

Consolidated Papers, Inc. and Office and Professional Employees International Union, Local 95, AFL-CIO, Petitioner. Case 30-UC-193.

29 March 1985

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND HUNTER AND
DENNIS**

Upon a petition filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Rocky L. Coe on 5 May 1982. After the hearing, and pursuant to Section 102.67 of the Board's Rules and Regulations, the Regional Director for Region 30 transferred the case to the Board for decision. The Petitioner, the Employer, and the attempted Interveners filed briefs.¹

The Board has reviewed the rulings of the hearing officer made at the hearing and finds that they are free from prejudicial error. They are affirmed.

On the entire record in this proceeding, the Board finds:

1. The Employer, a Wisconsin corporation, is engaged in the manufacture of paper products at its facility in Wisconsin Rapids, Wisconsin, where, during calendar year 1981, it shipped goods valued in excess of \$50,000 to and from points located outside the State of Wisconsin. We find the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The parties stipulated, and we find, that Office and Professional Employees International Union, Local 95, AFL-CIO, the Petitioner, is a labor organization within the meaning of Section 2(5) of the Act. The Petitioner claims to represent certain employees of the Employer.

The Petitioner seeks by its unit clarification petition to add to the unit described below approximately four merchant account representatives, four merchant account representative trainees, three merchant account regional supervisors, and one administrative assistant. The Employer contends that none of those classifications is properly included in the certified unit which the Petitioner presently represents. That unit is described in the most recent collective-bargaining agreement's recognition clause, as follows:

The Company recognizes the Union as the exclusive collective bargaining agent as to wages, hours, working conditions, and other conditions of employment for all eligible em-

ployees engaged in office and clerical work in the offices of Wisconsin Rapids Division, Kraft Division, Paperboard Products Division, Main Office, Consoweld Corporation, and Consoweld Distributors, Inc. and any successors or assigns, all of which are located in the city of Wisconsin Rapids, Wood County, Wisconsin; Biron Division and Research and Development Division, which are located in the Village of Biron, Wood County, Wisconsin; and all eligible employees engaged in office and clerical work and employees classified as Technicians in the offices of the Wisconsin River Division, located in the Village of Whitening and the Township of Linwood, Portage County, Wisconsin. The term "eligible employees" shall be defined as "hourly paid employees engaged in office and clerical work." It is agreed that managerial, supervisory, professional, technical (other than those covered by this agreement), and confidential employees as defined in the Labor Management Relations Act of 1947 as amended, are excluded.

The history of collective bargaining between the Employer and the Petitioner in Wisconsin Rapids dates back to 1944, when the Union was first certified by the Wisconsin Employment Relations Board after an election. Contracts between the parties were successfully negotiated, with the most recent contract extending from 1 June 1980 through 31 May 1982.² The contracts have specifically covered only hourly paid employees. In July 1979, while the parties were operating under a contract which had become effective 31 August 1978, the petitioned-for section, composed of salaried sales employees, was transferred from the Employer's Chicago facility to its main office in Wisconsin Rapids, with some of the employees coming from Chicago and some of the jobs being filled locally, including from the bargaining unit, after a job posting in the plant.

The Petitioner filed for unit clarification in Case 30-UC-153 seeking to clarify these new positions into its existing unit. A hearing was held and, on 8 January 1980, the Regional Director issued his Decision and Order Granting Clarification of Bargaining Unit and a Supplemental Decision and Order Granting Clarification of Bargaining Unit on 15

² The original unit was composed of "eligible employees in office and clerical work at the Wisconsin Rapids Division and Main Office" of the Employer. Other office and clerical units from divisions in Biron, Atawagonon, and Wisconsin River were added by election, as were comparable groups from the Kraft Division, Consoweld Subsidiary, Research and Development and the Paperboard Products Division. Recently, a unit of hourly paid technicians was added following an election and hourly paid computer programmers were added by way of unit clarification.

¹ The hearing officer denied the motion to intervene filed by employees S M Allen, et al on the grounds that they lacked standing and that the Employer adequately represented their position.

January 1980.³ The Regional Director found that six customer service representatives⁴ were proper accretions to the unit, but that two customer service representative supervisors should be excluded as supervisors, and that the Petitioner's motion to amend its petition to clarify the unit by including the position of administrative assistant was untimely.

Subsequently, the Employer refused to bargain with the Union about the terms and conditions of employment of the six customer service representatives and, on 13 November 1980, the Board issued its Decision and Order granting the Motion for Summary Judgment and ordering the Employer to bargain with the Union. (253 NLRB 283 (1980).) The United States Court of Appeals for the Seventh Circuit, however, denied enforcement of the Board's Order (670 F.2d 754 (1982)), finding that, under *Wallace-Murray Corp.*, 192 NLRB 1090 (1971), the petition should have been dismissed as untimely because it was filed in midcontract and sought to include, by clarification, employees who the contract excluded from the unit.⁵ The court did not reach the merits of the accretion issue, but stated that the Union could seek unit modification while negotiating a new contract, or alternatively file for unit clarification at that time. On 12 April 1982 the instant petition was timely filed.

