

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

TRIANGLE SIGN AND SERVICE, INC.

Employer

and

Cases 5-UC-363
5-RM-988

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 24, AFL-CIO

Petitioner

DECISION AND ORDER

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called 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 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. **Triangle Sign and Service, Inc.** (the **Employer** or the **Company**) is a Delaware corporation engaged in the manufacture and installation of electrical signs at its Baltimore, Maryland facility. At hearing, the parties stipulated and I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated and I find that **International Brotherhood of Electrical Workers, Local 24, AFL-CIO**, (the **Union**) is a labor organization within the meaning of the Act. Since the early 1970’s, the Union has been recognized by the Employer as the exclusive collective-bargaining representative of a unit of the Employer’s employees. There are approximately 50 employees in this unit. In 1975, the parties negotiated a collective-bargaining agreement containing the following “Work Covered” clause in Article III:

Section 1. Employees covered by this Agreement shall perform the work involved in the manufacture, fabrication, assembly, wiring, painting, installation, cleaning and maintenance of all signs and/or displays, whether electric, fluorescent, plastic, neon gas tube, receptacle or reflector type. It shall also include all neon window signs or other work including the bending, pumping, and repairing of all tubes used as conductors of electricity, for whatever purpose intended and shall also include all work in connection with the shipping and receiving of signs or components thereof. Work in connection with such signs shall include the erection and installation of all electrical wiring, units, devices, and the repair and servicing of transformers or ballasts. Wires, cable and insulators within or on the sign itself and the connection of the completed sign to an existing electrical outlet is all work covered hereunder. Workmen under the terms of this Agreement shall also operate all equipment necessary in the manufacture, installation and servicing of signs. The erection and installation of all neon tubing used for interior lighting or decorating shall be the work of Journeymen Sign Electricians employed hereunder.

Schedule "A" of this 1975 Agreement, the Wage Schedule, sets forth the minimum hourly wage rates for "employees covered by this Agreement." It also includes the effective dates for such rates for the following "Journeymen" classifications: Sign Electricians; Sign Erectors; Sign Painters; Sign Pattern Makers; Sign Servicemen; Sign Sheet Metal Workers; Sign Sketchmen; Neon Tube Benders; Equipment Operators; and Maintenance Mechanics.

Article IX of this 1975 Agreement contains the following provision:

Section 1. The Employer recognizes the Union as the exclusive bargaining representative for all Sign Electricians, Sign Erectors, Sign Painters, Sign Servicemen, Sign Sheet Metal Workers, Neon Tube Benders, Equipment Operators and Maintenance Mechanics, including all Journeymen, Apprentices and/or Helpers, concerning hours of work, rates of pay and other conditions of employment, exclusive of: all office clerical employees, salesmen, guards, watchmen and supervisors, as defined in the National Labor Relations Act, as amended.

On August 31, 1978, the parties entered into a successive collective-bargaining agreement. This Agreement contains the above recognition clause as well as the above-referenced "Work Covered" language found in Article III. In addition, the record established that classification of Sign Sketchmen, the Art Department employees, were included in "Schedule B" of that Agreement, the Wage Schedule.

The parties have negotiated subsequent collective-bargaining agreements since 1978. More recently, for example, on October 1, 1996, the parties entered into another

collective-bargaining agreement to remain in effect through August 31, 1999. Article III, Section 1 of that Agreement contains identical "Work Covered" language to what had been used in the prior agreements; however, the following clause was added:

Employees performing work not specifically described in this Section shall not be covered by any of the terms of this agreement.

In addition, the Wage Schedule of the 1996 Agreement was modified by setting forth the wages and effective dates for only the following classifications: Journeymen; Senior Apprentices; Apprentices; and Helpers. Thus, there is no specific reference to "Sign Sketchmen." The Recognition clause, however, was not changed.

Upon expiration of the 1996 Agreement, the parties engaged in collective-bargaining negotiations and have recently reached another agreement; however, this agreement has not yet been reduced to writing. The record shows that no changes have been made in this agreement with respect to Article III, Section 1, or Article IX, the recognition clause. Thus, these clauses remain the same as those found in the 1996 Agreement.

4. The Union filed the unit clarification petition in 5-UC-363, seeking to clarify the existing bargaining unit by **including** the employees employed in the **Art Department**. The record established that the following employees are currently employed in the Art Department: **Frank Hyde; John McCall; Karen Shafer; and Spiro Contis**. The Employer, on the other hand, opposes the clarification of the bargaining unit and has filed its own petition in 5-RM-988. For the reasons discussed in this decision, I find that clarification of the bargaining unit is unwarranted and I shall dismiss the unit clarification petition. In addition, inasmuch as no question concerning representation exists, I shall also dismiss the Employer's petition in 5-RM-988.

POSITION OF THE PARTIES

THE UNION

The Union contends that the Art Department employees are currently and have always been included in the bargaining unit since the early 1970's and thus the unit should be clarified to include them. The Union further contends that the Employer's RM petition is inappropriate inasmuch as there is no question concerning representation and should be dismissed.

