

**Southwest Gas Corporation and Utility Workers
Union of America, AFL-CIO, Petitioner.** Case
28-RC-4890

November 6, 1991

SUPPLEMENTAL DECISION, DIRECTION,
AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The National Labor Relations Board, by a three-member panel, has considered determinative challenges and an objection to an election held December 4, 1990, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 287 for and 286 against the Petitioner with 14 challenged ballots,¹ a number sufficient to affect the results.

The Board has reviewed the record in light of the exceptions² and briefs and has adopted the hearing officer's findings³ and recommendations only to the extent consistent with this Supplemental Decision, Direction, and Order.

¹ The challenge to the ballot of Cody Payne was previously overruled in the Board's unpublished Decision and Order issued on June 3, 1991, pursuant to the Regional Director's recommendation. Further, at the hearing, the Petitioner withdrew its challenge to the ballot of Portia Pubins and, therefore, the challenge to her ballot is overruled. Also at the hearing, the parties stipulated that William Sproule was ineligible to vote in the election and, therefore, the challenge to his ballot is sustained.

² In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to sustain the challenge to the ballot of Chris Lara and to overrule the Petitioner's Objection 2.

³ The hearing officer found that Maria Flores was the senior customer representative (SCR) at the Grove district payment office (DPO) until November 1990 and was the SCR at the Glendale DPO on December 4, 1990, the date of the election. The Employer has excepted to the finding that Flores was the SCR at the Glendale DPO. In its answering brief, the Petitioner agrees with the Employer that the hearing officer erred in finding that Flores was the SCR at the Glendale DPO on the date of the election.

Insofar as the parties, in their briefs, are in agreement that Flores was not the SCR at the Glendale DPO on the date of the election, we shall accept that as fact and thus we neither rely on testimony nor adopt the hearing officer's finding to the contrary. Instead, we find that Flores was the SCR at the Grove DPO at all times material. Further, because we find that the record is devoid of evidence establishing that any supervisor was daily assigned to the Grove DPO with Flores, we adopt the hearing officer's finding that Flores worked in a DPO without a daily assigned supervisor. In this regard, we note that the Employer alleged in its brief that Supervisor Scott was daily assigned to the Grove DPO. The evidence offered by the Employer in support of this contention consists solely of testimony that alludes to Scott's being "upstairs" in the Grove building (which includes not only the DPO, but also other offices). No direct evidence or testimony, however, supports a finding that Scott was daily assigned specifically to the Grove DPO. Accordingly, we affirm the hearing officer's conclusion that, like other SCRs at DPOs without a daily assigned supervisor, Flores is a supervisor within the meaning of the Act and is ineligible to vote in the election.

In resolving the challenges to the ballots cast by seven customer accounts processing (CAP) employees and one telecommunications employee,⁴ the hearing officer found that the unit description⁵ was ambiguous and thus that the objective intent of the parties was unclear. Accordingly, he applied traditional community-of-interest principles and concluded that these eight employees were eligible to vote. The Employer has excepted to this finding arguing, inter alia, that the unit description is unambiguous and refers only to the employees who work in the Employer's operating division known as the Central Arizona Division. We find merit in this exception.

It is undisputed that the Employer is organized into six distinct operating divisions, one of which is expressly identified as the Central Arizona Division. The remaining five divisions are the Southern Arizona Division, the Southern California Division, the Southern Nevada Division, the Northern Nevada Division, and the Systems or Staff Division. The Systems Division, which is a corporatewide division responsible for all systemwide functions, is headquartered in Las Vegas, Nevada, and has satellite offices in Phoenix, Arizona. It is further undisputed that the CAP and telecommunications departments, regardless of geographical location, are encompassed operationally within the Systems Division.

In resolving challenges to ballots of disputed employees in stipulated unit elections, the Board will look to the parties' intent as objectively manifested and, when such an intent is clear, "the Board will hold the parties to their agreement." *Viacom Cablevision*, 268 NLRB 633 (1984).⁶ Here, the hearing officer found the

⁴ The CAP employees whose ballots were challenged are: Ray Vorwerk, Arlette Waffensmith, Carol Corona, Mary Ann Permuda, Beverly Schneider, Robin Martin, and Marilyn Cooke. Sanford Butler is the telecommunications employee. The Board agent conducting the election challenged the ballots of these CAP and telecommunications employees because their names did not appear on the voter eligibility list.

⁵ The stipulated unit description is:

All nonexempt employees working for the Employer in its Central Arizona Division; excluding exempt employees, professional employees, confidential employees, guards, watchmen and supervisors as defined in the Act.

