

Northwest Publications, Inc., d/b/a San Jose Mercury and San Jose News, Petitioner and San Jose Newspaper Guild, Local 98, affiliated with American Newspaper Guild, AFL-CIO. Case 20-UC-38

May 30, 1972

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND PENELLO

Upon a petition of Northwest Publications, Inc., for clarification of unit duly filed on February 18, 1971, under Section 9(b) of the National Labor Relations Act, as amended, hearings were held on June 24 and 25 and July 1, 6, and 7, 1971, before Hearing Officer Helen A. Phillips. On July 20, 1971, the Regional Director for Region 20 issued an order transferring the case to the Board. Thereafter, briefs were filed by the Petitioner and the Union.

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. The ruling 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 Union involved herein is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

3. The Petitioner publishes the San Jose Mercury and the San Jose News in San Jose, California. The history of collective bargaining between the Petitioner and the Union dates back to 1937. The current contract between the parties, for a term extending from November 2, 1970, to December 31, 1973, covering a unit never certified by the Board includes:

. . . all the employees of the Publisher in the editorial, business, and janitorial departments, including advertising, business office, inside circulation, telephone operators and clerical employees, excepting those positions and individuals specifically excluded from the terms of the contract.

Article III of the contract enumerates specified "executive positions" which are excluded from the coverage of the contract.

Petitioner contends that 26 job classifications, which have been treated by the parties as part of the

bargaining unit, are supervisory and should therefore be excluded from the unit.

Negotiations leading to the current contract began in the summer of 1970. During the negotiations, the Petitioner did not bargain or attempt to bargain for additional exclusions from the contract. However, in the course of grievance hearings in July 1970, the Petitioner stated its intention to file a unit-clarification petition in order to clarify the entire bargaining unit. During the contract negotiations the Union was advised by the mediator that the Petitioner had not agreed to abandon its intention to file a unit-clarification petition. On January 18, 1971, the Petitioner and the Union executed their current collective-bargaining agreement. As they had done in the past, the parties agreed to exclude only certain enumerated "executive positions" from the coverage of the contract. Thereafter, on February 26, 1971, the Petitioner filed its unit-clarification petition and requested that the Board clarify the bargaining unit to exclude various alleged supervisors.

Under certain circumstances, despite the existence of an unexpired collective-bargaining agreement, the Board has found it appropriate to entertain a petition for unit clarification. For instance, where the bargaining unit, as stipulated by the parties, excluded supervisors as defined by the Act, the Board, during the term of the contract, has clarified a bargaining unit and removed improperly included supervisors. *The Western Colorado Power Company*, 190 NLRB No. 111. Also, when the unit-clarification petition has been filed prior to the execution of a new collective-bargaining agreement, the Board has found it appropriate to entertain the petition. *Peerless Publications, Inc.*, 190 NLRB No. 130.

Here, as stated, the parties chose to exclude only certain "executive positions" from the coverage of the contract. The parties have submitted to arbitration their disputes over which job classifications are "executive positions." The contract in no way indicates that it does not cover supervisors as defined by the Act. Further, the Petitioner did not file the petition for unit clarification until shortly after the execution of the new collective-bargaining agreement. Under these circumstances, we are of the opinion that it would be disruptive of the bargaining relationship voluntarily entered by the parties to clarify the unit at this time. *Wallace-Murray Corporation, Schwitzer Division*, 192 NLRB No. 160.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Employer's petition herein be dismissed.