

Williams Transportation Company, Employer-Petitioner, and Teamsters Automotive Workers Union Local No. 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 21-UC-104

November 30, 1977

**DECISION ON REVIEW AND ORDER
CLARIFYING UNIT**

BY CHAIRMAN FANNING AND MEMBERS
PENELLO AND MURPHY

On May 17, 1977, the Regional Director for Region 21 issued his Decision and Order in the above-entitled proceeding, in which he dismissed the Employer's petition seeking clarification of the bargaining unit represented by the Union by excluding the classification of "clerical employees." Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision on the grounds, *inter alia*, that the Regional Director departed from reported Board precedent.

By telegraphic order dated July 11, 1977, the Board granted Employer's request for review. Subsequently, the Employer and the Union filed briefs 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 Board has considered the record in this case with respect to the issue under review and makes the following findings:

The Employer is engaged in the business of leasing trucks to industrial customers and providing maintenance service for the lessees at its Vernon, California, location. Employed there are eight journeyman mechanics, a tire man, and a lube man. Additionally, the Employer has a "shop office clerk," Debra Glavas, who works in a partitioned area in the shop office. A dispute over the unit placement of the shop office clerk has prompted the instant petition.

Since several years prior to 1960 the Employer, as a member of a multiemployer bargaining unit, has been signatory with Local 495 to various collective-bargaining agreements. The current Western States Area Automotive Shop and Truck Service Supplemental Agreement, to which the Employer is signatory, describes the unit in article 40 as including all lubricators, fuelers, fuel truck drivers servicing company equipment, washers, cleaners, polishers, steam rack operators, tire service operators, tire repairmen, parts and stock employees, shop and yard cleanup, stock and parts pickup and delivery

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employees, mobile service truckdrivers, service truckdrivers, and such other employees as may be presently and hereafter represented by the Union, engaged in automotive, bus, car, and truck servicing within the jurisdiction of the local union, and tow truck drivers. No exclusions are stated in the contract.

The Employer asserts that the terms and conditions of only 2 of its 11 employees fall within the provisions of the supplemental agreement; that the sole clerical position it maintains has never been covered by any collective-bargaining agreement; and that the remaining 8 employees are covered by an agreement with a local union of the IAM.

The Employer established the position of shop office clerk in 1961. The duties of the current shop office clerk, Debra Glavas, who apparently is the first full-time employee in that position, include the filing of records of oil and gas usage, compiling a preventive maintenance schedule, comparing delivery receipts and monthly invoices for parts, reporting road calls, and receiving telephone calls for the shop. The shop office clerk does not handle parts or perform lubrication or tire work.

From 1961 to 1976, the collective-bargaining agreement between the Employer and the Union was not applied to the shop office clerk. On May 17, 1976, Glavas was hired. On September 27, 1976, the Union filed a grievance on Glavas' behalf contending, *inter alia*, that her position was covered by the applicable contract. The Southern California Joint State Committee considered the grievance, but deadlocked on the result. Subsequently, on appeal by the Union, the Joint Western States Committee (hereafter the Committee) concluded that Glavas' position was covered by the contract unit and directed the Union and the Employer to develop a rider agreement applicable to Glavas, with pay to be set at the rate for comparable work under the Western States Area Office Employees Supplemental Agreement, to which the Employer was not a party.

The Employer declined to comply with the Committee's award and filed the instant petition seeking to clarify the bargaining unit.

The Regional Director, in dismissing the Employer's unit clarification petition seeking the exclusion of clerical employees from the unit, concluded that, notwithstanding the long exclusion of the shop office clerk position from the preceding collective-bargaining contracts, that position has now been included as a result of the decision of the Joint Western States Committee, which the Regional Director characterized as part of the collective-bargaining process. The Employer, contrary to the Union, urges that the Board cannot abdicate its statutory duty to resolve unit questions as presented here and that the

Regional Director's deferral to the Committee's decision contravened Board policy. We find merit in the Employer's contention.

As we recently stated in a case presenting the issue of deferral to arbitration, "The determination of questions of representation, accretion, and appropriate unit do[es] not depend upon contract interpretation but involve[s] the application of statutory policy, standards, and criteria. These are matters for decision of the Board rather than an arbitrator."¹

The Committee's decision with regard to the shop office clerk was not, in our view, based upon an interpretation of the contract, as it is clear that such classification is not mentioned in the unit description and there was no existing wage rate for the position. Rather, it appears clear that the Committee's decision is tantamount to a determination that, somehow, the shop office clerk has been accreted to the unit. Such determinations are within the province of this Board to make. Thus, we conclude that the Regional Director improperly equated the Committee's action as "collective bargaining" by the parties on this issue. His dismissal of the unit clarification petition in this circumstance will result in the Committee's decision taking effect unless the Board decides the issue.² This we shall do.

¹ *Marion Power Shovel Company, Inc.*, 230 NLRB 576, 577-578 (1977), citing *Combustion Engineering, Inc.*, 195 NLRB 909 (1972), *Hershey Foods Corporation*, 208 NLRB 452 (1974), and others.

² Compare *Oyster Creek Division, The Dow Chemical Company*, 179 NLRB 719, 723 (1969).

³ See, e.g., *Monongahela Power Company*, 198 NLRB 1183 (1972); *The*

It is axiomatic that, where a classification has been historically excluded from a unit, it cannot be added by means of the accretion doctrine; i.e., without affording employees in that classification an opportunity to select or reject the bargaining representative.³ By giving effect to the Committee's decision, the Regional Director has in effect mandated the inclusion of the shop office clerk via the forbidden accretion route.

Therefore, we find and affirm that, in view of the historical exclusion of the shop office clerk from the unit since 1961 in the face of successive collective-bargaining agreements applicable to the Employer's employees in classifications covered by the unit description and not applicable to the classification in issue, the employee classified as shop office clerk is excluded from the unit.⁴

ORDER

It is hereby ordered that the classification of shop office clerk is excluded from the Employer's employees in the unit under the Western States Automotive Shop and Truck Servicing Supplemental Agreement represented by Teamsters Automotive Workers Union Local No. 495, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

Mountain States Telephone and Telegraph Company, 175 NLRB 553 (1969); *Gould-National Batteries, Inc.*, 157 NLRB 679 (1966).

⁴ In view of the result reached herein, it is unnecessary to rule on the Employer's "motion to strike" material submitted by the Union with its brief on review.