

The Green-Wood Cemetery and Louis Gioffre, an Individual Petitioner and Local 966, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

The Green-Wood Cemetery, Employer-Petitioner and Local 966, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 29-RD-525 and 29-UC-300

31 July 1986

**DECISION ON REVIEW AND ORDER
REMANDING**

**BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN, BABSON, AND STEPHENS**

On 30 August 1985 the Regional Director for Region 29 issued a Decision and Direction of Election and Order in the above-entitled proceeding in which he found appropriate a unit of all field employees and office clerical employees employed by the Employer at its Brooklyn, New York location, excluding all executives, confidential employees, guards and supervisors as defined in the Act.¹ In so doing, the Regional Director found that the petitioned-for unit of office clerical employees was inappropriate for the decertification election on the basis that a merger of units had occurred. The Regional Director therefore also rejected the Employer's petition for clarification of separate bargaining units of office clerical employees and field employees.

In accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's decision. The Employer contended that substantial questions of law and policy were raised because of the absence of controlling Board precedent and because of a departure from officially reported Board precedent. The Employer further contended that, to the extent the Regional Director's decision was consistent with Board policy, a reexamination of such policy was warranted because of the asserted adverse effect on the office clerical employees' Section 7 rights.

By telegraphic order dated 5 November 1985 the request for review was granted.

The Board has reviewed the entire record in this case and has decided to affirm the Regional Director's Decision and Direction of Election and Order.

¹ The Regional Director conditioned the direction of election on the Petitioner's submission of an additional showing of interest because the unit found appropriate by the Regional Director was broader than the unit originally sought by the Petitioner. The Board has been administratively advised that no election has been conducted.

In *Gibbs & Cox, Inc.*,² the Board majority recently reaffirmed the Board's "merger doctrine" in an unfair labor practice case, finding that the respondent employer unlawfully withdrew recognition from the union at one location of a multilocation bargaining unit. Specifically, the Board majority found that a merger of units at the employer's Arlington, Virginia and New York City facilities had occurred, despite the initial separate recognition at Arlington, as a result of a 4-year history of bargaining on a multilocation basis and the parties' application of two successive collective-bargaining agreements to the Arlington employees. Rejecting the dissenters' focus on the time of the creation of the unit, the majority stated that the nature of the established bargaining relationship must be recognized in order to guarantee the Section 7 rights of employees in the overall unit and to further the statutory objective of maintaining industrial stability.

Similarly, in the instant case, the parties' entire course of conduct following recognition of the office clerical unit in 1979 establishes an intent to merge the office clerical unit with the field employees unit. The Union was certified on 25 May 1979 as the exclusive bargaining representative of the Employer's 110 field employees. The parties executed a 3-year collective-bargaining agreement on 24 July 1979. The unit description in the contract's recognition clause specifically excluded office clerical employees, consistent with the certification.³ Later in 1979, following a card check, the Employer voluntarily recognized the Union as the representative of the office clerical employees. On 10 December 1979 the parties executed a collective-bargaining agreement which, in addition to containing a number of provisions applicable to the clericals only, incorporated the field employees' agreement by deleting the exclusion of the office clerical employees from the recognition clause.⁴

Rejecting the Employer's argument that the recognition clause was merged for convenience only, the Regional Director noted that the contract itself indicated no such intention and that the parties elsewhere included separate clauses for the office clerical employees. The Regional Director further noted, however, that there was no discussion

² 280 NLRB 953 (1986) (Members Johansen, Babson, and Stephens, Chairman Dotson and Member Dennis dissenting).

³ The unit description in the certification covered all employees employed by the Employer, excluding office clerical employees, guards and supervisors as defined in the Act.

