

**White Cloud Products, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Case 7-RC-12215**

October 31, 1974

DECISION AND DIRECTION

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election executed on February 12, 1974, an election by secret ballot was conducted on March 14, 1974, under the direction and supervision of the Regional Director for Region 7 among the employees in an appropriate unit. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 82 eligible voters, 87 cast ballots, of which 42 were for, and 40 against, the Petitioner, and 5 were challenged. There were no objections filed.

Inasmuch as the challenged ballots were sufficient in number to affect the results of the election, and as a preliminary investigation established the existence of substantial and material factual issues, the Regional Director for Region 7 of the National Labor Relations Board issued a notice of hearing on April 4, 1974. Thereafter, on April 18 and 29, 1974, a hearing was held before Hearing Officer Gregory S. Muzingo for the purpose of resolving the issues by the challenges to the ballots of Mike Kuhns, Margaret Nies, Clifford Schooley, Joanne Nelson, and Wesley Graham.

The hearing was conducted in accordance with the provisions of Section 102.69(e) of the Board's Rules and Regulations, Series 8, as amended. All parties were represented and afforded full opportunity to be heard, to present and examine witnesses, to introduce relevant evidence, and to present oral arguments during the course of the hearing.

On June 21, 1974, Hearing Officer Muzingo issued and served on the parties his Report and Recommendations on Challenged Ballots. In his report, the Hearing Officer recommended that the challenges to the ballots of all five employees be overruled, their ballots be opened and counted, a revised tally be issued, and an appropriate certification then be issued. Thereafter, the Employer filed exceptions, with a supporting brief, limited only to the recommendation that the challenge to Nelson's ballot be overruled.<sup>1</sup> The Employer contends that Nelson was classified as

a "leader" and that, pursuant to the agreement between the parties, that classification was specifically excluded from the unit. Petitioner filed a reply brief in support of the Hearing Officer's recommendation that the challenge to Nelson's ballot be overruled.

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 Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees including tool and die repairmen, die setters, fork truck drivers and salvage employees, but excluding office clerical employees, professional employees, production control employees, truckdrivers, leaders, leader trainees, inspectors, co-op students, guards, supervisors as defined in the Act, and all other employees.

5. The Board has considered the Hearing Officer's report, the Employer's exceptions, and the briefs, and finds merit in said exceptions as hereinafter set forth.

The parties stipulated to a unit which specifically excluded "leaders." Nelson and two other painters are classified as leaders as is an employee in the toolroom. None of the names of the three painters appeared on the eligibility list provided by the Employer. Of them, only Nelson attempted to vote, but her ballot was challenged by the Board agent. However, the name of the leader in the toolroom appeared on the list and he voted without challenge.

Established Board law dictates that in stipulated unit cases ". . . the Board's function is to ascertain the parties' intent with regard to the disputed employee and then to determine whether such intent is inconsistent with any statutory provision or established Board policy."<sup>2</sup> In accordance with these guidelines the Hearing Officer determined that, since there was no statutory definition as to what constituted a "leader," it was his duty to ascertain the parties' intent with respect to the unit placement of leaders. Upon consideration of testimony given at the

<sup>1</sup> In the absence of exceptions thereto, the Board adopts *pro forma* the Hearing Officer's recommendation that the challenges to the ballots cast by Kuhns, Nies, Schooley, and Graham be overruled

<sup>2</sup> *The Tribune Company*, 190 NLRB 398 (1971), *J. Olson Machine Co. Inc.*, 196 NLRB 598 (1972)

hearing, he concluded that the Employer only intended to exclude leaders who possess the authority to discipline, and that, absent any indication to the contrary, the Petitioner intended to exclude all leaders. Thus, ascertaining that the intent of the parties with respect to the exclusion of leaders was "in a real sense, disputed," he concluded that the stipulation was inconclusive as to the placement of leaders and that that issue had to be resolved in accordance with community-of-interest standards. On this basis, he determined that Nelson shared a community of interest with unit employees and therefore that the challenge to her ballot should be overruled.

We disagree with the Hearing Officer's determination that the intent of the parties with respect to leaders was inconclusive. As already indicated, in stipulated-unit cases such as this it is incumbent upon the Board to ascertain the expressed intent of the parties with regard to the disputed employee. Here, the intent of the parties is expressed in their stipulation of the appropriate bargaining unit in clear and unambiguous terms. Without qualification, it is to exclude "leaders." If, as the Hearing Officer found, the hearing disclosed that one of the parties subjectively entertained an intent at odds with this stipulation,<sup>3</sup> that intent cannot be given recognition. To do so would only undercut the very agreement which served as a basis for conducting the election. In the circumstances, we must conclude that the parties intended to exclude all leaders from the unit. As Nelson is classified as a leader, it follows that her exclusion was intended.

As also indicated above, we permit parties to stipulate to the appropriateness of the unit, and to various

inclusions and exclusions, if the agreement does not violate any express statutory provisions or established Board policies. But a stipulated inclusion or exclusion which may not coincide with a determination which the Board would make in a nonstipulated-unit case on a "community of interest" basis is not a violation of Board policy such as would justify overriding the stipulation. In *Tribune Company, supra*, we cited with approval this observation by the Courts of Appeals for the Second Circuit:

In our view no established Board policy or goal of the Act is contravened by including [the employee]. We view community of interest as a doctrine useful in drawing the borders of an appropriate bargaining unit, a function well within the discretion of the Board. But we do not conclude that the doctrine remains as an established Board policy sufficient to override the parties' intent when the Board, in the interests of furthering consent elections, allows the parties to fix the unit.<sup>4</sup>

Accordingly, we conclude that the challenge to the ballot of Joanne Nelson should be sustained.

#### DIRECTION

It is hereby directed that the Regional Director for Region 7 shall, within 10 days from this date of this Decision, open and count the ballots of Mike Kuhns, Margaret Nies, Clifford Schooley, and Wesley Graham, the challenges to which have been overruled, and thereafter prepare and cause to be served on the parties a revised tally of ballots, including therein the count of said ballots. Upon the basis of the revised tally, the Regional Director shall issue the appropriate certification in accordance with the Board's Rules and Regulations.

<sup>4</sup> *Tidewater Oil Company v N L R B*, 358 F 2d 363, 366 (C A 2, 1966)

<sup>3</sup> In its brief to the Board, the Employer denies that its intent was to exclude from the unit any leaders who possessed disciplinary or other supervisory authority. It states that since supervisors are also excluded from the unit, "it is redundant to exclude leaders on the theory ascribed by the Hearing Officer to the Employer since the Report concludes that only leaders with supervisory authority are excluded."