Reading Eagle Company *and* Local Union No. 429, International Brotherhood of Teamsters, AFL–CIO,[1] Petitioner. Case 4–RC–17536

March 27, 1992

DECISION ON REVIEW AND ORDER REMANDING

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On April 12, 1991, the Regional Director for Region 4 issued a Decision and Order in the above-entitled proceeding, in which the Petitioner sought to represent a unit of approximately 42 district managers and customer service representatives employed in the circulation department of the Employer's newspaper. The Employer contended that the petitioned-for unit was inappropriate, and that the appropriate unit should include all its nonmechanical employees employed in the editorial, accounting, advertising, and circulation departments—approximately 200. The Employer also contended that the district managers should be excluded from any unit found appropriate as managerial employees.[2]

The Regional Director concluded that the district managers are managerial employees and, therefore, must be excluded from the bargaining unit. He dismissed the petition without determining the appropriateness of the petitioned-for unit, however, as the Petitioner had indicated that it did not wish to participate in any election that did not include the district managers.

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 decision as to the managerial status of the district managers. The Board, by Order dated August 1, 1991, granted the Petitioner's request for review.

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

The Board has considered the decision and the entire record in this case, and concludes, contrary to the Regional Director, that the district managers are not managerial.

The newspaper's circulation area is divided into districts that are determined by the number of newspapers distributed in a given area or by the number of square miles covered by the area. The circulation department is headed by a director and includes approximately 6 district manager supervisors, 32 district managers, and 10–13 customer service representatives, as well as mailroom employees and truckdrivers.[3]

Each district manager supervisor is responsible for several district managers. The district manager supervisors recommend the hiring and firing of district managers to the circulation director, and evaluate the district managers by rating them in five categories—sales development, service management, collections management, carrier development, and records management.

All district managers must have a high school education, and their salaried compensation is based on whether they have obtained a 2-year or 15-year level of employment. The record shows that at the 2-year level, district managers earn approximately $687 a week; however, the record does not show the earnings at the 15-year level. The district managers work from 5–10 a.m. and from 12:30–6 p.m., receive overtime pay only in ''very extreme and unique circumstances,'' and receive the same benefits as all other employees who are not represented by labor organizations. In addition, all district managers receive a mileage allowance; however, ''county'' district managers are provided with a car in lieu of the mileage allowance, if they so choose. There are no sales quotas or goals imposed on the district managers.

District managers recruit, interview, hire, train, and terminate the newspaper carriers. These carriers, who must be at least 12 years old, are not on the Employer's payroll, but are signed without any negotiation to a standard form agreement which provides for collection, sales/promotion, service, and various miscellaneous items. The district manager signs the agreement as the Employer's representative; if the carrier is under 18 years of age, the carrier's parents must sign as well.

The district managers recruit in a variety of ways, including placing standard form ads in the Employer's newspaper. There are no company guidelines for hiring carriers, although in their on-the-job training the district managers are given examples of how to recruit. Although carriers are signed and terminated without prior approval, some district managers discuss termination with their supervisors. When a carrier is terminated or quits, the district manager prepares an evaluation that rates the carrier on service, personality, character, and reliability. In addition, the evaluation indicates whether the carrier's account is paid in full. These evaluations are kept in the Employer's files so that other district managers may review them.

The carriers purchase newspapers from the Employer at wholesale prices, and their compensation is based on the difference between the wholesale price and the price at which the paper is sold to their customers. The district managers have no authority to ei-

[1] The name of the Petitioner has been changed to reflect the new official name of the International Union.

[2] Communications Workers of America, AFL–CIO intervened in the proceeding on the basis of a showing of interest in the broader overall nonmechanical unit.

