

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

PACIFIC COAST PUBLISHING, LTD.  
d/b/a REGIONAL TELEPHONE DIRECTORY

Employer

and

Cases 19-RC-13868  
19-UC-661

COMMUNICATIONS WORKERS OF AMERICA,  
AFL-CIO

Petitioner

**ORDER; DECISION AND DIRECTION OF ELECTION**

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record<sup>1</sup> in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute an appropriate voting group:

Included: All advertising consultants employed by the Employer in its Seattle book area;

Excluded: All office clerical employees, guards and supervisors as defined in the Act, and all other employees.

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<sup>1</sup> The parties filed briefs, which have been considered.

The Employer is engaged in the publication of independent telephone directories in several states, including the state of Washington. In prior Case 19-RC-13639, Petitioner was certified on August 3, 1998, as the collective bargaining representative of a unit of advertising consultants employed by the Employer in its book areas of Pierce, South King, Kitsap, Thurston, and Mason Counties in Washington.<sup>2</sup> At the time of the hearing, there were about 40 employees in the unit. The parties have been in negotiations for an initial contract, but there is no evidence that final agreement has been reached. Here, in Case 19-UC-661, Petitioner seeks accretion of about 24 advertising consultants employed in the Employer's recently established Seattle office (Seattle is in King County, but would not be considered to be in "South King County" by the parties, or the public.)<sup>3</sup> In the alternative, in Case 19-RC-13868, Petitioner seeks a self-determination election among the advertising consultants in the Seattle office. The Employer opposes accretion, and, further, contends that there is not a substantial and representative complement of employees in the Seattle office at the present time. Otherwise, the parties appear to be in agreement.

The directories published by the Employer are of the "yellow pages" variety; separate books are published for the various counties. The unit advertising consultants sell advertisements in the directories. Some of them are advertising or senior advertising consultants who sell to new customers; others are executive or senior executive advertising consultants who handle renewals. Consultants are hired to work on a particular book, such as the South King County directory, or the Pierce County directory. However, whenever they have a customer who wants to place an advertisement in an additional book, they handle that as well. The Pierce County and South King County book consultants work in an office in Federal Way. Other unit employees work in an office in Olympia.

The Federal Way office is directly supervised by Andy Frickel and Rob Sawicki. David Pierce also has some authority in that office, over Frickel and Sawicki. Bart Bruckman has supervisory authority in Bremerton (Kitsap County). Glen Earles has supervisory authority in Olympia. Frickel, Sawicki, Bruckman, and Earles have the title "Book Manager", and are stipulated by the parties to be supervisors within the meaning of the Act. Pierce is the overall manager of the Seattle office, and that office also has three sales managers, Lisa Starr, Greg Sperte, and Dennis Brekke, who are stipulated by the parties to be supervisors within the meaning of the Act. An Employer witness testified that Pierce's responsibilities with respect to the Federal Way office are being phased out.

The Seattle office, which is actually located in Bellevue, opened in May 1999. The advertising consultants in that office all sell to new customers, as they are working on the first Seattle book, and there are no renewals at this time. The book is expected to "close" in May, that is, no more advertisements will be accepted and it will go to press. The employees are expected to then set immediately to work on the next book. In other areas, there is a hiatus of about three months between the time one book closes and work on the next one begins, and the employees are laid off during that time.

The advertising consultants receive a base salary of \$1,000 per month. They also receive commissions. Bargaining unit employees receive a 30 percent commission, with a seven percent reserve on new sales, and 12 percent on renewals; if a renewal brings additional sales, they receive 15 percent, with a one and a half percent reserve on the new sales. Seattle employees get 20 percent, with a seven percent reserve. As noted, there are as yet no "renewals" in Seattle. All employees receive the same level

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<sup>2</sup> Excluded from the certified unit are all office clerical employees, guards and supervisors as defined in the Act, and all other employees, including employees in the National Department.

<sup>3</sup> I take administrative notice of the location and the "public's" perception.

of benefits, and are subject to the same personnel policies. Personnel records are kept at the corporate headquarters, and all sales employees receive their paychecks every two weeks.

A senior executive advertising consultant testified that he is assigned to Pierce and South King Counties. He said that he has sold advertisements in those directories to businesses which are located in Seattle; of the approximately 600 accounts he expects to handle this year, two or three are located in Seattle. He said that he has never been to the Seattle office and does not know where it is.

An executive advertising consultant testified that all her accounts are in Pierce County except for three months of the year when that book is closed, and she works on South King County. She said that she has very little contact with employees from the Seattle office. She did visit that office once, to "say hello" to an acquaintance and see what it looks like.

Another advertising consultant, who sells new advertisements, said that he has had telephone contact with Seattle employees about four times. He visited the Seattle office on one occasion, on union business. He works in the Federal Way office, which has a training room. He said that the company's trainer, Matt Wells, is currently teaching a class to new hires, including three from Seattle, one from Olympia, and one from Pierce County.

An Employer witness testified that the Employer is actively recruiting employees for the Seattle office, and is seeking to employ a total of about 30 advertising consultants in Seattle by the end of October, and a total of about 45 by December. The Employer's central human relations department places recruiting advertisements in newspapers and engages in other recruiting activities. Candidates for hire are interviewed and selected by the manager in the Seattle office.