The Merchant Account Representatives

The Union's petition seeks to clarify into the certified unit 12 employees who are salaried and hold the positions of merchant account representative (3 of whom are classified as merchant account regional supervisors), merchant account representative trainee, and administrative assistant. With the exception of the administrative assistant, these employees are essentially sales representatives who receive the initial contract for customers, take orders for paper products, and generally follow through on their customers' orders. The merchant account representatives are assigned to specific geographic regions in which they are required to know their customers' needs and maintain contact with them.

The merchant account representative position description states that the purpose of the job is to represent the Company "with respect to sales and service of merchant papers to a variety of customers within a defined geographical area" and to "maintain favorable contact with these accounts."

These employees take orders, usually by telephone, from customers and complete the requisite forms, determining prices from a manual supplied to each representative as well as to most customers. The representative also provides the customer with information regarding transportation and arranges the transportation in accordance with the customers' wishes. On occasion, the representative will actively solicit orders from customers, particularly if the Employer happens to be overstocked with a particular item it wishes to sell rapidly. The representatives are required to be thoroughly familiar with the Employer's wide variety of products, including 27 grades of paper available in many sizes, weights, and finishings.

As noted, all the employees the clarification petition seeks are salaried, and their salaries are raised according to merit reviews. Unit employees are hourly paid and file timecards and their wages are increased according to seniority rather than merit. Salaried employees are evaluated according to a set of standards related to the achievement of sales-oriented goals, while hourly paid unit employees are judged on the basis of objective criteria set by the contract but not considered in determination of wages. In addition, the salaried employees' eligibility for promotion is determined by regular monitoring of their job performance. Hourly paid employees, on the other hand, are promoted solely on the basis of seniority and standard minimum qualifications. The merchant account group's salary range is higher than the range of yearly wages the unit employees earn, with merchant account representatives earning from \$19,240 to \$35,620, as opposed to \$11,814 to \$23,919 for unit employees.⁶

The merchant account representatives and the unit employees share common medical insurance and the same paid holidays but their other benefits are different. Salaried employees do not work a fixed number of hours and have no predetermined amount of vacation time, while hourly workers work a definite number of hours per week and are entitled to 40 hours of personal leave per year. The retirement plans, sick leave, and long-term disability benefits of the two groups are also different.

The Union asserts that the merchant account representatives are simply salesclerks who exercise no discretion beyond the Employer's established policies. The Union also contends that the representatives conduct almost all of their business over the telephone and that their discretion in sales is limited to filling the customer's orders by use of a price manual that is available to the customers as

⁶ Relatively few of the unit's 316 employees are at the higher end of the wage scale.

³ On 5 March 1980 the Board denied the Employer's request for review of the Regional Director's Decision and Order and Supplemental Decision and Order.

⁴ Before the hearing in the instant case, the customer service representatives' job titles were changed to merchant account representatives.

⁵ The employees sought through the clarification petition were salaried, and the unit had been limited historically to hourly paid employees.

well. Like regular salesclerks, they type on a video terminal keyboard utilizing employment skills which are similar to those of many unit employees.

The Union also seeks to demonstrate that the merchant account group shares a substantial community of interest with the bargaining unit employees by pointing out that they are in regular contact with employees in production inventory control regarding production scheduling and with shipping department employees concerning pool trucks; that unit employees filled three of the five positions that became vacant at the time that the merchant account group was transferred from Chicago to Wisconsin Rapids; and that some unit positions involve complexity and responsibility comparable to that of the merchant account positions as well as daily contact with customers. However, out of a unit of approximately 316 employees, the Union, using its own calculations, points to only 27 employees whose jobs it argues require the same discretion and independence as the merchant account job.

There is no interchange between unit employees and the merchant account representatives, nor do the two groups share common supervision or the same benefits. They are evaluated and promoted according to different procedures and different standards and, while there is some functional integration, it appears to be minimal and limited to dealing with only two categories of unit employees, those in production inventory control and shipping.

In addition to the difference in working conditions, benefits, and pay, the merchant account representatives are required to utilize substantially different skills from those needed by unit employees. Their main objective is to maximize the Employer's product sales by developing cordial and lasting relationships with their customers, to familiarize themselves with the items to be sold in order to best anticipate the needs of both the Employer and the customer, and to manage each sale from its origin at the point of initial inquiry, through the arrangement of transportation, to the product's final

destination. Their rate of pay is considerably higher than that of the vast majority of unit employees and they are required to travel occasionally to their customers' facilities to aid in the development of a beneficial working relationship. They are hired based on factors such as educational background, sales experience, and sales aptitude. Therefore, because we find that the merchant account representatives have a separate and distinct community of interest from the bargaining unit employees, we shall deny the Union's petition to clarify them into the unit.

The Merchant Account Trainees

The merchant account trainees are college graduates training for outside sales positions by working for a time, usually exceeding 1 year, in the merchant account department. Their duties while in the merchant account department are essentially the same as those of the merchant account representatives, described above. We shall therefore deny the Union's petition with respect to this classification.

The Administrative Assistant

The administrative assistant position was transferred from the Chicago operation, along with the merchant account representatives, and is essentially a part of that operation. Like the merchant account positions, the administrative assistant is salaried and works closely with the department manager. Because we find that the administrative assistant has a greater community of interest with the other employees in the merchant account group than with the unit employees, we shall dismiss the petition with regard to that position as well.

Because we are finding that none of the positions can be properly added to the unit, we find it unnecessary to reach the issue of whether three of the merchant account representatives are supervisors.

ORDER

The petition is dismissed.