⁴ Member Stephens notes that whether or not the clericals might be properly certifiable as a separate unit they did not seek separate certification at the time and were not expressly recognized as a separate unit for bargaining purposes. Thus, in his view, this is not, strictly speaking, a "merger doctrine" case.

during the 1979 negotiations of merging the clerical employees with the field employees unit.⁵

The Regional Director found further support for a finding of merger of units in the 1982 negotiations. He noted that the Union had a single negotiating committee for all employees, held a single contract proposal meeting for all employees, and held a single ratification vote. He further noted that the parties entered into a single contract extension, that there were no separate sessions for proposals related to the clericals, and, most importantly, that the parties retained the merged recognition clause from the 1979 agreement.⁶

The Regional Director also noted, inter alia, that since 1979 the Union has had a single shop steward for all employees. Finally, he noted the lack of any written or oral statements by either party expressing an intention to maintain separate units. The Regional Director therefore found that the parties intended to merge the field employees and office clerical employees into a single overall unit, as in *Scott Paper Co.*, 257 NLRB 699 (1981); *Armstrong Rubber Co.*, 208 NLRB 513 (1974); and *W. T. Grant Co.*, 179 NLRB 670 (1969).⁷ Accordingly, applying the well-settled rule that the unit appropriate in a decertification election must be coextensive with the certified or recognized unit,⁸ the Regional Director concluded that only a merged unit of field employees and office clerical employees is appropriate in this case.

We conclude, essentially for the reasons stated by the Regional Director, that the appropriate unit in the decertification election here should encompass the field employees as well as the office clerical employees. To return, as our dissenting colleague would do, to the time of the creation of the office clerical unit would ignore a 6-year history of bargaining and bargaining agreements containing a merged recognition clause and other manifestations of an overall unit. This would "disturb the reasonable balance the Board seeks to achieve between the aims of assuring freedom of employees' choice and fostering established bargaining relationships."⁹

⁵ The clerical employees had been informed by the Union that an agreement covering their terms and conditions of employment would be amended into the field employees contract.

⁶ The Regional Director additionally noted that the parties had acted to more closely align the welfare benefits of the field and clerical employees, as had been done in 1979 with respect to pension benefits.

⁷ The Regional Director distinguished the instant case from the cases relied on by the Employer based on the merged recognition clause and unit description herein.

⁸ *Campbell Soup Co.*, 111 NLRB 234 (1955).

⁹ *Gibbs & Cox*, above, at 954.

Accordingly, we affirm the Regional Director's Decision and Direction of Election in an overall unit,¹⁰ and we affirm his dismissal of the Employer's petition for unit clarification.

ORDER

It is ordered that Case 29-RD-525 is remanded to the Regional Director for Region 29 for further appropriate action.

IT IS FURTHER ORDERED that the petition in Case 29-UC-300 is dismissed.

CHAIRMAN DOTSON, dissenting.

I would reverse the Regional Director and direct him to hold the decertification election in the petitioned-for office clerical unit. In 1979 the Board certified Teamsters Local 966 as representative for a 110-member service, labor, and maintenance (field) unit. Later in 1979 the Employer, after an authorization card check, recognized the Union for a 5-member office clerical unit. Finding that the parties subsequently had mutually agreed to merge the clerical and field units, the Regional Director directed an election in the merged unit, rather than in the petitioned-for office clerical unit.

I do "not adhere to the merger doctrine in determining the appropriate unit in cases involving the Section 7 right of employees to reject or change their bargaining representative." See the dissent in *Gibbs & Cox, Inc.*, 280 NLRB 953, 957 (1986). I would find:

Absent unusual circumstances, any unit that was appropriate for the purpose of selecting a bargaining representative remains appropriate for the purpose of rejecting that representative or obtaining a new one. The appropriateness of that unit cannot be extinguished merely by a mutual intent on the part of an employer and a union to conduct collective bargaining on the basis of some other unit. The unit alleged to be appropriate at the present time, however, must have been the one in which recognition was originally granted, and not merely a fragment of that unit, even if that fragment would otherwise have been appropriate.

In my view, this formulation accommodates the conflicting goals of employee free choice and bargaining stability.

¹⁰ As the unit found appropriate is larger than that requested, the Petitioner is accorded a period of 10 days in which to submit the requisite showing of interest to support an election. In the event the Petitioner does not wish to proceed to an election herein, it may withdraw its petition without prejudice by notice to the Regional Director within 10 days from the date of this decision.

The 5-member office clerical unit was, when recognition was granted, separately appropriate from the 110-member field unit. Accordingly, I would

find the petitioned-for office clerical unit appropriate for conducting the decertification election.