#### ***Accretion issue.***

In *Passavant Retirement and Health Center*, 313 NLRB 1216 (1994), the Board reiterated its long-standing principles regarding accretion, as follows:

The Board has followed a restrictive policy in finding accretions to existing units because employees accreted to such units are not accorded a self-determination election, and the Board seeks to insure the employees' rights to determine their own bargaining representative. *Compact Video Services*, 284 NLRB 117, 119 (1987). Further, "[i]t is well settled that the doctrine of accretion will not be applied where the employee group sought to be added to an established bargaining unit is so composed that it may separately constitute an appropriate bargaining unit." *Hershey Foods Corp.*, 208 NLRB 452, 458 (1974), enfd. 506 F.2d 1052 (3d Cir. 1974).

The Board has consistently held that a single facility unit geographically separated from other facilities operated by the same employer is presumptively appropriate even though a broader unit might also be appropriate. *Manor Healthcare Corp.*, 285 NLRB 224, 225 (1987). This presumption may be rebutted by a showing that the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit, and that the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted. *Safeway Stores*, 256 NLRB 918 (1981). In determining whether the presumption has been rebutted, the Board examines such

factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions, and working conditions; degree of employee interchange; common supervision; distance between locations; and bargaining history. *Mercy Health Services*, 311 NLRB 367 (1993); *Compact Video Services*, supra. The Board has identified the degree of interchange and separate supervision as particularly important factors in determining whether an accretion is warranted. *Towne Ford Sales*, 270 NLRB 311, 311-312 (1984), affd. sub nom. *Machinists Local 1414 v. NLRB*, 759 F.2d 1477 (9th Cir. 1985).

The record herein establishes that the Employer has centralized labor relations and applies the same personnel policies to all its employees. However, there is a supervisor on-site in the Seattle office who has authority to interview candidates for hire and at least recommend hiring. The skills and functions of the Seattle employees are similar to those of the unit employees. There is no regular temporary interchange<sup>4</sup> of employees between Seattle and other offices; only one employee has permanently transferred from the certified unit to Seattle, and another is expected to transfer in the near future. At the present time, both the Seattle and the Federal Way offices are under over-all supervision by David Pierce, but it appears that Pierce spends most of his time in Seattle and is phasing out his work at the Federal Way office. Furthermore, the Seattle office has three first-line supervisors reporting to Pierce, and the offices where unit employees work each have separate first-line supervisors. The Seattle office is geographically separate from the offices where unit employees work.<sup>5</sup> There is no bargaining history regarding the Seattle employees.<sup>6</sup>

Inasmuch as the Seattle location is geographically separate, has separate first-line supervision, and there is no regular interchange of employees between the Seattle office and offices employing unit employees, I conclude that accretion is not warranted here, and I shall dismiss the unit clarification petition.

***Representative complement issue.***

In *Wittman Steel Mills*, 253 NLRB 320 (1980), the Board found that a representative complement of employees had been hired where about 50 percent of the total anticipated workforce in about 60 percent of the anticipated classifications had been hired by the time of the issuance of the underlying Acting Regional Director's decision. Here, about 53 percent of the anticipated total employees and all of the anticipated classifications were working at the time of the hearing, and the Employer expected to have about 67 percent employed by the end of October, the approximate eligibility date. In these circumstances, I conclude that the present complement of employees is representative and substantial for purposes of directing an immediate election.

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<sup>4</sup> "Interchange" as used by the Board refers to employees from one group temporarily doing the work of employees in another group such as would occur in this case if employees in the Federal Way office sometimes went to the Seattle office to work and vice versa. There is no evidence of such interchange occurring here.

<sup>5</sup> I take administrative notice that Bellevue, the location of the "Seattle" office, is approximately 20 to 30 minutes driving time, perhaps 15 miles, from Federal Way.

<sup>6</sup> In this regard, evidence that Petitioner *sought* accretion of the Seattle employees in the negotiations for the certified unit does not constitute persuasive bargaining history here.

***Self determination election.***

The parties appear to agree that if there is to be an election, it should be in the voting group set forth above in Item 5. Such a unit is clearly appropriate for the same reasons I have rejected the accretion argument.

Inasmuch as Petitioner seeks to add the Seattle employees to its existing unit, I shall order a self-determination election in which, if a majority of the employees in the voting group votes in favor of union representation, their votes will be taken to mean they desire to be included in the existing unit of all advertising consultants employed by the Employer in its book areas of Pierce, South King, Kitsap, Thurston, and Mason Counties, Washington. In that event, the appropriate unit for collective bargaining shall be:

All advertising consultants employed by the Employer in its book areas of Pierce, South King, Kitsap, Thurston, and Pierce Counties, and Seattle, Washington; excluding all office clerical employees, guards and supervisors as defined in the Act, and all other employees, including employees in the National Department.

There are approximately 30 employees<sup>7</sup> in the voting group.

**ORDER**

**IT IS HEREBY ORDERED** that the unit clarification petition filed herein be, and it hereby is, dismissed.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO.

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<sup>7</sup> In accordance with the Employer's estimate that it would employ approximately 30 employees in the Seattle office by the end of October, 1999.

## **NOTICE POSTING OBLIGATIONS**

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 4 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Seattle Regional Office, 2948 Jackson Federal Building, 915 Second Avenue, Seattle, Washington, on or before November 12, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by November 18, 1999.

**DATED** at Seattle, Washington, this 4<sup>th</sup> day of November, 1999.

/s/ PAUL EGGERT

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