

West Virginia Newspaper Publishing Company and Joseph Michael Duley, Petitioner and Mountaineer Newspaper Guild, Local 231, as chartered by the Newspaper Guild, AFL-CIO-CLC. Case 6-RD-750

November 22, 1982

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

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 challenges to an election held on October 22, 1981,¹ and the Hearing Officer's report recommending disposition of the same. The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the Hearing Officer's findings² and recommendations, as modified herein.³

The record shows that the Employer is engaged in the business of newspaper publishing. Included among its mailroom employees is the position of inserter. Most of the inserters regularly work a 15-hour-per-week schedule and are on call for special projects.⁴ The rest of the inserters do not have set hours but rather are on call with the right to

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 46 for, and 33 against, the Union; there were 20 challenged ballots, a number sufficient to affect the results of the election.

² The Employer and the Union have excepted to various credibility findings of the Hearing Officer. It is the established policy of the Board not to overrule a Hearing Officer's credibility resolutions unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *The Coca-Cola Bottling Company of Memphis*, 132 NLRB 481, 483 (1961); *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no sufficient basis for disturbing the credibility resolutions in this case.

³ We adopt the Hearing Officer's recommendation to sustain the challenges to the ballots cast by the following: Colin David Kelly, Glen Mako, Thomas R. Wolfe, and Mark Riser. We also adopt the Hearing Officer's recommendation to sustain the challenge to the ballot cast by Nancy Beck. Even though, as the Employer contends, the evidence shows that Nancy Beck received holiday pay for working during the Labor Day holiday, we find that the evidence clearly establishes that she performs nonbargaining unit work and therefore does not share a community of interest with the appropriate unit.

We adopt the Hearing Officer's recommendation to overrule the challenges to ballots cast by the following: Virgil Little, Michael Lorensen, Joseph Duley, Delbert Royce, and Arch Reed. In the absence of exceptions we also adopt the Hearing Officer's recommendations to overrule the challenges to the ballots cast by Carl Johnson, Cleo R. Thomas, and Richard Harris.

We find it unnecessary to determine the voting eligibility of Morgan Mayfield because his ballot is no longer determinative. Members Zimmerman and Hunter adopt the Hearing Officer's recommendation to overrule the challenge to the ballot cast by Robert Mills, Jr. Member Jenkins finds it unnecessary to determine the voting eligibility of Mills because his ballot is no longer determinative.

⁴ The ballots of these inserters were not challenged.

accept or reject employment. All inserters perform the same work and receive the same contractual wage rate and the same benefits on a pro rata basis. The certified unit⁵ consists of all full-time and regular part-time mailroom employees, including inserters. However, the recognition section of the most recent collective-bargaining agreement⁶ states that the contract covers "all mailroom employees, including inserters."

Based on the practice, coverage, and application of the contract, the Hearing Officer found that all inserters,⁷ regardless of the number of hours worked, are included in the unit and are eligible to vote. The Union excepts to the Hearing Officer's finding that five challenged "on-call" inserters—David Comely, Don Comely, Tim Pisegna, Michael Rohozan, and Gwathney Smith—are eligible to vote. For the reasons discussed below, we find that only David Comely is eligible to vote.

It is well-established Board law that the scope of the appropriate unit in a decertification election is coextensive with the existing recognized or certified unit.⁸ As found by the Hearing Officer, the evidence clearly establishes that the parties, by practice and by coverage and application of the contract, have included the position of inserters in the existing unit.

However, contrary to the Hearing Officer's finding, our inquiry does not end there. We must still determine the voting eligibility of each of the challenged inserters.⁹ The challenged inserters are "on call" employees. The Board has held that such employees are eligible to vote if they regularly average 4 hours of work per week in the quarter preceding the election.⁹ Here, the payroll records show that during the preceding quarter Don Comely, Tom Pisegna, Michael Rohozan, and Gwathney Smith each averaged less than 4 hours of work per week. David Comely averaged 6.2 hours. Therefore, only David Comely is eligible to vote.

Accordingly, based on the results of the election and the fact that the overruled challenges are insuf-

⁵ The Union was originally certified in 1973.

⁶ This contract expired on December 31, 1980.

⁷ *First Mortgage Investors, A Trust, d/b/a Cranston Hilton Inn*, 230 NLRB 186 (1977); *Minneapolis Star and Tribune Company*, 115 NLRB 1300 (1956).

⁸ *Cranston Hilton Inn, supra*; *Ray Patin Productions, Inc.*, 121 NLRB 1172, 1174 (1958); contrary to the Employer's contentions, *See's Candy Shops, Inc.*, 231 NLRB 156 (1977), is consistent with this approach. In *See's* the Board found that the scope of the unit for the upcoming decertification election was coextensive with the existing recognized unit and thus included seasonal employees. Then, as in *Cranston Hilton*, the Board found that seasonal employees were to be excluded if they did not meet the appropriate voter eligibility requirement for seasonal employees; i.e., reasonable expectancy of recall in the foreseeable future.

⁹ *V.I.P. Movers, Inc.*, 232 NLRB 14 (1977); *Davison-Paxon Company*, 185 NLRB 21 (1970).

efficient in number to affect the election results, we find that a majority of the valid ballots have been cast for the Union.

**CERTIFICATION OF
REPRESENTATIVE**

It is hereby certified that a majority of the valid ballots have been cast for Mountaineer Newspaper Guild, Local 231, as chartered by the Newspaper Guild, AFL-CIO-CLC, and that, pursuant to Section 9(a) of the Act, the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the

purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All full-time and regular part-time mailroom employees, including inserters, all full-time and regular part-time editorial, advertising, circulation and maintenance department employees, including proofreaders and the switchboard operator employed at the West Virginia Newspaper Publishing Company, Morgantown, West Virginia plant; excluding all guards, professional employees and supervisors as defined in the Act.