

**Patrick H. Dulin d/b/a Copier Care Plus and International Brotherhood of Teamsters, Local 959, AFL-CIO, Petitioner.** Case 19-RC-13391

October 20, 1997

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered objections to an election held May 30, 1997, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 1 ballot for the Petitioner, 0 ballots against the Petitioner, and no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings<sup>1</sup> and recommendations, and finds that a certification of representative should be issued.

In his report, the hearing officer recommended that the Employer's objections be overruled, finding that the Employer had not shown that the unit had been permanently reduced to one employee.<sup>2</sup> In adopting the hearing officer's findings and recommendations, we agree with his statement that in deciding whether a bargaining unit consists of only one employee, it is the permanent size of the unit that is controlling. That principle is applicable, and has been followed, in representation cases.<sup>3</sup>

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Brotherhood of Teamsters, Local 959, AFL-CIO and that it is the exclusive

<sup>1</sup>The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

<sup>2</sup>The relevant portion of the hearing officer's report is attached.

<sup>3</sup>For example, in *Mt. St. Joseph's Home for Girls*, 229 NLRB 251, 252 (1977), the Board dismissed a petition in a one-person unit of social workers, on the grounds that the employer "does not intend to employ more than one such social worker at a given time." The Board cited, *inter alia*, *Crescendo Broadcasting, Inc.*, 217 NLRB 697, 698 (1975), an unfair labor practice case which applied the principle that an employer can only refuse to bargain if the unit consists permanently of one employee.

collective-bargaining representative of the employees in the following appropriate unit:

All sales employees and service technicians employed by the Employer at its Fairbanks, Alaska location; but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

APPENDIX

HEARING OFFICER'S REPORT ON OBJECTIONS AND RECOMMENDATION

The Employer objected to the results of the election based on the assertion that at the time of the election the appropriate unit consisted of one employee. The Board has long recognized the Act does not empower the Board to certify a one employee unit. *Luckenbach Steamship Co.*, 2 NLRB 192 (1936).

At the time the petition was filed in this matter (April 25), there were three employees in the appropriate unit, Daniel Voorhis, Keven Curley, and Stan Stenberg. Stenberg's last day of employment was April 28; Curley was terminated on May 19; and on May 2, Adam Christianson started work. A Stipulated Election Agreement was approved on May 13, and the election was held on May 30. Shortly after the election, on June 2, David Nordin was hired.

Given this overall scenario, the Employer's objection asserts that on the day of the election there was a one employee unit. The Employer contends that Christianson was a temporary summer employee and not part of the unit and Nordin is a supervisor within the meaning of Section 2(11) of the Act and therefore not part of the unit, leaving only Voorhis as an employee.

This overall set of facts gives rise to several legal questions relating to one employee units. In applying the one employee rule, it is the permanent size of the unit, not the number of actual incumbents employed at any given point in time which is controlling. *Mount St. Joseph's Home for Girls*, 229 NLRB 251 (1977). The burden of proof is on the employer to show that a reduction in size is a permanent reduction, not merely a temporary happenstance occasioned by personnel shifts or employee turnover. *Borden Co.*, 127 NLRB 304 (1960); and *Crispo Cake Cone Co.*, 190 NLRB 352 (1971), *enfd.* 464 F.2d 233 (8th Cir. 1972).

I find Nordin not to be a supervisor at the current time based on his lack of authority under any of the traditional indicia and he should be included in the unit. Since I have found Christianson not to be in the unit and Nordin [as well as Voorhis] in the unit, I cannot conclude the appropriate unit in this matter to be a permanent one employee unit and I recommend overruling the objections and certifying the election results.