

Wisconsin Bell, Inc. and Deborah Hollis and Local 4603, Communications Workers of America, AFL-CIO. Case 30-RD-858

27 May 1987

DECISION AND ORDER

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

On 17 June 1986 the Regional Director for Region 30 of the National Labor Relations Board issued an order withdrawing notice of representation hearing and dismissing petition in the above-titled proceeding. The Regional Director found that Wisconsin Bell, the Employer, and Communications Workers of America, Local 4603, the Union, had entered into an agreement on 24 September 1984 to amend their then current collective-bargaining agreement to merge the newly certified unit of Public Service Center employees at the Kossow Road location into a larger unit of employees,¹ and that therefore the unit petitioned for in this proceeding was not appropriate for purposes of a decertification election. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Petitioner filed a timely request for review of the Regional Director's dismissal. By order dated 17 December 1986, the Board granted the request for review, as it raised substantial issues with respect to whether there had been a merger of the originally certified unit sought here into a larger unit that could best be resolved on the basis of record evidence. On 20 January 1987 a hearing was held before Hearing Officer Gary Prochnow. Thereafter, on 21 January 1987, the case was transferred to the Board for decision in accordance with its 17 December 1986 order.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the entire record in this proceeding, including the briefs of the parties, and has decided to affirm the Regional Director's dismissal.

The Employer and the Union have had an ongoing collective-bargaining relationship for many years. The first contract covering a unit of com-

mercial employees was effective either in 1974 or 1977.² Since that time, there have been a series of successive 3-year contracts, the most current of which is effective 10 August 1986 through 12 August 1989. Each of the contracts has consisted of a main body with common clauses and four separate appendices. Historically, appendix D has covered commercial employees. Prior to the 1983 agreement, each of the commercial units was listed separately in the appendix by geographic area and was considered a separate bargaining unit. During bargaining for the 1983 agreement, however, the Union and the Employer agreed that all existing units in appendix D would be combined into one overall unit represented by the Union. The parties further agreed that any newly certified groups of commercial employees in the future would be included in the overall commercial unit described in appendix D. These changes were reflected in the 1983 agreement by the deletion of the phrase "separate bargaining units," which appeared in the 1980 contract.

On 13 September 1984 the Union was certified as the collective-bargaining representative for a group of eight commercial employees who worked at the Employer's Public Service Center on Kossow Road in Waukesha, Wisconsin. The 1983 contract was then amended by letter dated 24 September 1984 to include the Kossow Road employees in the overall commercial workers unit set forth in appendix D. This change was later incorporated into the 1986 collective-bargaining agreement between the parties. It is undisputed that the Kossow Road employees have been paid in accordance with wage rates listed in appendix D and that other contractual benefits and provisions have been applied to them. The instant petition was filed on 22 May 1986, requesting a decertification election in a unit limited to all Public Service Center employees at the Kossow Road location.

The Board has long recognized the "merger doctrine" under which an employer and union can agree to merge separately certified or recognized units into one overall unit.³ This doctrine was recently affirmed in our decision in *Gibbs & Cox*, 280 NLRB 953 (1986). Where such an agreement has been reached, the larger, merged unit is the only unit appropriate for purposes of a representation election. Here, the Employer and the Union reached an agreement that merged the Kossow Road employees into the larger unit set forth in appendix D of the 1983 and 1986 collective-bargain-

¹ The Union maintains that the agreement between the parties merged the Public Service Center employees at the Kossow Road location into an overall unit of employees, comprising all 4000 Wisconsin Bell employees represented by the Union. In the alternative, the Union claims that the Kossow Road unit merged into a single unit of all commercial employees set forth in appendix D of the collective-bargaining agreement. We find that the evidence establishes at least that the Kossow Road employees were merged into a unit with the employees in appendix D of the collective-bargaining agreement, and find it unnecessary to pass on whether the unit in appendix D was merged into a larger unit of all Wisconsin Bell employees.

² Commercial work generally encompasses such duties as sales, service, marketing, and bill collecting.

³ See, e.g., *White-Westinghouse Corp.*, 229 NLRB 667 (1977), *General Electric Co.*, 180 NLRB 1094 (1970).

ing agreements. Accordingly, as the petitioned-for unit is not coextensive with the currently recognized and established bargaining unit, the petition shall be dismissed.⁴

ORDER

The petition is dismissed.

CHAIRMAN DOTSON, dissenting.

Contrary to my colleagues, I would reverse the Regional Director's dismissal of the petition, and would instead reinstate the petition and remand the case to the Region for further appropriate action, including the scheduling of an election in the petitioned-for unit. The Board determined that the employees in the Public Service Center at the Kossow Road location constituted a separate appropriate unit for bargaining when it directed a representation election and thereafter certified the Union as the collective-bargaining representative on 13 September 1986 in that unit. The Regional Director found, and the majority agrees, that this unit is now inappropriate for purposes of a decertification election because of the Employer and the Union's agreement to merge this eight-person unit into the much larger unit set forth in appendix D to the 1986 collective-bargaining agreement. I disagree.

The employees in the Kossow Road unit expressed an interest in union representation in mid-1984. At no time was there any mention of the fact that their small unit of approximately eight employees would be merged into a larger unit of Wis-

consin Bell employees. At an organizational meeting prior to the election in September 1984, the employees specifically asked if they would be able to decertify the Union "if it ever came to that point." The response was that they would be able to have a decertification election at any time through proper procedures and filing a petition. The Kossow Road employees were not given a copy of the then-current collective-bargaining agreement prior to the election. Neither were they informed at any time of the 24 September 1984 letter of agreement between the Employer and the Union that purported to merge them into the larger overall unit.

As set forth in former Member Dennis' and my dissent in *Gibbs & Cox*, I cannot adhere to a policy that so callously ignores the specific right of employees to reject or change their bargaining representative. The situation here clearly illustrates the inherent unfairness of placing the employees' collective-bargaining fate in the hands of the Employer and the Union. These employees, who have not been represented by counsel, cautiously inquired as to their rights. They received a Delphic response. I cannot state strongly enough my view that the only proper accommodation of employees' Section 7 rights with the policy of stability in labor relations requires that "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."¹ Accordingly, I dissent.

⁴ See *Green-Wood Cemetery*, 280 NLRB 1359 (1986), *Westinghouse Electric Corp.*, 227 NLRB 1932 (1977)

¹ *Gibbs & Cox*, 280 NLRB 953 (1986)