

**William J. Keller, Inc. and Buffalo Local No. 261,
Lithographers and Photoengravers International
Union, AFL-CIO, Petitioner. Case 3-RC-5361**

August 30, 1972

DECISION ON REVIEW

**BY CHAIRMAN MILLER AND MEMBERS
KENNEDY AND PENELLO**

On March 23, 1972, the Regional Director for Region 3 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate the Petitioner's requested unit of year-round production and maintenance employees which is currently represented by the Intervenor, Graphic Arts Independent Union, rejecting the Employer's contention that unrepresented seasonal employees have such a close community of interest with year-round employees as to require their inclusion in the unit. Thereafter, in accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's Decision on the ground that, in concluding that seasonal employees may be excluded from the unit, he made findings of fact which are clearly erroneous and departed from precedent.

On April 13, 1972, the National Labor Relations Board by telegraphic order granted the request for review and stayed the election pending decision on review. The Employer and the Petitioner 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 reviewed the entire record in this case, including the briefs on review, and makes the following findings:

As indicated, the Employer contends that the bargaining history for a unit confined to its year-round employees is not controlling with respect to the issue of the unit placement of its seasonal employees herein. We agree.

At its Buffalo, New York, plant the Employer is engaged principally in the printing and publication of school yearbooks. It also prints and publishes college catalogs and admissions brochures and, on a fill-in basis, does some commercial printing. The yearbook production is seasonal, geared to the major

market at the end of the regular school year, in June, and to a minor market for summer school yearbooks, in October. In its fiscal year 1971, the Employer's yearbook production accounted for 55 percent of its sales volume. However, in August 1971 the Employer was acquired by Herff Jones Co. and the new management has decided to expand yearbook production, especially for the fall market. It is estimated that in fiscal 1972 the Employer's yearbook production will contribute 66 percent of total sales.

The Intervenor was certified in 1947 as the representative of a stipulated unit of year-round employees. At that time there were but a half dozen seasonal employees hired during the yearbook production season. At present, during the major yearbook production season, the Employer has about 60 year-round employees and approximately 40 seasonal employees. Seasonal employees are added to the employee complement each year beginning in late December or early January, and they work an average of 25 weeks until May or June.¹ During this peak production period up to 95 percent of the Employer's work is devoted to yearbook production. In the past a few seasonals were recalled during the late summer for work on summer yearbook production.²

All seasonals are females; in the main, housewives living in the neighborhood of the plant. Although the Employer advertises for seasonal employees, it obtains all but a few from a recall list, and virtually all seasonals whose work has been acceptable in the past return to work for the Employer from year to year.³ Although they work in other departments the seasonals are assigned mainly to the prepress department to do the stripping of black and white negatives. The seasonals work the same number of hours per week and are under the same departmental supervision as year-round employees. However, they do not participate in certain fringe benefits received by year-round employees, such as vacations, group life and health insurance coverage, pension plan, and jury duty compensation.

Upon the foregoing and the entire record in this case, we conclude that the continued exclusion of seasonals from the historical unit represented by the Intervenor is not warranted. Although the Board is reluctant to disturb a contract unit based on a satisfactory bargaining history, it will not give controlling weight to bargaining history to the extent that it departs from statutory provisions or clearly

¹ The Employer tries to employ seasonals for at least 20 weeks so that they may qualify for unemployment benefits following their layoff

² Most recently no seasonals have been hired for summer work. However, as indicated, the Employer's current policy entails an expansion of production for the fall yearbook market

³ Two of the seasonals were formerly year-round employees, and 12 of the latter were once seasonals. It may be noted that the Employer's new management has reversed the previous policy of not laying off year-round employees, and in late 1971 about 40 percent of the year-round complement were laid off for an average period of almost 9 weeks

established Board policy concerning the composition and scope of bargaining units.⁴ In the instant case, in view of the record evidence that seasonals work for a substantial portion of the year, that they have a near certain expectation of reemployment from year to year, that when employed they work alongside year-round employees under the same supervision, and that the Employer under its new owners has undertaken new policies which will tend to eliminate distinctions previously existing between seasonal and year-round employees, we believe that exclusion of seasonals from the bargaining unit at this time would be contrary to clear Board policy.⁵ We shall

⁴ See *General Electric Company*, 107 NLRB 70, 72

⁵ See *Baumer Foods, Inc.*, 190 NLRB No 137

⁶ 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 a revised 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 3 within 7 days of

therefore include the seasonals in the unit and we find that those not employed at the time of the election who have a reasonable expectation of recall shall be eligible to vote.

Accordingly, the case is hereby remanded to the Regional Director for Region 3 for the purpose of holding an election pursuant to his Decision and Direction of Election, as modified herein, except that the payroll period for determining eligibility shall be that immediately preceding the date of issuance of this decision.⁶

the date of this Decision on Review. 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.

Since the unit as found by the Board is larger and more comprehensive than that requested by the Petitioner or that currently represented by the Intervenor, both the Petitioner and the Intervenor have the option to withdraw

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