

**American Federation of State, County and Municipal Employees, AFL-CIO, and Zwerdling, Maurer and Papp<sup>1</sup> and Office and Professional Employees International Union, Local No 333, AFL-CIO-CLC, Petitioner Case 9-RC-11400**

June 17, 1976

DECISION AND ORDER

BY MEMBERS FANNING, PENELLO, AND WALTHER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer James E. Horner. After the hearing this proceeding was transferred to the Board for decision. The Employer has filed a brief.

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. They are hereby affirmed.

Upon the entire record in this proceeding, the National Labor Relations 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.

2. The labor organization involved is a labor organization within the meaning of the Act.

3. No question of representation of employees of the Employer affecting commerce exists within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Employer, American Federation of State, County and Municipal Employees, (AFSCME), is an unincorporated association which exists for the purpose of bargaining collectively on behalf of its members over wages, hours, and other conditions of work. Its headquarters is in Washington, D.C., with 30 area offices which coordinate activities between the parent organization and its subordinate councils and locals. The alleged joint Employer, Zwerdling, Maurer and Papp, is a law firm with offices in Detroit, Michigan, and Washington, D.C., as well as one recently established in Columbus, Ohio. A. L. Zwerdling, a partner in the firm, is AFSCME's general counsel, and the firm's Columbus office provides legal services to AFSCME's area office there.

<sup>1</sup> The petition was amended at the hearing to include the law firm of Zwerdling, Maurer and Papp as a joint employer. Since we find *infra* that it is not a joint employer, no issue is presented with respect to the assertion of Board jurisdiction over law firms.

There is no history of collective bargaining with respect to either employer's Columbus, Ohio, operations. A local of the Office and Professional Employees International Union, AFL-CIO-CLC, is voluntarily recognized by AFSCME as the collective-bargaining representative of the clerical employees at its Washington, D.C., headquarters and at its Baltimore, Maryland, area office in a combined unit.

The Petitioner seeks a unit of all office clerical employees of both Employers at their Columbus, Ohio, office<sup>2</sup> excluding supervisors. The parties have stipulated the exclusion of William Garnes, AFSCME's area director, and Denny Gilbert, an International representative who deals with public relations and is represented by another labor organization.

The Petitioner contends that AFSCME and Zwerdling, Maurer and Papp are joint employers, and that Karen Metzger, secretary to Ronald Janetzke, the law firm's resident attorney, should be included in the unit. At the time of the hearing, Janetzke shared office space with AFSCME's area office, his number was not listed in the telephone directory, and the law firm was not identified in the building directory or on the office door. However, the firm's Columbus office was opened February 2, 1976, barely more than 5 weeks before the hearing.

Following testimony, the record was held open to permit the receipt of further evidence on the joint employer issue. Following submission of an affidavit from A. L. Zwerdling and notification from the Petitioner that it did not object to closing the record—although not conceding agreement with, or the truth of, the affidavit—the record was closed. Zwerdling avers that the firm's Columbus office was opened on a tentative basis and that no decision has been made on continuing the office or its permanent location. The firm and Zwerdling were not aware that the Columbus office was not listed in the telephone and building directories, nor that its name did not appear on the office door. Zwerdling further avers the firm intends to make its services generally available to other attorneys and potential clients.

Metzger, the employee in question, was hired following directions from the firm to Janetzke to hire a legal secretary and her salary and benefits are paid for by the firm, as are Janetzke's. Although Metzger previously worked for AFSCME, she was hired by Janetzke only after interviews with three other applicants and his conclusion that she was the most qualified. Her work hours are different from the hours worked by the AFSCME employees, she receives 1 week less vacation than she had received previously,

<sup>2</sup> AFSCME's area office and Zwerdling, Maurer and Papp's resident attorney share the same office.

and is covered under the firm's optional insurance plan (which is the same package offered AFSCME employees) Metzger takes turns with AFSCME employees in answering the telephone and occasionally performs office tasks for AFSCME, but it is clear that her salary, hours, duties, and conditions of employment are established and controlled by the law firm

