

Volt Technical Corp.¹ and Communications Workers of America, AFL-CIO, Petitioner. Case 31-RC-3860

September 23, 1977

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on June 7, 1977, before Hearing Officer John Prough of the National Labor Relations Board. Following the close of the hearing the Regional Director for Region 31 transferred this case to the Board for decision. Thereafter, the Employer and Petitioner submitted briefs.

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 reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board finds:

1. The Employer, which annually receives in excess of \$50,000 in revenues from customers located outside the State of California, is engaged in commerce and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The parties stipulated, and we find, that Petitioner is a labor organization within the meaning of the Act, seeking to represent certain employees of the Employer pursuant to a petition filed on May 9, 1977.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The Employer is a California corporation engaged in supplying temporary technical and clerical manpower to industries and government. It also has an in-house operation supplying typing, technical writing, and computer services.

Petitioner seeks to represent the approximately 425 technical employees supplied by the Employer to

General Telephone of California (hereafter General), or, alternatively, all Volt technical employees supplied to any telephone company. Volt contends that the petition is barred by a contract between General and Petitioner,² and that, in any event, the requested unit is inappropriate because it is an "indistinct proportion" of its employees and excludes other temporary employees supplied to General by another employer. Further, Volt contends the employees are ineligible for collective bargaining due to an "insufficient permanent relationship" with the Employer and because of its lack of control over the terms and conditions of their employment.

Volt Technical Corporation, a subsidiary of Volt Information of New York, has California offices in El Segundo, San Diego, Anaheim, Van Nuys, and Mountain View, and an office in Phoenix, Arizona. Volt recruits applicants nationwide. From the 50,000 resumes on file, about 3,300 individuals are currently supplied by Volt to various companies, including the 425 at General, 10 at Continental Telephone, and 15 at Pacific Telephone. Volt's customers are procured by its salesmen who bid for the jobs. Volt employees have no seniority or formal grievance machinery. Generally, employees work for a customer from 1 week to 1 year; the average is 3 months. Volt has a policy of attempting to place the employees elsewhere when the job terminates. The same computer billing system is used for all employees.

Volt enters into a standard "employment agreement" with all its employees. Blanks are provided for the employee's name, the name of the customer that the individual is assigned to, the job classification, the starting date, and the hourly and overtime wage rates. Standard form provisions, applicable to all Volt employees regardless of the type of work they perform, cover transportation and per diem expenses, holidays, and vacations. The agreement also prohibits the employees from accepting employment by the specified customer within 30 days of the termination of employment with Volt, without Volt's written consent.

Volt and General entered into an "agreement for contract labor," effective from March 2, 1977, to March 31, 1979. The contract provides in part: (1) that "journeyman craft personnel" shall be furnished as required, (2) the wage rate,³ (3) that General has a right of refusal of any Volt employee "not capable of or fit to perform the work assigned, "(4) that

¹ Name appears as amended at the hearing.

² We find this contention to be without merit. Volt argues the contract is a bar because art. VII entitled "Contracting of Work" provides, *inter alia*, minimum wage rates applicable to employees supplied by a contractor such as Volt. A contract asserted as a bar to an election petition must contain "substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship; it will not constitute a bar if it is limited to wages only . . ." *Appalachian Shale Products Co.*, 121 NLRB

1160, 1163-64 (1958). Among the terms apparently not covered for the Volt employees are grievances, arbitration, seniority, vacations, holidays, and overtime.

³ The specified minimum rate is commensurate with that of General's regular, full-time, "journeyman craft personnel." However, for administrative convenience Volt rounds off the hourly rate upward to the nearest nickel. Thus, Volt employees may receive up to 4 cents more per hour than General employees performing the same work.

General's work rules are applicable to Volt employees, and (5) should Volt supply equipment, it will be compensated as mutually agreed. The contract also provides in pertinent part that: (1) General may cancel the agreement if it is significantly affected by a modification of the contract between General and the Communications Workers of America; (2) General may hire Volt employees as its own after 30 days, without incurring any liability to Volt; (3) Volt maintain workmen's compensation and withhold any taxes, as required by law; (4) Volt maintain for each employee comprehensive general and automobile liability insurance; and (5) all persons supplied to General by Volt shall be considered Volt's employees.⁴

It is well established that employees in a labor pool who are hired out to the employer's customers on a day-to-day basis are entitled to the protection of the Act even though the employer does not exercise control over the entire employment relationship. *All-Work, Inc.*, 193 NLRB 918 (1971). Volt controls work assignments, wage rates, the manner of payment, holiday and vacation schedules, insurance benefits, and travel and per diem expenses. Thus, Volt sufficiently controls the employer-employee relation to enable effective and meaningful collective bargaining to take place.

In resolving the unit issue, we are not constrained by the Act to find the most appropriate unit, but rather an appropriate unit to assure employees the fullest freedom in exercising the rights guaranteed by the Act. *The Parsons Investment Company*, 152 NLRB 192, fn. 1 (1965). Factors to be considered include the employees' community of interest, the bargaining history, and whether the proposed unit is homogeneous, identifiable, and distinct.

Volt employees supplied to General must qualify as journeymen. While performing technical telephone maintenance and repair, they are subject to General's personnel rules and supervision. Finally, their wage rate is the product of an initial bid by Volt, and subsequent contract negotiations between Volt and General. In these circumstances it cannot be said, as Volt argues, that the unit requested is an "indistinct proportion" of Volt employees; it is an identifiable, homogeneous group.

Nor are we persuaded by Volt's assertion that the requested unit is inappropriate because it excludes other temporary employees supplied to General by

another employer. Contrasted to all other employees at General, including General's regular full-time employees, the Volt employees wear Volt identification badges, have different holidays and vacations, and are subject to a different system of remuneration. Also significant are the facts that Volt, and not General, makes the initial employment determination and Volt pays required taxes and workmen's compensation. Further, the Volt employees, *vis-a-vis* General's, have neither seniority nor grievance or arbitration machinery. Finally, the Volt employees—to the exclusion of all other employees at General—are Volt employees.

Considering the community of interest resulting from the unique position of Volt employees supplied to General, apart from other Volt employees as well as all employees at General, the absence of a bargaining history, and the absence of any request to represent these employees in a different unit, we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of Employer Volt Technical Corp., supplied to General Telephone Company of California, as installers, repairpersons, splicers, construction, testboard, C.O.E. installers and maintainers, and framepersons, excluding all other employees, confidential and professional employees, guards, and supervisors as defined in the Act.

Neither party has taken any position with respect to the question of eligibility to vote in the election. Accordingly, we shall apply the formula applied in *All-Work, supra*. Eligible to vote are those employees in the unit who were employed at General during the 90-calendar-day period ending on the date of this Decision, who worked a minimum of 7 days in that period and at least 1 of those days, or 8 hours, during the 30-day period ending on said date. This formula is designed to include those employees having a substantial and continuing interest in terms and conditions of employment with Volt Technical Corp. at General, while excluding those employees not currently employed.

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

⁴ Volt employees wear Volt identification badges while working at General.