-time employee at the time of the election. Accordingly, we shall order that the Regional Director open and count Arter's ballot and, based on a revised tally of ballots, issue an appropriate certification.

#### DIRECTION

It is hereby directed that the Regional Director for Region 25 shall, pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, within 10 days from the date of this decision, open and count the ballot of Kerry Arter, prepare and cause to be served on the parties a revised tally of ballots, and thereafter issue the appropriate certification.

---

<sup>3</sup> See, e.g., *Lake City for Aged, Inc., d/b/a Shady Oaks*, 229 NLRB 54, 55 (1977).