

Compact Video Services, Inc. and International Alliance of Theatrical Stage Employees and Moving Picture Operators of the United States and Canada. Case 31-UC-204

4 June 1987

DECISION AND ORDER

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

Upon a petition filed under Section 9(c) of the National Labor Relations Act by the Employer, a hearing was held before Hearing Officer Susan Seeck on 19 February and 4 and 7 March 1986. On 9 July 1986 the Regional Director for Region 31 of the Board issued a Decision and Order Clarifying Bargaining Unit in the above-captioned proceeding. In his decision, the Regional Director concluded that the existing unit at the Employer's Alameda Avenue facility should be clarified to include the following syndication-distribution employees at the Employer's Chestnut Street facility: nonsupervisory shipping and receiving employees, the tape eraser, and the shuttle driver/shipping and receiving employee; and to exclude the following employees at that facility: customer service representatives, the delivery driver, and the shipping supervisor. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review alleging that, contrary to the conclusion of the Regional Director, all of the syndication-distribution employees at its Chestnut Street facility should be excluded from the unit at its Alameda Avenue facility. The request for review was based essentially on the grounds that the decision raised a substantial question of Board policy by departing from Board precedent regarding accretion issues and that the Regional Director allegedly failed to consider certain facts. The Union filed a statement in opposition, contending that the Regional Director's decision accreting certain of the employees at the Chestnut Street facility to the Alameda Avenue unit was correct.¹

By order, dated 9 October 1986, the Employer's request for review was granted. Thereafter, the Employer filed its posthearing brief to the Regional Director and its request for review as its brief on review.

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

¹ The Union had moved to dismiss the UC petition, which motion was denied by the Regional Director. The Union took the position at hearing that, if its motion were denied, the Chestnut Street employees should be accreted to the existing unit.

The Board has considered the entire record in this case and makes the following findings.

1. The Employer, a California corporation, provides videotape postproduction services. The parties stipulated that, during the past calendar year, a representative period, the Employer received gross revenues in excess of \$500,000 and purchased and received goods valued in excess of \$50,000 directly from points located outside the State of California. On these facts, we find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act. We also find that, as stipulated by the parties, the Union is a labor organization within the meaning of Section 2(5) of the Act.

2. The Employer, a wholly owned subsidiary of Compact Video, Inc., has been engaged for the past 15 years in providing videotape postproduction services, such as visual editing and sound mixing, at its Alameda Avenue facility. The Union has had a longstanding bargaining relationship with the Employer, and a current collective-bargaining agreement covers the approximately 100 employees in the Alameda Avenue unit.² The bargaining unit, as described in the collective-bargaining agreement, includes the following job classifications: video tape machine operators; videotape editors; maintenance engineers; film transfer technicians; electronic graphics operators; computer personnel; fabrication, art and geographics departments; boommen, audio 2 technicians; audio mixers; video projection technicians; telecine operators; recotech; tape cleaning; repair; evaluation and storage.

In 1983 Compact Video acquired a competitor, Vidtronics, Inc. Compact Video closed Vidtronics' operations, other than its syndication-distribution department, in early 1985. At that time, the Vidtronics' syndication-distribution department, which duplicates videotapes of syndicated shows and distributes them to television stations, was transferred to the Employer (Compact Video Services). Vidtronics' duplication department employees, i.e., dub room supervisors and video tape operators, were moved to Alameda Avenue and absorbed into the bargaining unit. The distribution and storage portion of the syndication-distribution operation was relocated to the Employer's Chestnut Street facility, approximately 3 miles removed from the Alameda Avenue facility.

At the time Compact Video took over Vidtronics, the latter's employees were represented in two bargaining units. Vidtronics' employees working in technical job classifications, including videotape operators and, apparently, tape cleaning employees

² That agreement is effective by its terms from 1 August 1984 through 31 July 1987.

in the syndication department,³ were in a Vidtronics' unit represented by the Union. Vidtronics' customer service representatives, shipping and receiving employees, and vault employees were included in a unit represented by the Office and Professional Employees International Union, Local 174 (OPEIU). OPEIU subsequently disclaimed interest in representing these employees after a decertification petition was filed with respect to that unit.

