

**Akron Telerama, Inc. d/b/a Akron Cablevision and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 497, Petitioner. Case 8-RC-8107**

June 9, 1971

**DECISION AND DIRECTION OF ELECTION**

BY MEMBERS FANNING, JENKINS, AND KENNEDY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Donald A. Knowlton. Thereafter, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 8, this case was transferred to the National Labor Relations Board for decision. A brief has been timely filed by the Intervenor.<sup>1</sup>

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 case 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 and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The parties stipulated that the Petitioner and Intervenor are labor organizations within the meaning of the Act, and we so find.

3. The Intervenor contends that the recognition agreement it executed with the Employer on October 1, 1970, in contemplation of later bargaining should be construed as barring the petition, and therefore no question concerning representation is raised by the petition. The agreement entered into by the Intervenor and Employer is not a complete collective-bargaining contract; for example, it does not contain provisions which regulate the employees' wages, hours, or conditions of employment, and as such will not be a bar to the petition.<sup>2</sup>

Nor may the recognition agreement be considered a bar within the *Keller Plastics* principle.<sup>3</sup> Unlike the cases in which that principle has been applied, it does not affirmatively appear in this case that the Employer extended recognition to the Intervenor in good faith on the basis of a previously demonstrated showing of majority at a time when only the Intervenor was en-

gaged in organizing its employees.<sup>4</sup> Accordingly, we find that 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 petition herein seeks a unit of all employees excluding office clerical employees, plant clerical employees, salesmen, confidential employees, guards, supervisors and professionals as defined in the Act. The Intervenor seeks a unit of all employees including the office clericals, plant clericals, and salesmen. The Employer seeks a unit of all employees including the office clericals and plant clericals, but does not take a position as to the salesmen.

For the reasons enumerated below, we find that the appropriate unit consists of all employees excluding office clerical employees, salesmen, confidential employees, professionals, guards and supervisors as defined in the Act.

The Employer is engaged in the operation of a cable television system in Akron, Ohio, by which it transmits television signals by cable from a master antenna to its customers. The employees are classified into four divisions: plant, plant clerical, office clerical, and sales. The parties stipulated that all plant personnel which includes the job categories of maintenance, technical balance, installation, support engineer group, splicing, driving, utility, utility cordinating, drafting and warehousemen, are to be included in the unit. The plant personnel build and maintain the electrical system which carries the television signals from the Employer's antenna through the city's streets on utility poles and into the customer's home.

Working closely with the plant personnel is the staff of nine clerical employees designated plant clerical by the Employer and the three schedulers designated sales employees by the Employer. The plant clericals' job functions include work orders, dispatching, inventory control, worksheets, equipment inventory, and work reports. The schedulers, while under the supervision of the sales manager, are in fact plant clericals; their job is scheduling the installers' visits to the customers' homes after the purchase of the service from the salesmen. The plant clericals' interests are closely allied with those of the plant personnel and we shall include them in the unit.

<sup>4</sup> The Intervenor relied on *Dale's Super Valu, Inc.*, 181 NLRB 98. In that case the intervening union presented authorization cards to the employer which bore the signatures of a majority of the employees sought in the unit and requested recognition. After examining the cards, recognizing the signatures, and believing that the union represented a majority of its employees, the employer signed a recognition agreement.

Here the Employer never received authorization cards or any evidence of membership from the Intervenor or questioned the Union to determine if it had authority from a majority of the employees.

<sup>1</sup> Communication Workers of America, AFL-CIO.

<sup>2</sup> *Sound Contractors Association*, 162 NLRB 364, 365

<sup>3</sup> 157 NLRB 583

The sales employees are door-to-door salesmen working on a commission basis. They begin to canvass an area when the plant personnel have completed the street wiring and the system is ready for installation into the homes of potential customers. The salesmen have no interests in common with the unit and we shall exclude them.

The office clerical staff includes all clerical employees except those designated plant clerical; their function is secretarial and payroll. Office clericals have no interests in common with the unit and we shall exclude them.

There remains for consideration the status of George Oravec and William Reagon whom the Petitioner would exclude from the appropriate unit as supervisors. Oravec installs cable from the street into the customer's home and Reagon is a crew leader who directs a crew which consists of himself and one other employee. The parties stipulated that crew leaders were not supervisors and are included in the unit. We find that Oravec and Reagon are not supervisors within the meaning of the Act and shall include them in the unit.

We find that the following unit is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees excluding office clerical employees, salesmen, confidential employees, professionals, guards and supervisors as defined in the Act.

[Direction of Election<sup>5</sup> omitted from publication.]

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<sup>5</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236; *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 8 within 7 days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.