[3] The Petitioner represents the truckdrivers in a separate unit; Graphic Communications International Union represents the mailroom employees.

ther change or adjust these prices, which are set by the publisher. All carriers are required to put money into a cash surety account (bond) that is held by the Company. This bond usually is equivalent to 2 weeks' charges for walking routes or 4 weeks' charges for motor routes. The Employer prepares weekly invoices listing the carriers' credits and charges. It is the responsibility of the district manager to get these invoices to the carriers and to collect from the carrier any money owed to the Company. In the event there are problems regarding collections, the district managers have the authority to extend unlimited credit to the carriers; however, the circulation director testified that the bond amount is the basic guideline and that the district managers do not let the extended credit go much beyond that limit. This bond also is used to recoup money owed the Employer if a carrier ''goes off route'' without paying the bill.

Motor route carriers receive a motor route allowance for the use of their vehicles which is determined by the publisher and circulation director. District managers may recommend changes in these allowances or that a route be split, expanded, contracted, or merged; however, the district manager supervisor has the authority to grant or deny the proposed change. Any disagreements are settled by the circulation director. District managers must have supervisory approval to change a customer's method of payment from a carrier-pay arrangement to an office-pay arrangement.

Lastly, the carriers are responsible for obtaining their own substitutes and, if one cannot be found, the district manager is responsible for delivering that route. If that is done, the district manager receives only the moneys from the sale of the papers, not an adjustment in pay. However, if a carrier misses a customer, and a paper has to be delivered by the Employer, the carrier is charged for the delivery.

Managerial employees are those who formulate and effectuate management policies by expressing and making operative the decisions of their employer and those who have discretion in performing their jobs. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974); *Eugene Register Guard*, 237 NLRB 205, 206 (1978). Applying this standard, the Regional Director found that the district managers are managerial employees. He noted, in particular, that they are responsible for executing and administering the Employer's contracts with its newspaper carriers, and for seeing that the carriers perform their obligations, including the collection of moneys. Further, he found it significant that the district managers may extend the time for payment by the carriers, evaluate the carriers, and recommend changes in mileage allowances and routes.

We disagree and, contrary to the Regional Director, we find the Employer's district managers to be distinguishable from the county district supervisors found to be managerial in *Eugene Register Guard*. In that case, the two county district supervisors had independent authority not only to decide when to hire carriers, but also to negotiate their contracts including compensation. The district supervisors also independently determined if and when motor routes should be added or subtracted, the lengths and boundaries of those routes, and, within certain employer guidelines, the size of commissions received by the motor route carriers. The commissions varied according to the length of the route, the number of subscribers, and road conditions.

Here, unlike the county district supervisors in *Eugene Register Guard*, the Employer's district managers do not negotiate the terms of carrier contracts, and do not independently determine if and when routes should be split or consolidated. Although they may make recommendations as to splits, mergers, expansions, and contraction of routes, the recommendations are not necessarily accepted, as the district manager supervisors have the authority to deny any proposed change, with the circulation director having the final decision.

District managers also have no authority over carrier compensation. That is determined by computing the difference between the rates at which carriers purchase and resell the Employer's papers, rates which are set by the Employer; the district manager has no discretion to deviate from those rates. In addition, although the district managers may extend credit to the carriers, the extension generally is within the limits of the carrier's cash surety account or bond, an amount that is specifically determined by the Employer.

Thus, as shown above, the duties and responsibilities of the Employer's district managers are performed within a narrow framework of established company policy from which they have little or no authority to deviate. Further, and significantly, they have no authority substantially to affect the economic terms of employment of the carriers. We find, therefore, that the Employer's district managers are not managerial employees as they do not formulate or develop the Employer's policies or effectuate them with sufficient independent judgment or discretion in performing their duties. See *Long Beach Press-Telegram*, 305 NLRB 412 (1991).

As the district managers are not managerial employees, they may be included in any unit found appropriate. Accordingly, the Regional Director's Decision and Order dismissing the petition is reversed, the petition is reinstated, and the case is remanded to the Regional Director for further appropriate action, including a determination of the appropriate unit.