

SCM Allied Egly Business, a Division of SCM Corporation and Local 527, International Printing and Graphic Communications Union, AFL-CIO, Petitioner. Case 10-RC-12669

24 May 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER**

Pursuant to a Stipulated Election Agreement approved 14 October 1982, an election by secret ballot was held 10 November 1982, under the direction and supervision of the Regional Director for Region 10, among the employees in the stipulated unit.¹ At the conclusion of the election, the parties were furnished a tally of ballots. The tally was 32 votes for, and 30 against, the Petitioner; there were 5 challenged ballots, a sufficient number to affect the results. Thereafter, the Petitioner timely filed two objections to the conduct affecting the results of the election.

After investigation, the Regional Director on 3 December 1982 issued an Order Directing Hearing and Notice of Hearing wherein he concluded that the objections and challenged ballots raised substantial and material issues of fact which could best be resolved by a hearing, and ordered such hearing on the objections and challenged ballots be held.

Pursuant thereto, a hearing before Hearing Officer W. Gene Heard was held. On 24 January 1983 the hearing officer issued and served on the parties her report recommending disposition of the challenged ballots and the Petitioner's objections. In her report, the hearing officer recommended that the challenges to the ballots of employees Ricky Phillips, Ricky Smith, and Thomas R. Appling be overruled and that the challenges to the ballots of employees Hiriam Blackmon and Coleman Gray be sustained. The hearing officer further recommended that, in the event a revised tally of ballots showed that the Petitioner did not attain a majority of the votes counted, Petitioner's Objection 1 should be sustained and Petitioner's Objection 2 should be overruled, and a new election be conducted.² On 3 February 1983 the Employer timely filed exceptions to the hearing officer's report on objections and challenged ballots, and brief in sup-

port thereof. The Employer contended that the hearing officer had erred in sustaining the challenge to Gray's ballot and Petitioner's Objection 1. Neither the Employer nor the Petitioner took exceptions to the remainder of the hearing officer's report and in particular her findings that employee Gray is not a supervisor within the meaning of Section 2(11) of the Act and her recommendations pertaining to the ballots of Appling, Blackmon, Phillips, and Smith and to Petitioner's Objection 2.³

On 14 November 1983 the Petitioner filed a motion to withdraw both its election objections so as to expedite processing of the case. The Employer did not respond to the Petitioner's motion and has not filed any opposition to the Petitioner's withdrawal request submitted at this stage in the proceedings.

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

The Board has reviewed the hearing officer's report, the Employer's exceptions and supporting brief, and the Petitioner's motion to withdraw its election objections and hereby adopts the hearing officer's findings, conclusions, and recommendations only to the extent consistent herewith.

After careful consideration, we grant the Petitioner's motion to withdraw its election objections. We do so in light of our general practice to permit such withdrawals, the absence of opposition from the Employer, and the benefits to all parties by expediting handling of the case.

The only issue remaining is the disposition of Coleman Gray's challenged ballot. At the election, the Petitioner challenged the ballot of employee Coleman Gray on the basis that he was a supervisor within the meaning of Section 2(11) of the Act. The hearing officer rejected the Petitioner's contention that Gray was a statutory supervisor but rather excluded Gray from the unit on a different ground entirely. The hearing officer found that Gray's job title, his responsibilities for the Employer's General Services Administration account, and his attendance at periodic management meetings where employee relations matters were discussed showed that Gray did not share a community of interest with the unit employees sufficient to warrant Gray's inclusion in the unit. Thus, on the basis of a

¹ The stipulated unit is: "All production and maintenance employees, including local drivers, quality control employees and pre-press employees, employed by the Employer at its Oakwood facility, but excluding all office clerical employees, guards and supervisors as defined in the Act."

² Petitioner's Objection 1 involved the Employer's distribution of a facsimile ballot to employees at work the day before the election. Petitioner's Objection 2 pertained to purported misrepresentations made by the Employer's campaign letter to employees dated and mailed 26 October 1982.

³ In the absence of exceptions thereto, we adopt pro forma the hearing officer's finding that Gray is not a statutory supervisor and her recommendations overruling the challenges to the ballots of Appling, Phillips, and Smith and sustaining the challenge to Blackmon's ballot. We do not pass on her findings and recommendation relating to Petitioner's Objection 2 because of our determination to permit the Petitioner's motion to withdraw its objections as discussed infra.

lack of community of interest, the hearing officer recommended sustaining the challenge to Gray's ballot. The Employer has excepted to these findings concerning Gray. We find merit in the Employer's exceptions. Contrary to the hearing officer, we find that her conclusion to sustain the challenge to Gray's ballot is not in accord with the parties' Stipulated Election Agreement, Board practice, and the record evidence.

Coleman Gray has been employed by the Employer for 31 years and presently occupies a position in the quality control department. Like other quality control department employees, Gray is hourly paid, utilizes a timeclock, wears a work uniform indicative of his position in quality control, and apparently is subject to the same rules, policies, and supervision of the Employer as other quality control employees. Although Gray's wage rates are somewhat higher, his fringe benefits are comparable to those received by other quality control employees. Gray, like other quality control employees, primarily performs inspection duties relative to customer printing orders and, in doing so, has regular work-related contact with other unit employees. The extra job tasks, alluded to by the hearing officer, do not detract from the similarity between his inspection duties and those assigned to the other quality control employees.

As exhibited by the parties' Stipulated Election Agreement, all quality control employees have

been specifically included in the unit description. Gray is clearly a quality control employee. It is the Board's established practice to permit parties to stipulate to the appropriateness of the unit, and to various inclusions and exclusions, if the agreement does not violate any express statutory provisions or established Board policies. *White Cloud Products*, 214 NLRB 516, 517 (1974); *Montefiore Hospital & Medical Center*, 261 NLRB 569 (1982). The parties' agreement clearly is a valid one. We therefore overrule the hearing officer's determination in this regard and we shall include Gray in view of the parties' stipulated-unit inclusion of quality control employees.

ORDER

It is hereby ordered that the Regional Director for Region 10, within 10 days from the date of this Decision, open and count the ballots of Thomas R. Appling, Coleman Gray, Ricky Phillips, and Ricky Smith, and thereafter prepare and cause to be served on the parties a revised tally of ballots, upon which basis he shall issue the appropriate certification.

IT IS FURTHER ORDERED that the above-entitled matter be, and it hereby is, referred to the Regional Director for Region 10 for further processing consistent herewith.