

**Keith Clark, Inc. and Sidney Typographical Union
No. 81, International Typographical Union, AFL-
CIO, Petitioner. Case 3-UC-150**

September 28, 1979

DECISION ON REVIEW AND ORDER

**BY CHAIRMAN FANNING AND MEMBERS PENELLO
AND TRUESDALE**

On June 8, 1979, the Acting Regional Director for Region 3 issued a Decision and Order clarifying the unit in this proceeding, in which he clarified the unit of the Employer's employees represented by Petitioner to include the classification of tractor-trailer truckdriver. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Acting Regional Director's Decision.

The National Labor Relations Board, by telegraphic order dated August 6, 1979, granted the request for review. Thereafter, the Employer filed a brief on 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 issue on review, as noted, involves whether the Employer's newly created position of tractor-trailer truckdriver should be included within the unit of production and maintenance employees for which Petitioner is the bargaining agent. The Acting Regional Director decided that the job classification should be encompassed within the unit, based on an analysis of the pertinent clauses in the applicable collective-bargaining contract and of community-of-interest considerations. After a careful examination of the record, we have decided to dismiss the unit clarification petition herein, because the evidence reveals that John Morrison, the only current tractor-trailer driver, also spends a substantial amount of time supervising unit employees at the plant. We emphasize that this determination is entirely without prejudice to the later filing of such a petition involving this job classification if circumstances should change, as, for example, if Morrison were to be assigned full-time driving duties.

The important facts may be briefly stated. The Employer is engaged in the printing of calendars at its two facilities in Sidney, New York. Before March 1978, there were 18 to 24 bargaining-unit employees in the shipping department, divided among 3 shifts. During the period Morrison was employed as a working foreman, a position not included in the bargaining unit. In this capacity, Morrison responsibly

directed the work of employees in the shipping department, including overseeing the loading of goods into the vehicles of common carriers. Morrison also had the power effectively to recommend the hiring and firing of employees, and exercised that power. Such recommendations by Morrison were followed without independent investigation by the Employer. Thus, Morrison clearly was a supervisor as defined in Section 2(11) of the Act.

In March 1978 the Employer made a change in its operations. Instead of warehousing finished products at its Sidney facilities, the Employer began to warehouse its finished products at its Lyndhurst, New Jersey, facilities. This change in operations required shipments to Lyndhurst about three times per week by tractor-trailer truck, 10-1/2 months per year (March to mid-January), as well as less frequent trips to other points. In addition, this change resulted in a reduction of those employed in the shipping department in Sidney from 18 to 24 employees working 2 to 3 shifts, to 4 to 6 employees working a single shift. The Employer leased the necessary tractor-trailer equipment and assigned the driving duties to Morrison. However, between March and mid-January, when Morrison was driving the tractor-trailer truck, he also continued to perform duties as a working foreman in the shipping department. This consumed about 20 percent of his time each week. In addition, Morrison was employed as a full-time working foreman for the remaining 1-1/2 months of the year. The supervisory nature of the working foreman position did not change when Morrison began driving the truck.

It is evident from these facts that Morrison continued to devote a significant portion of his time to the performance of supervisory functions over unit employees after March 1978, specifically 20 percent of his time for 10-1/2 months per year and 100 percent of his time for 1-1/2 months. Thus, assuming without deciding that Morrison's tractor-trailer truckdriving duties would dictate the inclusion of that position in the unit, Morrison's continuing supervision of unit employees presents a serious conflict-of-interest problem. This is so because he acts as a representative of management for a significant amount of time each week, as well as a rank-and-file unit employee. In these circumstances, we have no alternative other than to exclude Morrison from the unit.¹ Accordingly, we shall dismiss the instant petition.

ORDER

It is hereby ordered that the petition for unit clarification herein be, and it hereby is, dismissed.

¹ *U.S. Radium Corporation*, 122 NLRB 468, 472-473 (1958); *Midland Broadcasters, Inc.*, 176 NLRB 107, 110-111 (1969).