Based on the record, it appears that the primary focus of the work performed at Alameda Avenue continues to involve postproduction services, including video editing and sound mixing, in furtherance of new television and film productions. The Employer characterizes such work as "technical" and "highly creative." The syndication-distribution operation services clients who hold the syndication rights to television programs, distributing dubbed syndication tapes to television stations around the country. Work related to the Employer's syndication-distribution operation is performed primarily at the Employer's Chestnut Street location, although some employees at Alameda Avenue are engaged in locating, duplicating, and occasionally shipping tapes if necessary for Chestnut Street's distribution needs.

Specifically, the Chestnut Street customer service representatives create a schedule for the distribution of tapes, attempting to minimize the number of required tape duplications by scheduling air dates so that stations can ship the tapes directly to the next station on the schedule. The customer services representatives prepare a shipping order which goes to the Chestnut Street shipping and receiving department, which prepares and ships the tapes. If it is necessary to duplicate a tape, a customer service representative prepares a duplication order which is delivered by the shuttle driver to a nonunit Alameda Avenue employee who creates a tape duplication schedule and labels. Pursuant to that schedule, an Alameda Avenue tape vault librarian, who is in the unit, locates the master tape and delivers it and clean tape to the duplication room, where the master tape is duplicated by a videotape operator who is also in the bargaining unit. Under ordinary circumstances, the Chestnut Street shuttle driver picks up the tape duplicates for shipping from, or storage at, the Chestnut Street facility shipping area. Where there is insufficient time to bring the tape duplicates back to Chestnut Street to be shipped, the Alameda Avenue bargaining unit

vault employees ship the duplicates from Alameda Avenue. These "red dot" shipments occur about 7 to 10 times a week. After the scheduled distribution of the tape duplicates is completed, they are returned to the Chestnut Street facility where they are received by the receiving employee. If the tape is to be circulated again, he takes it to the rack area, where it is stored until its next shipment. If a duplicated tape is no longer needed, the receiving employee delivers it to the Chestnut Street tape eraser, who evaluates its condition with a "recortec" machine.⁴ The tape eraser will then put it in a "junk tape" pile or clean and erase the tape and place it on a storage rack, to be returned to Alameda Avenue by the shuttle driver for future use.

The Regional Director essentially included as accreted to the existing unit only those distribution and storage employees at Chestnut Street who he determined had duties and functions similar to those of employees in the Alameda Avenue unit. Thus, the Regional Director excluded the Chestnut Street customer service representatives and delivery driver from the unit because he found they had no counterparts among the unit employees of the Alameda facility. In contrast, the Regional Director concluded that the functions of the Chestnut Street shipping and receiving employees are similar to those of the six or seven tape vault employees at Alameda Avenue who are in the unit. Specifically, the Regional Director noted that both categories of employees maintain tape libraries, log tapes in and out, and refile them. He further noted that while generally Chestnut Street shipping employees label and ship duplicate tapes, in "red dot" situations those duties are performed by the tape vault employees. He also relied on what he considered to be the "regular" contact between the two groups.⁵ On these grounds, the Regional Director included the shipping and receiving employees in the Alameda Avenue unit and further found that the shuttle driver/shipping and receiving employee should be included in the unit inasmuch as he spends a substantial amount of time each day performing shipping and receiving duties.

As to the Chestnut Street tape eraser employee, the tape eraser's function is to clean and erase used

³ Although there was no testimony at the hearing as to whether the tape cleaning employees were included in the bargaining unit when Compact Video acquired Vidtronics, the Emp. Exh 2 (the collective-bargaining agreement in effect between the Union and Vidtronics when Compact Video, Inc. acquired Vidtronics) lists the tape cleaning and repair classification as within the agreement's coverage.

⁴ The parties' current collective-bargaining agreement refers to a "recotech" job classification, as does the Union's brief. However, the record testimony refers only to a "recortec" machine. It is unclear from the record whether the recortec machine is also called a "recotech" machine.

