

Norman J. Provost d/b/a Detective Intelligence Service and International Union of Guards and Watchmen, Petitioner. Case 20-UC-25

June 26, 1969

**DECISION AND ORDER GRANTING
PETITION TO CLARIFY
CERTIFICATION**

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND JENKINS

Upon a petition of International Union of Guards and Watchmen for clarification of unit, duly filed on February 7, 1969, under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held on February 26, 1969, before Hearing Officer Donald E. Twohey. On February 27, 1969, the Regional Director for Region 20 issued an Order Transferring the case to the Board. Thereafter, briefs were timely filed by Employer and Petitioner.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with 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 case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The Petitioner represents certain employees of the Employer.
3. On August 28, 1968, as the result of an election conducted pursuant to a stipulation for certification upon consent election in Case 20-RC-8244, Petitioner was certified to represent the following employees of the Employer:

All security officer employees of the Employer working out of its Oakland, California location including regular part-time employees, excluding office clerical employees, salesmen, part-time employees who have not worked in the calendar quarter ended June 30, 1968, and supervisors as defined in the Act.

The Petitioner contends that the certification is ambiguous and should be clarified so that it will clearly include all regular part-time employees. The Employer contends that the certification is unambiguous and clearly excludes part-time employees hired since the specified quarter.

We think it is clear that in drafting the consent agreement the parties and the Regional Director inadvertently included in the unit description the formula agreed on to determine which employees would be eligible to vote in the ensuing election.

Thus it is not uncommon, in cases where an issue arises as to what part-time employees may vote in an election, to utilize employment in a particular calendar quarter as one of the criteria to determine eligibility.¹ On the other hand the exclusion of employees from the unit on the basis of their date of hire would be manifestly contrary to a basic principle of unit determination that the inclusion and exclusion of employees from a unit must be based on the work interests and job functions of the employees involved.²

In particular, however, we note that in this case, as revealed by the unit description, the Petitioner and the Employer first of all have specifically agreed to include in the unit the Employer's regular part-time employees. It also appears from the evidence adduced at the hearing that the greater part of the Employer's force of security officers consists of employees who work less than full time, and there is an indication in the record that the Employer has resorted increasingly to the employment of part-time employees. Further, the record also discloses that there is a substantial turnover among the Employer's work force, such that the Employer's employee complement has become, and is becoming, increasingly composed of part-time employees hired since the election. In this situation, the effect of the provision excluding part-time employees who have not worked during the specified calendar quarter, applied as a term of unit description rather than as a formula for determining voting eligibility, is to diminish and potentially to eliminate entirely the very part-time employees who constitute the bulk of the unit involved. We cannot believe, despite the Employer's protestations to the contrary, that such a result reflects the deliberate intention of the parties. It is not reasonable, we believe, for parties to agree to the appropriateness of a unit composed for the greater part of a given class of employees and in the same unit description provide for a mechanism whereby such employees are to become largely or entirely eliminated.

In sum, we conclude that the unit description appearing above, if interpreted literally, contains inconsistencies leading to an absurd result and cannot reasonably be regarded as reflecting the parties' intention. We find, as indicated above, that a provision intended in fact as a formula for determining eligibility in an election has been inadvertently included in the unit description. We shall accordingly clarify the unit description by eliminating the eligibility provision.

¹*Allied Stores of Ohio, Inc.*, 175 NLRB No. 162; *Fresno Auto Auction, Inc.*, 167 NLRB No. 124; *Farmers Insurance Group*, 143 NLRB 240, 245; *Motor Transport Labor Relations, Inc.*, 139 NLRB 70, 72.

²*T O Metcalf Company*, 171 NLRB No. 160, and authorities cited therein.

DECISIONS OF NATIONAL LABOR RELATIONS BOARD

ORDER

It is hereby ordered that the petition for clarification be granted, and that the description of the unit involved in this proceeding be clarified. As so clarified, the description of the appropriate unit

in these proceedings shall be as follows:

All security officer employees of the Employer working out of its Oakland, California location including regular part-time employees, excluding office clerical employees, salesmen, and supervisors as defined in the Act.