The Scranton Tribune, Employer-Petitioner and Scranton Newspaper Guild Local 177. Case 4-UC-214.

May 31, 1989

DECISION ON REVIEW AND ORDER

By Chairman Stephens and Members Johansen and Cracraft

On September 8, 1987, the Acting Regional Director for Region 4 issued a Decision and Order in the above-entitled proceeding, in which he found that the employees occupying the positions of city editor, assistant circulation manager, and circulation office supervisor were supervisors and should be excluded from the existing bargaining unit; that the employee occupying the position of Sunday editor was a managerial employee and should be excluded from the existing bargaining unit; that the employees occupying the positions of circulation supervisor and district manager were either supervisors or managerial employees and should be excluded from the existing bargaining unit; and that the petition to clarify the existing bargaining unit should be dismissed as to the other eight positions listed in the petition. In accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Union and the Employer filed timely requests for review of the Acting Regional Director's decision. The Union contended that the positions of city editor, Sunday editor, circulation supervisor, and district manager should remain in the unit. The Employer contended that the unit should be clarified further to exclude six of the eight positions that the Acting Regional Director found should remain in the unit. By Order dated October 3, 1988, the Board granted the Union's request for review only with respect to the status of the city editor and the Sunday editor.1 In all other respects, the Union's and the Employer's requests for review were denied.

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

The Board has considered the entire record in this case and finds the following:

The Employer publishes and distributes two newspapers in the Scranton, Pennsylvania area, the Scranton Tribune which is circulated Monday through Saturday and the Scrantonian which is circulated on Sundays. The Employer and the Union were parties to a collective-bargaining agreement effective from October 1, 1982, to September 30,

1985, covering, inter alia, all employees in the editorial department except the executive editor, the managing editor, and the copy boys.

The Employer seeks to clarify the existing bargaining unit to exclude the city editor and the Sunday editor, contending that they are supervisors and managerial employees. The Union contends that the Acting Regional Director erred by clarifying the unit to exclude the city editor and the Sunday editor because they are neither supervisors nor managerial employees.

The city editor and the Sunday editor both report to the Employer's executive editor, Hal Lewis. The city editor is responsible for "getting out" the daily paper and oversees the news departments for the Scranton Tribune. The Sunday editor is responsible for "getting out" the Sunday paper and oversees the news departments for the Scrantonian. Up to 13 reporters cover the news for the daily paper, with about 5 to 8 reporters working on any particular day. Both the city editor and the Sunday editor perform similar duties and functions for their respective papers.

The city editor lays out four to six pages of the daily paper (but not the two front pages that are laid out by the telegraph editor), edits stories written by the reporters, decides which of the reporters' stories to use, and writes headlines. The Sunday editor performs similar duties for the Sunday paper. Executive Editor Lewis testified, however, that he is in charge of the news department, that he advises the city editor and the Sunday editor of the paper's policies on printing the news, that the city editor tells him what big stories are going in the paper each morning (about 30 percent of the paper's content), that he reviews these stories and ongoing investigative pieces for potential libel problems before they are printed. that he reviews the quality of all stories after they are printed in the paper, that he approves the necessity for and the conduct of any long investigative pieces, and that he approves any use of space from another section of the paper for a big news story. Further, Executive Editor Lewis testified that he makes the overall general plans for the two papers, resolves any major problems, and directs any major changes in the paper such as layout and style changes. Although he consults with the other executives such as the publishers and gets input from the editors on whether changes will work, he makes the final decision.

The Board has long held that mere editing does not make a newspaper editor a supervisor under Section 2(11) of the Act. Kenosha News Publishing

¹ Member Cracraft, dissenting in part, would also have granted review with respect to the status of the circulation supervisors and the district

² The telegraph editor was included in the unit.