⁵ In this regard, the Regional Director noted that a Chestnut Street shipping supervisor and shipping employee went to Alameda Avenue six times during the last year to assist with "red dot" orders and a Chestnut Street shipping employee went once to Alameda Avenue to aid an injured shuttle driver. An Alameda Avenue vault employee has gone to Chestnut Street to oversee tape retrieval there and the Alameda Avenue vault employees regularly telephone a Chestnut Street shipping supervisor if they have questions about duplicated tape shipments.

duplication tapes and evaluate their quality for possible future use. The Regional Director concluded that this function is comparable to that of the Alameda Avenue videotape operators,⁶ who may devote 20-25 percent of their time to tape cleaning and erasing, using the same type of recortec machine, albeit working with new rather than used tape. The Regional Director further noted that the Chestnut Street tape eraser and the bargaining unit videotape operators at the Alameda Avenue duplication department are supervised by the same individual. Accordingly, the Regional Director included the tape eraser employee in the unit.

The Board has followed a restrictive policy in finding accretions to existing units because employees accreted to an existing unit are not accorded a self-determination election and the Board seeks to insure that the employees' right to determine their own bargaining representative is not foreclosed. *Towne Ford Sales*, 270 NLRB 311 (1984), *affd. sub nom. Machinist District Lodge 190 v. NLRB*, 759 F.2d 1477 (9th Cir. 1985). The Board thus will find a valid accretion "only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted [footnotes omitted]." *Safeway Stores*, 256 NLRB 918, 918 (1981). Under this policy, we find, contrary to the Regional Director, that none of the Chestnut Street distribution and storage employees should be accreted to the Union's existing Alameda Avenue unit.

In *Towne Ford Sales*, 270 NLRB 311, 311-312 (1984), the Board identified certain factors critical to finding an accretion. The Board stated:

One of these elements is the degree of interchange of employees between the affiliated companies. *Mac Towing*, 262 NLRB 1331 (1982). No weight is assigned to the fact that interchange is feasible when in fact there has been no actual interchange of employees. *Combustion Engineering*, 195 NLRB 909, 912 (1972). Another important element is whether the day-to-day supervision of employees is the same in the group sought to be accreted. *Save-It Discount Foods*, 263 NLRB 689 (1982); *Weatherite Co.*, 261 NLRB 667 (1982). This element is particularly significant, since the day-to-day problems and concerns among the

employees at one location may not necessarily be shared by employees who are separately supervised at another location. *Renzetti's Market*, 238 NLRB 174, 175 (1978).

The Board has also considered relevant such additional factors as similarity of terms and conditions of employment;⁷ similarity of skills and functions;⁸ physical, functional, and administrative integration;⁹ and bargaining history.¹⁰ We conclude that the factors arguably favoring accretion considered dispositive by the Regional Director here do not outweigh the factors militating against a finding of accretion, particularly in light of Board policy favoring such a finding only under the narrow circumstances set forth in *Safeway Stores*, above.

With respect to employee interchange, the record indicates that no Alameda Avenue employee has ever been transferred to the Chestnut Street syndication-distribution operation. Likewise, no Chestnut Street employee has ever transferred into the Alameda Avenue bargaining unit.¹¹ As to employee substitutions, the evidence reflects that no Alameda Avenue employee has ever substituted for a Chestnut Street employee, and indicates instead that short-staffing at Chestnut Street's shipping and receiving department is remedied through the use of overtime. Additionally, although as noted by the Regional Director the Chestnut Street tape eraser had substituted on occasion for the Alameda Avenue delivery driver, that Alameda Avenue employee is not in the bargaining unit.

Moreover, the occasional and irregular contacts found by the Regional Director among employees in the two facilities do not establish functional integration sufficient to warrant accretion. In this regard we note that the phone contact cited by the Regional Director is between the excluded Chestnut Street supervisor and Alameda Avenue unit vault employees. Further, although Chestnut Street shipping employees went to Alameda Avenue six times last year to help with "red dot" shipments and an Alameda Avenue vault employee has gone to Chestnut Street to oversee tape retrieval, this infrequent interchange is consistent with a finding

⁷ *Western Cartridge Co.*, 134 NLRB 67 (1961).

⁸ *Jos Schlitz Brewing Co.*, 192 NLRB 553 (1971).

⁹ *Pullman Industries*, 159 NLRB 580 (1966).

¹⁰ *Aerojet-General Corp.*, 185 NLRB 794 (1970).

