

**H & H Bookbinding Co., Inc. and Wilma S. Midkiff,
Petitioner and Local Union No. 53-B, Graphic Arts
International Union, AFL-CIO. Case 25-RD-349**

June 21, 1973

DECISION ON REVIEW

BY CHAIRMAN MILLER AND MEMBERS FANNING
AND PENELLO

On February 22, 1973, the Acting Regional Director for Region 25 issued a Decision and Direction of Election in the above-entitled proceeding,¹ finding the following unit to be appropriate for purposes of the requested decertification election:

All employees of the Employer in its cutting department and bindery operations, but excluding all *semi-skilled and unskilled "B" workers (non-journeymen and non-apprentices)*, probationers, part-time employees, temporary employees, mailers, truckdrivers, and all office clerical employees, professional employees, guards and supervisors as defined in the Act. [Emphasis supplied].

Thereafter, in accord with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Acting Regional Director's decision on the grounds that in specifically excluding the categories of employees italicized in the unit description set forth above, he departed from officially reported precedent. The Union filed opposition to the request for review.

By telegraphic order dated March 15, 1973, the National Labor Relations Board granted the request for review and stayed the election pending decision on review. Thereafter, the Employer filed a brief 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 considered the entire record in this case with respect to the issues under review, including the Employer's brief on review, and makes the following findings:

Prior to October 31, 1972, the Employer, together with other members of an association, as well as a number of nonmember companies, was a party to a multiemployer bargaining relationship with the Union and its predecessor. By the terms of its most

recent contract, effective November 1, 1970, to October 31, 1972, the Employer recognized the Union as the representative of "all employees in the cutting department and binding operations." Prior to October 31, 1970, the Employer also recognized the Union as representative of a separate unit of its unskilled and semiskilled employees in the cutting department and bindery operations who had not achieved apprentice or journeymen status, and who were referred to as "B" workers. However, at that time the Employer took the position that a separate contract for "B" workers at its plant created administrative problems and was no longer needed. The record indicates that after discussions with the Union, an agreement was reached on April 2, 1971, whereby three "B" workers were approved as apprentices and five as journeymen and were included in the coverage of the existing contract. Whether this agreement resulted in the inclusion of all then employed "B" workers in the unit is unclear, as subsequently, in May and June 1972, further discussions ensued as to three "B" workers and it was agreed on June 10 that two of the three be "promoted" to apprentice status and that the third would be terminated. Moreover, on June 13, the Union sent the Employer a letter which states that the Union "agrees to accept the offer made by [the Employer] to resolve the dispute involving the employees formerly known as 'B' workers, i.e. [the letter then lists 'B' workers who were reclassified as apprentices and journeymen and covered by the existing contract]."

The Employer contends that the Acting Regional Director erred in excluding "B" workers from the unit; that on the basis of the foregoing evidence, the Union had agreed to include employees formerly known as "B" workers in the unit. The Union, in its opposition, states that the Employer has hired many individuals who were never represented by it. However, the Employer in its brief on review asserts that the Union has been on strike since December 2, 1972, and that none of the replacements it has hired have been approved or accepted by the Union as having journeymen or apprentice status.

In accord with the Employer, we find no evidence in the record to indicate that it continues to classify certain of its employees as "B" workers.² For this reason, we shall delete the reference to such employees in the unit description.

The appropriate unit is therefore described as follows:³

² No request for review was filed as to the Acting Regional Director's finding that the contract unit is now confined to employees of the Employer or to his listing other specific exclusions such as probationers, part-time employees, temporary employees, mailers, truckdrivers, and all office clerical employees.

³ Our modification of the unit description is without prejudice to the right

Continued

¹ Local Union No. 53-B, Graphic Arts International Union, AFL-CIO, was permitted to intervene at the hearing

All employees of the Employer in its cutting department and bindery operations, excluding probationers, part-time employees, temporary employees, mailers, truckdrivers, office clerical

employees, professional employees, guards and supervisors as defined in the Act.

Accordingly, we shall remand the case to the Regional Director for the purpose of conducting 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 issuance date of this Decision. [Excelsior footnote omitted from publication.]

of any party to challenge individuals at the polls on the ground that they have been excluded from the contract unit.