

Safelite Industries Division of Lear Siegler and Gary Wheeler and Glaziers and Glassworkers Union Local No. 558, Case 17-RD-1062

16 December 1987

SUPPLEMENTAL DECISION AND ORDER REMANDING TO THE REGIONAL DIRECTOR

BY CHAIRMAN DOTSON AND MEMBERS STEPHENS AND CRACRAFT

The National Labor Relations Board, by a three-member panel, has considered a determinative challenge in an election held 20 March 1987 and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The revised tally of the ballots shows nine for and eight against the Union, with one challenged ballot.¹

The Board has reviewed the record in light of the Union's exceptions and brief and adopts the hearing officer's findings, conclusions, and recommendations.

The sole issue before the Board is the disposition of Paul DeWitt's challenged ballot. At the election, the Board's agent challenged the ballot of DeWitt, who at the time was a manager-trainee, on the basis that he was not included on the eligibility list. The hearing officer recommended that the challenge to DeWitt's ballot be overruled, finding that the parties did not express an intent either to include DeWitt in the unit or to exclude him. The hearing officer then considered community-of-interest factors and found that DeWitt shares a community of interest with the unit employees and therefore should be included in the unit. The Union excepts to the hearing officer's recommendations, asserting that the parties intended to exclude DeWitt from the unit and, as that intent was clearly expressed, that the hearing officer should never have reached the community-of-interest question, but instead should have sustained the challenge based on the parties' intent.

The stipulated unit includes glass installers and shop managers.² The parties stipulated that this

unit has historically been recognized by the parties.³ They further stipulated that the Union was aware of DeWitt's employment but not necessarily aware of his job title. The parties agree that neither Paul DeWitt nor the manager-trainee position was ever discussed by the parties, either in the course of collective bargaining or pursuant to the parties' entering into the stipulated election agreement.

The record shows that the Employer employs shop managers and glass installers at its various glass installation shops. The duties of the shop managers include answering the telephone, waiting on customers, preparing shop tickets and invoices, maintaining a daily log of jobs completed, maintaining an inventory of windshields, flat glass and parts, placing orders for parts with the Employer's warehouse, scheduling and coordinating the assignment of jobs to be performed, handling customer problems and complaints, and installing glass. The glass installers do only installation work.

In September 1986 the Employer employed Paul DeWitt at its Raytown facility.⁴ It is unclear when the Employer officially classified DeWitt as a manager-trainee; however, sometime in October 1986 both DeWitt and Lester Saathoff, the shop manager at the Raytown facility, were aware that DeWitt's position was that of manager-trainee. Initially DeWitt was trained to perform all the shop manager's paperwork duties. Sometime after the election was held, DeWitt began training for the glass installation work.

When DeWitt was originally hired, he received a wage rate substantially lower than the wage rate of the shop managers and glass installers (\$5.22 per hour versus about \$10.72 per hour journeyman's rate, with the shop manager receiving additional pay above the journeyman's rate). DeWitt also received different benefits from those of the unit employees, although Herb Conyers, the Employer's district manager, testified that the benefits were comparable.

It is settled law that in a stipulated-unit election, "the Board's function is to ascertain the parties' intent with regard to the disputed employees." *Tribune Co.*, 190 NLRB 398 (1971). If the intent is unclear or the stipulation ambiguous, the Board will then consider community-of-interest principles to determine whether the disputed employee belongs in the unit. *Viacom Cablevision*, 268 NLRB 633 (1984).

³ It is unclear from the record whether a collective-bargaining agreement covering the unit employees was in effect.

⁴ Prior to September 1986, DeWitt worked for the Employer at its construction glazing shop which the Employer closed around mid-August 1986. No employees at the Employer's glazing shop were ever included in the instant unit.

¹ The revised tally of ballots reflects the Board's 2 July 1987 unpublished Decision and Order sustaining the challenge to the ballot of Matthew Young, overruling the challenge to the ballot of David Emmett, and ordering that Emmett's ballot be opened and counted.

² The unit is described as follows: All glass installers and shop managers employed by Safelite Division of Lear Siegler, Inc., at its facilities located at 8042 Parallel Parkway, Kansas City, Kansas, 1547 Burlington, Kansas City, Missouri, 9204 E. 350 Highway, Raytown, Missouri, 7953 Wornall Road, Kansas City, Missouri, 8702 Grant, Overland Park, Kansas, 5813 Reeds Road, Mission, Kansas, and 1732 Oak, Kansas City, Missouri, but EXCLUDING all office clerical employees, professional employees, guards and supervisors as defined in the Act.

The express language of the stipulation in this case does not specifically include or exclude the manager-trainee classification. Consequently, the hearing officer concluded that the parties did not express a clear intent with regard to the inclusion or exclusion in the unit of the manager-trainee position. The Union asserts, however, that because manager-trainee is not one of the classifications included in the unit description, and because it was not a classification historically included in the unit, the parties' intent that the manager-trainee position not be in the unit is clear. Thus, the Union asserts that there was no need to discuss DeWitt's status when the parties were discussing the election stipulation and, furthermore, that the Employer's failure to include DeWitt on the list of eligible voters affirms that the parties' intent was clear.

We find the Union's assertions unpersuasive. Initially, we find that the failure to list the manager-trainee position as an included classification does not establish that the parties clearly intended to omit the classification. The unit description specifically includes two classifications of employees and specifically excludes four classifications of employees. With regard to the six classifications of employees mentioned in the stipulation, the parties' intent is clear; however, as the express language of the stipulation does not include or exclude the classification of manager trainee, their intent with regard to that position is not clear.

Furthermore, the historical absence of the manager-trainee position from the unit also fails to establish that the parties clearly intended to exclude the position from the unit. The manager-trainee position was not created until September or October 1986, when DeWitt was hired for the position. The parties stipulated that neither DeWitt nor the manager-trainee position was ever discussed by the Union and the Employer. Contrary to establishing that the parties did not intend to include the position in the unit, this evidence indicates that the parties never addressed the issue.

Finally, the failure to discuss DeWitt's status at the time the election stipulation was entered into and the Employer's failure to include DeWitt on the eligibility list also do not establish a clear intent by the parties to exclude the manager-trainee position from the unit. Rather, such occurrences can just as easily be explained by the parties' oversight.

We find that it is not possible to ascertain the parties' clear intent with regard to whether the manager-trainee position is to be included or excluded from the unit. Therefore, community-of-interest principles must be used to determine whether the manager-trainee position belongs in the unit.

The evidence establishes that DeWitt performs the same duties as the shop managers. Like the shop managers and glass installers, he is hourly paid, receives his pay at the same time, works approximately the same hours, punches the same timeclock, wears the same uniform, uses the same lunch area and restroom facilities, works under the same supervision, and spends a significant percentage of his time interacting with the other unit employees, both in the shop area and the customer waiting area. Furthermore, the duties performed by DeWitt are an integral part of the flow of bargaining unit work performed in the shop. We therefore find that DeWitt, as manager-trainee, shares a community of interest with unit employees and shall include him in the unit.

ORDER

It is ordered that the Regional Director for Region 17, within 10 days from the date of this decision, open and count the ballot of Paul DeWitt and thereafter prepare and cause to be served on the parties a second revised tally of ballots, on which basis he shall issue the appropriate certification.

IT IS FURTHER ORDERED that the above-entitled matter is remanded to the Regional Director for Region 17 for further processing consistent herewith.