Whether AFSCME is a joint employer of Metzger is essentially a factual issue turning on the extent of its control over her.<sup>3</sup> Although certain factors, most particularly the similarity of the work and close relationship with AFSCME employees and the sharing of some office tasks, suggest that the law firm and AFSCME jointly employ Metzger, the record as a whole convinces us that is not the case. As a former AFSCME employee working in the same small office, the fact that certain office tasks are currently shared is not compelling. To at least some extent that is attributable to the fact that the law firm only recently established its office in Columbus, Ohio. Zwerdling is AFSCME's general counsel, not house counsel, and Janetzke, the resident attorney, has only recently joined the firm at a distant location. It is not surprising that certain details of his relationship with AFSCME and its effect on office administration had not been worked out at the time of the hearing. That does not provide any basis for finding appropriate a bargaining unit which lumps together AFSCME employees with those of its general counsel.

Metzger was hired and is paid by the law firm and her work and working conditions are distinct from those of AFSCME employees and are controlled by the law firm, not AFSCME. We find that Metzger is not an employee of AFSCME and that AFSCME is not a joint employer with the law firm of Zwerdling, Maurer and Papp. Accordingly, Metzger may not be included in a unit with AFSCME employees.

Edward Bell is a multith operator whom the Petitioner would include in the unit. The Employer contends that Bell is, as he testified, a temporary employee who must be excluded from the unit. Bell testified that he had previously been hired by AFSCME in 1973 and was laid off in July 1975 and rehired on a temporary basis for 90 days September 27, 1975, which was later extended for another 90-day period. However, Garnes, the area director, testified that Bell had previously worked for a subordinate body of the Employer and not for the Employer, and that he was hired as a temporary employee be-

cause of that experience. We see no need to resolve the conflict, although Bell might not have recognized the distinction between employment by the parent body and employment by its subordinate council.

Unlike the other employees sought in the unit, Bell is paid on a weekly basis and receives no fringe benefits. Bell was hired as a "special project employee" for the purpose of an organizing campaign. Although Garnes sought permission to hire Bell as a regular full-time employee, it was denied. Since Bell is employed for a specific 90-day period which may be extended for an additional 90 days only if specifically authorized by the Employer from its Washington, D C, headquarters, and does not share similar wages, benefits, or work with other employees sought, we conclude that he is a temporary employee and lacks a sufficient community of interest to be included in the proposed bargaining unit.

Patricia Cain is the area director's personal secretary, and assists him generally. Her work includes the preparation of confidential correspondence to be sent to the Employer's Washington, D C, headquarters. Cain is responsible for typing evaluations, recommendations for employment and pay raises, and disciplinary warnings. Although most labor relations matters are now handled by the Employer at its Washington, D C, office, the area director manages the area office, effectively recommends wages, hiring, layoff, may order overtime, and sets the hours of employment. Cain acts in a confidential capacity as the area director's personal secretary, prepares correspondence dealing with labor relations and would handle collective-bargaining related clerical duties should that circumstance arise. We conclude that she is a confidential employee and shall exclude her from the unit.<sup>4</sup>

The remaining employee, Sandra Eaton, handles the books and accounts and all financial management for the area office. The Employer suggests that she also is a confidential employee. However, the unit would include only a single employee and it is established Board policy not to direct an election in a single-employee unit. Accordingly, we shall dismiss the petition.

## ORDER

It is hereby ordered that the petition in Case 9-RC-11400 be, and it hereby is, dismissed.

<sup>3</sup> *National Medical Hospitals, Inc. of San Diego d/b/a Chicco Community Memorial Hospital*, 215 NLRB 821 (1975). *The B. F. Goodrich Company*, 115 NLRB 722 (1956).

<sup>3</sup> *Boire v. The Greyhound Corp.*, 376 U.S. 473, 481 (1964).