Corp., 264 NLRB 270 (1982); Suburban Newspaper Publications, 226 NLRB 154, 156 (1976). Thus, without more, an editor's authority to check, correct, rewrite, or even kill stories and to determine the content and layout of part of the paper does not compel a supervisory finding or demonstrate managerial status. Such duties merely require the exercise of "news judgment" within the editor's professional journalistic expertise as opposed to any supervisory or managerial authority. Washington Post Co., 254 NLRB 168, 208-210 (1981). Based on the record evidence stated above, we find that the editorial duties of the city editor and the Sunday editor do not establish that they are either supervisors or managerial employees. In particular, we note that the record in this case shows Executive Editor Lewis exercises substantial control over even the day-to-day news decisions as to the content of the paper and makes all of the important policy decisions for the paper. Thus, Bulletin Co., 226 NLRB 345, 357-359 (1976), cited by the Acting Regional Director, is distinguishable from this case because the Sunday editor found to be a managerial employee there was directly involved in making fundamental changes in the newspaper, chaired weekly policy meetings, and dealt directly with the publisher and other top executives. Here, all of these managerial functions are performed by Executive Editor Lewis rather than the city editor or the Sunday editor.

The city editor and the Sunday editor also play some role in scheduling reporters, assigning them work, evaluating their work, reporting their disciplinary problems, and hiring new reporters. As to the scheduling of reporters, the record shows that Executive Editor Lewis makes up the reporters' schedules every 2 weeks and does the payroll based on the actual hours worked by the reporters. In addition, he approves the scheduling and availability of any reporters assigned to do long investigative pieces. Although the city editor and the Sunday editor can change a reporter's scheduled hours to cover breaking news stories, they often consult Executive Editor Lewis before doing so. They also call Executive Editor Lewis at home an average of once a week about scheduling a reporter to replace one who has called in sick. The city editor and the Sunday editor can approve overtime worked by a reporter to finish covering a story. A reporter, however, can also decide on his own to work overtime to finish covering a story, and such overtime is always approved automatically after it occurs. This evidence does not establish that the city editor and the Sunday editor exercise any independent judgment in connection with scheduling reporters or approving their overtime which would support a finding of supervisory status.

As to the assignment of work to reporters, the record shows that 3 reporters are automatically assigned to cover all stories arising on their permanent beats; that there are about 3 to 10 jobs assigned to the other 2 to 5 reporters working on any particular day; that the jobs to be assigned are noted down in the city book, primarily by the day editor,3 but also by any reporter who hears of an upcoming event or by anyone who happens to answer the telephone when someone calls in with a story; that the city editor and the Sunday editor decide which jobs noted in the city book will be covered; and that the assignment of a particular job to a particular reporter is based in part on the availability of the reporter during the hours of the event to be covered. Such assignment of reporters is merely routine. Washington Post Co., 254 NLRB 168, 208 (1981). Further, as stated above, deciding whether to cover a news story requires only the exercise of professional news judgment rather than supervisory authority.

As to evaluating reporters' work, the record shows only that the city editor and the Sunday editor give their views on the quality of a particular reporter's work to assist Executive Editor Lewis in his scheduling of reporters. There is no evidence that they play a part in any formal evaluation of reporters. This does not warrant a finding of supervisory status.

As to reporting disciplinary problems, the record establishes that the city editor and the Sunday editor recommend discipline for a reporter infrequently, that Executive Editor Lewis makes the decision to discipline only after investigating the reported incident, and that Executive Editor Lewis does not always take action on the problems reported to him by the city editor and the Sunday editor. Thus, the city editor and the Sunday editor do not effectively recommend discipline for reporters.

Finally, as to the hiring of new reporters, the record establishes that only Executive Editor Lewis interviews reporter applicants, that he often discusses an applicant he would like to hire with the city editor or the Sunday editor but only to see where they could use such a new reporter and what they think of his work samples, and that he makes the decision to hire all new reporters. Although Executive Editor Lewis may consult the city editor and the Sunday editor about new hires, the evidence indicates that he makes an independent decision whether to hire a particular reporter.

³ The day editor is a unit employee.

Thus, the city editor and the Sunday editor do not effectively recommend hiring of new reporters.

Based on all the record evidence, we find that the city editor and the Sunday editor are not supervisors or managerial employees. Accordingly, contrary to the Acting Regional Director, we shall dismiss the petition as to the positions of city editor and Sunday editor.

ORDER

The petition to clarify the bargaining unit is dismissed as to the positions of city editor and Sunday editor.