⁶ The cases in this area have generally involved disputes over whether specific employees with job titles or duties not in conformance with the express job titles or descriptions in the unit description are eligible to vote notwithstanding the stipulation's failure specifically to include or exclude them. See *Lear Siegler*, 287 NLRB 372 (1987); *C.K.E. Enterprises*, 285 NLRB 975 (1987); *Royal Laundry*, 277 NLRB 820 (1985); *Browning Ferris, Inc.*, 275 NLRB 292 (1985). In such cases, the Board finds that the objective intent of the parties is ambiguous and resorts to community-of-interest principles to resolve the challenge. *Viacom Cablevision*, 268 NLRB 633 (1984); *White Cloud Products*, 214 NLRB 517 (1974). The initial question to be resolved in all cases, however, is whether the intent of the parties is unambiguously manifested in the unit stipulation. Here the initial question to be resolved concerns the meaning of "All nonexempt employees working for the Employer in its Central Arizona Division . . ." (Emphasis added.)

stipulated unit description ambiguous because it did not contain job titles or descriptions and because it referred “to a geographically-based division within the Company using broad, imprecise, inclusive language” (presumably the language “nonexempt employees working for the Employer in its Central Arizona Division”). We do not agree with the hearing officer’s findings.

In finding the unit description ambiguous, the hearing officer initially relied on the fact that the stipulation does not include specific job titles or descriptions. If that view prevailed, whenever a stipulated unit description lacks specific job titles or descriptions it would be per se ambiguous. The Board, however, has not established such a per se approach, and we decline to do so here. Rather, the Board looks simply at whether the parties’ objective intent concerning the questioned portion of the unit description is unambiguously manifested in the express language of the description. *Viacom Cablevision*, supra. In the instant case, we find that despite the absence of job titles or descriptions in the stipulation, the reference to “non-exempt employees working in the Central Arizona Division” refers to an identifiable, specific employee group, i.e., those who work within that named division and who are not employed within that division in one of the excluded categories or classifications. That being so, we find that the parties’ objective intent is clear with respect to the unit’s composition.⁷

The hearing officer also appears to have based his finding of ambiguity on the fact that, given its lack of job descriptions, the stipulation could be construed as referring to any employees working within the central Arizona geographic area, whether or not they work in the operational division specifically titled the “Central Arizona Division.” He finds this ambiguity in the language “employees working for the Employer in the Central Arizona Division.” Petitioner reiterates this argument in its answering brief to the Employer’s exceptions, arguing that the parties could have chosen alternative language that would more clearly indicate that the description referred only to employees employed in the organizational division rather than in a geographic area. We disagree.

First, given that the phrase “Central Arizona Division” is capitalized, we fail to see how this clear use of the name of the Employer’s organizational division could be mistaken for a generalized reference to the geographic area of central Arizona. That the Central

Arizona Division, like four other of the Employer divisions, is identified in geographic terms and operates in a definable geographic area does not make it any less a separate, identifiable division with designated functions and employees who carry out their respective specified duties within the division’s structure. Indeed, it is every bit as much a division as is the Systems Division, which has no geographical reference in its name and which is companywide in scope and function, albeit subdivided into main and satellite offices. We also note that the construction urged as a possibility by the hearing officer and the Petitioner would conceivably include *any* employee of the Employer (other than those in the excluded classifications) from *any* of the organizational divisions who happened to have a job assignment in Arizona. Such an interpretation of the unit description is simply untenable. As to the Petitioner’s argument that the possibility of clearer alternative language shows the unit description to be ambiguous, we fail to see how the examples proffered by the Petitioner make the intent any clearer than it already is.⁸

Consequently, we find that the term “Central Arizona Division” has no independent geographic meaning outside the context of the Employer’s organizational structure and, therefore, that it was the clear intent of the parties to confine the scope of the stipulated unit wholly to Central Arizona Division employees, excluding employees who work in other divisions but are based in Arizona.

Accordingly, we reject the hearing officer’s finding that the unit is ambiguous because it is too “broad, imprecise, [and] inclusive,” and we hold the parties to their stipulation.⁹ Therefore, because the challenged CAP and telecommunications employees are employed in the Systems Division, a different division from the one identified in the stipulation, the challenges to their ballots are sustained.

DIRECTION

IT IS DIRECTED that the Regional Director shall, within 10 days of from the date of this Decision and Direction, open and count the ballots of Payne and Pubins and prepare and serve on the parties a revised tally of ballots. Thereafter, the Regional Director shall issue the appropriate certification.

⁷The hearing officer stated that the “Board bases its approach in determining the objective intent on an expectation that a petitioner is knowledgeable as to the job titles used in the description, but *not on a petitioner’s knowledge of an employer’s organizational chart and divisional structure.*” (Emphasis added.) He cited no authority for this proposition. In any event, when parties stipulate to language that refers to objectively identifiable divisions within an employer’s organization, they should be bound by that objective description.

⁸Petitioner suggests that the intent we discern in the unit description would be clearer if it referred to “*All nonexempt employees employed by the Employer’s Central Arizona Division,*” or “*All nonexempt Central Arizona Division Employees.*” (Petitioner’s emphasis.)

⁹Because we find that the intent of the parties is clear and that the stipulated unit description is unambiguous, it is unnecessary for us to pass on the hearing officer’s community-of-interest analysis.

ORDER

IT IS ORDERED that this proceeding is remanded to the Regional Director for further action consistent with this Supplemental Decision, Direction, and Order.