

**National Public Radio, Inc. and National Association of Broadcast Employees and Technicians, CWA, AFL-CIO, Petitioner and EIT/DIST Technical Representatives, Intervenor and Public Radio Technical Employees Association, Intervenor.**  
Case 5-RC-14591

April 21, 1999

SUPPLEMENTAL DECISION AND  
CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN  
AND BRAME

The National Labor Relations Board, by a three-member panel, has considered challenges in an election held May 27, 1998, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Decision, Order and Direction of Second Election. The revised tally of ballots shows 37 for the Petitioner, 1 for Intervenor EIT/DIST Technical Representatives, 31 for Intervenor Public Radio Technical Employees Association, 3 against any participating labor organization, with 5 challenged ballots, a sufficient number to affect the election results.<sup>1</sup>

The Board has reviewed the record in light of the exceptions and brief and has decided to adopt the hearing officer's findings and recommendations only to the extent consistent with this decision.

The parties in this case stipulated to a unit description including, inter alia, "all full-time and regular part-time broadcast/recording technicians." The Board agent challenged the ballots of three temporary broadcast/recording technicians, at issue in this proceeding, because their names were not on the *Excelsior* list. The hearing officer found that the parties' unit stipulation was not instructive as to whether temporary broadcast/recording technicians were included in the unit. The Employer has excepted to this finding. We find merit to the exception.

Contrary to the hearing officer's finding, we believe the parties' stipulated unit description is controlling and would therefore sustain the challenges to the ballots of the three temporary broadcast/recording technicians. The stipulation expressly includes all full-time and regular part-time employees in several specific classifications, including broadcast/recording technicians. It further excludes several other specific employee classifications and "all other employees." The dissent contends that the stipulation is ambiguous with respect to the unit placement of temporary employees because "the record contains no employer definition of 'regular part-time.'" We disagree.

<sup>1</sup> At the hearing, the parties stipulated that challenged voter Thom J. Woodward was an eligible voter and that Stuart Rushfield was not an eligible voter. Given our sustaining of the challenges to the remaining three ballots (the three temporary broadcast/recording technicians), Woodward's ballot is not determinative.

There is clear, undisputed record evidence that temporary employees do not meet the the Employer's definition for regular part-time employees.<sup>2</sup> In this regard, the Employer's employee action forms expressly distinguish between a full-time or part-time "temporary employee" and a full-time or part-time "regular hire" (also denominated as "permanent hire" in some documents). It is likewise undisputed that the Employer employed each of the three challenged voters as a temporary employee, using hiring procedures different from those required for regular part-time employees.

Under the circumstances, we perceive no ambiguity in the parties' stipulation. The Employer has distinct separate categories of regular and temporary employees. By specifically agreeing to include only full-time and regular part-time employees in certain classifications and to exclude all other employees, the parties must have intended the exclusion of temporary broadcast/recording technicians. As the stipulation does not contravene any statutory provision or established Board policy, we shall enforce it by sustaining the challenges cast by temporary employees Ellena, Hayden, and Tevault. *Hotel Inter-Continental Maui*, 237 NLRB 906, 907 (1978).

Accordingly, the Petitioner having received a majority of the valid votes cast, we shall issue the appropriate certification of representative.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for National Association of Broadcast Employees and Technicians, CWA, AFL-CIO and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Engineers, Technicians, Technical Directors, Electronic Engineers, Broadcast/Recording Technicians, Bureau Engineers and Bureau Broadcast/Recording Technicians, Satellite Depot Technicians and Satellite Transmission Center Technicians, and Tape Center Operators and Tape Center Coordinators employed by the Employer in the Engineering and Operations Department and the Distribution Division at its Washington, D. C. office and its bureaus in Los Angeles, Chicago, and New York; but excluding Quarter Masters, Satellite Depot Shipping Clerks, Satellite Transmission Center Support Coordinators, Engineering Services Assistants, Information Technology Department employees, New Media Department employees, all other employees, clerical employees, guards, and supervisors as defined in the Act.

<sup>2</sup> We note that the express intent of the parties concerning the definition of job classifications sought to be included in the stipulated unit may be determined by reference to the employer's regular use of the classifications in a manner known to its employees, industry practice, and the Board's established definitions of the classifications.

MEMBER LIEBMAN, dissenting.

Contrary to my colleagues, I agree with the hearing officer's finding that the parties' unit stipulation was not instructive as to whether temporary broadcast/recording technicians were included in the unit. I find *Hotel Inter-Continental Maui*, 237 NLRB 906, 907 (1978), on which my colleagues and the Employer rely, distinguishable.

It is well-settled that in stipulated unit cases, "the Board's function is to ascertain the parties' intent with regard to the disputed employee[s]. . . ." *Tribune Co.*, 190 NLRB 398 (1971). Applying this principle in *Hotel Inter-Continental Maui*, the Board held that the parties' unit stipulation covering "regular part-time" employees did not include "oncall" employees. The facts of that case showed that the employer had two categories of part-time employees: (1) "regular part-time" employees, who were guaranteed 20 to 30 hours of work per week; and (2) "oncall" employees, who were only offered employment when there was a particular need for their services. Because the descriptive language of the stipulation ("regular part-time employees") matched one of the employer's two categories of part-time employees, the Board concluded that, by implication, the parties intended to exclude the additional classification of "oncall" employees. Thus, the Board reasoned that when the par-

ties stipulated that "regular part-time employees" were included in the unit, they intended to adopt the employer's definition of who was and was not a "regular part-time employee."

Here, the stipulation covers "regular part-time broadcast/recording technicians," but, in contrast to *Hotel Inter-Continental Maui*, the record contains no employer definition of "regular part-time." Therefore, it is not possible to ascertain the parties' clear intent with regard to whether the classification of temporary broadcast/recording technicians is to be included or excluded from the unit.<sup>1</sup> Accordingly, the stipulated unit is ambiguous and it is necessary to apply a community of interest test to determine whether employees in the disputed classification belong in the unit. See *R. H. Peters Chevrolet*, 303 NLRB 791, 792 (1991). For the reasons stated by the hearing officer, I would find that the challenged voters share a community of interest with unit employees and would include them in the unit.

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<sup>1</sup> Reference to the Employer's employee action forms does not clarify the parties' intent with respect to the unit stipulation because the terms used in the forms do not match the terms used in the stipulation.