¹¹ Tape vault employee Scott Eversull testified that he started in shipping and receiving at Alameda Avenue, transferred to Chestnut Street, and then back to Alameda Avenue. However, he further testified that he has been employed in the Alameda Avenue tape vault for 5 years, which is prior to the institution of the current syndication-distribution operation at Chestnut Street, and, further, that the shipping and receiving work he performed at Chestnut Street related to Compact Video's production work, work which the Employer no longer performs. Thus, Eversull's experience does not support the existence of interchange between the Employer's current Chestnut Street and Alameda Avenue operations.

⁶ As noted by the Regional Director, although the existing collective-bargaining agreement includes the job classifications of tape cleaning and evaluation, the Employer does not currently employ individuals in those classifications. No evidence was adduced as to the "recortec" classification included in the agreement.

that these two facilities are, in large part, functionally distinct.

Similarly, the nature of day-to-day supervision does not warrant accretion. The tape eraser is the only Chestnut Street employee who reports directly to an individual, the Employer's manager of duplication, who directly supervises employees at Alameda Avenue. The shipping and receiving employees at Chestnut Street, on the other hand, report to an intermediate supervisor at Chestnut, who in turn reports to the manager of duplication. The record clearly demonstrates that the shipping and receiving employees' immediate supervisor has complete day-to-day responsibility and control over the operation of his department. In this regard, the manager of duplication only visits the Chestnut Street facility once every month or 6 weeks.

We find that other relevant factors do not support an accretion under the facts here. Although, as the Regional Director stresses, some Alameda Avenue employees arguably perform functions similar to those performed at Chestnut Street, the majority of employees at Alameda Avenue are postproduction employees who are more skilled, are higher paid, and perform more creative work. In this connection, it is undisputed that the postproduction employees engage in editing and mixing work with clients to create new productions, and the engineers and tape operators involved in postproduction provide technical support for such creative operations. Further it appears, for example from the testimony of the manager of duplication, that although both the Chestnut Street tape eraser and the Alameda Avenue videotape operators use the recortec machine for cleaning, erasing, and evaluating tape, the tape operators perform such duties only for 20-25 percent of the time and supplement such duties with tasks involving use of more complex machinery. As the manager of duplications testified, such cleaning, erasing, and evaluation work is the primary function of the tape eraser at Chestnut Street while only a preliminary function of the tape operators at Alameda Avenue. Consistent with this comparison, he further testified that the wage rate for the tape eraser is \$200 per week, compared to \$533 for the videotape operators.

With respect to the alleged similarity of function between the Alameda Avenue tape vault employees and the Chestnut Street shipping employees, even assuming, as noted by the Regional Director,

that tape vault employees may spend between 40-60 percent of their time on 3 to 15 shipments per day, the evidence indicates that the Chestnut Street shipping operation is of greater magnitude, with shipping employees spending 90 percent of their time on 200 to 300 multiple tape shipments daily. The working conditions differ between the two locations, as evidenced by the fact that Chestnut Street functions essentially on a single day shift whereas the Alameda Avenue location, including both postproduction employees and dubroom and tape vault employees associated with the syndication function, operates on staggered shifts around the clock.

Finally, with respect to bargaining history, the employees at issue at Chestnut Street, who were formerly in the Vidtronics' syndication and distribution operation, with the apparent exception of the tape eraser, were excluded from the Union's unit at Vidtronics. As stated previously, the Chestnut Street customer service representatives, whom the Regional Director excluded from the existing unit, were in a separate OPEIU unit with the shipping and receiving employees, whom the Regional Director included. That their union ultimately disclaimed interest in representing them does not erase their separate bargaining history and the considerable functional interaction between the two groups at Chestnut Street at present.

In sum, we do not find based on the record as a whole that the shipping and receiving employees or the tape eraser at Chestnut Street have little or no separate group identity, nor do we find that they share an overwhelming community of interest with the Alameda Avenue unit, as required under the Board's accretion policy.¹² We therefore grant the Employer's petition and shall clarify the existing bargaining unit by excluding the Employer's syndication-distribution employees at the Employer's Chestnut Street location.

ORDER

The unit of employees represented by the Union at the Employer's Alameda Avenue facility in Burbank, California, is clarified to exclude all syndication-distribution employees at the Employer's Chestnut Street location.

¹² We note that the facilities are 3 miles apart. In light of the factors militating against accretion discussed above, we do not find the geographic proximity of the Alameda Avenue and Chestnut Street locations sufficient to warrant a finding of accretion. See, e.g., *Towne Ford Sales*, supra