

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-48

November 7, 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 September 30, 1971, under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held on June 21, 1972, before Hearing Officer Helen A. Phillips. On June 27, 1972, 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 rulings 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.

In *Northwest Publications, Inc. d/b/a San Jose Mercury and San Jose News*, 197 NLRB No. 32, the Board dismissed the unit clarification petition of the Petitioner involved herein. In that case, because the individuals that the Petitioner sought to exclude from the bargaining unit were clearly included in the description of the unit in the current contract of the parties, the Board, under its rationale in *Wallace-Murray Corporation, Schwitzer Division*, 192 NLRB No. 160, found that it would be disruptive of the bargaining relationship voluntarily entered into by the parties to clarify the unit.

The Petitioner filed the unit clarification petition involved herein on September 30, 1971, and requested that the Board clarify the bargaining unit to exclude alleged supervisors. The collective-bargaining agreement of the parties has a reopener provision providing in part as follows:

As of December 1, 1971, either party may raise for negotiation any non-economic issues pertaining to terms and conditions of employment whether these issues are covered by this agreement or not. Any such issues shall be raised by written notice to the other party no later than October 1, 1971. The written notice shall be accompanied by a detailed statement of issues raised and proposed changes.

* * * * *

On any issues not resolved and not referred to arbitration the status quo shall remain unchanged.

Having filed the petition herein during the period in which proposals for midterm modifications to the contract could be made, the Petitioner contends that it would not be disruptive of the parties' bargaining relationship for the Board to clarify the unit. The Petitioner states that the parties contemplated some disruption of their bargaining relationship in that they provided in their contract for midterm modifications.

Nonetheless, the record shows that the alleged supervisors are still included within the coverage of the current collective-bargaining agreement. During the reopening of the contract, the Petitioner did not propose that there be additional exclusions from the contract. The recent supplemental agreement reached by parties after negotiations pursuant to the reopener provision did not change the description of the bargaining unit. The contract still excludes only certain "executive positions" and not supervisors as defined by the Act. The arbitration procedure is available to the parties in order to resolve what jobs are "executive positions" and thereby excluded from the contract. Furthermore, the jobs alleged by the Petitioner to be supervisory have existed for many

years and their status has not changed since the execution of the current contract. In these circumstances, were we to clarify the bargaining unit as requested by the Petitioner, we would be permitting one of the contracting parties to effect a change in the definition of the bargaining unit during the contract term. Such a change, as we held in *Wallace-*

Murray, would be disruptive of an established bargaining relationship.¹

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.

¹ See also *Monongahela Power Co.*, 198 NLRB No. 177.