THE EMPLOYER

The Employer contends that the Art Department employees were excluded from the bargaining unit in the parties' collective-bargaining negotiations of 1996. The Employer argues that the Union's petition is inappropriate and should therefore be

dismissed. The Employer further contends that the Union's demand to represent the Art Department employees raises a question concerning representation and that the Art Department employees are statutorily entitled to exercise their voting rights regarding union membership in a Board secret-ballot election.

BACKGROUND

As noted above, there has been a collective-bargaining relationship between the Union and the Employer since the early 1970's. The parties agree that prior to October 1, 1996, the classification of employees referred to as sketchmen was covered by the collective-bargaining agreements as journeymen. Sketchmen, a classification of employees in existence since the 1970's, are employees employed in the Employer's Art Department that are responsible for designing the electric signs by taking specifications or information from the sales people, and by generating drawings which the sales people then use to attempt to make a sale with the client. In the past, these drawings were done by hand. Today this is done with the aid of a computer. There was also testimony that in the past, it was expected that these employees would occasionally "go out" and "do some sign painting." Today, however, these employees work exclusively on the "shop floor." Aside from these two above-mentioned things, however, the record did not establish any other substantial changes with respect to job functions of the Art Department employees.

THE 1996 COLLECTIVE-BARGAINING NEGOTIATIONS

During the 1996 negotiations, which consisted of three sessions, the issue of the inclusion of Art Department employees arose for the first time as a matter for serious consideration. The Employer presented a proposal to exclude the Art Department from the unit by amending Article IX, Section 1 so that it would exclude Art Department employees from the bargaining unit. The Union's collective-bargaining notes, introduced at hearing in this matter, reflect that the Union's position at negotiations was to keep the Art Department employees in the unit. The Employer's proposed language was not included in the final bargaining agreement.

Union president James Jarvis testified on direct examination that there was new language added to Article III, Section 1 (titled, "Work Covered – General Working Conditions") providing that "Employees performing work not specifically described in this Section shall not be covered by any of the terms of this Agreement." He avers, however, that this language was not intended to exclude the Art Department. Rather, it was included as a result of discussions about other classifications of employees: a janitorial-type employee and a stockman. According to Mr. Jarvis, there was never any understanding on the part of the Union that there had been a mutual agreement by the parties to exclude the Art Department employees. Regarding the above-mentioned change to Article III, Section 3.1 of the Agreement, Mr. Jarvis testified that the Employer's position had changed during negotiations and that the Employer's final position was that the Art Department employees would be part of the bargaining unit. On cross-examination, however, he admitted that he could not remember who from the

Employer informed him that the Employer's position had changed in this regard. He further admitted that there is nothing in his collective-bargaining notes that indicated that the Employer had changed its position with respect to the Art Department.

Employer President Robert Altshuler, who was also involved in the 1996 negotiations, testified that the new contractual language ultimately included in Article III, Section 1, was proposed because the Employer was interested in fully clarifying who was covered under the Agreement. According to Mr. Altshuler, the Employer specifically referred to the Art Department as one of the groups of employees to be excluded at these negotiations. He conceded on cross-examination, however, that the Employer might have withdrawn its proposal concerning Article IX, Section 1, concerning the exclusion of the Art Department.

As Employer's counsel notes on brief, all references to "sketchmen" were eliminated from the 1996 collective-bargaining agreement. He goes on to argue that this demonstrates the intent to exclude this classification from the collective-bargaining unit.

Following the 1996 negotiations, the record testimony established that certain employees continued, and are continuing, to receive pension contributions by the Employer to the National Electrical Benefit Fund, a contractual pension benefit. Union President James Jarvis testified that not only did Art Department employees continue to receive contractual benefits such as pension benefits and health and welfare, but they also continued to be covered by the agreement. For example, they could file grievances pursuant to the Agreement's grievance/arbitration machinery. Moreover, they could vote on ratification of collective-bargaining agreements reached by the parties and they continued to have a portion of their wages deducted for union dues by the Employer.

Employer President Robert Altshuler testified, however, that non-unit employees, such as office clericals and salesmen, receive the same benefits (such as sick days, holidays, vacations, and personal days) as those received by the bargaining unit. He further explained that the Employer withheld the wages of one Art Department employee, Frank Hyde, for benefits and dues because he "continued to remain in the bargaining unit." He went on to testify that:

We never asked him to leave the bargaining unit. He had already attained these benefits. If he so desired to leave, that would have been his right to come to me and say so but we never requested that he leave the bargaining unit that he was a part of prior to the '96 negotiations.

Upon questioning from counsel, and over objections by Union's counsel, Mr. Altshuler clarified that by using the term "bargaining unit" in the above-referenced testimony, he meant "Union membership."

THE 1999 COLLECTIVE-BARGAINING NEGOTIATIONS

At the recently concluded 1999 negotiations, record testimony established that the Union raised the issue of the Art Department. Employer President Altshuler, who was involved in these negotiations, testified that the Employer informed the Union that it was not open for discussion because the Art Department had been excluded from the bargaining unit as a result of the 1996 negotiations. Charles Weakley, Assistant Business Manager for the Union, was also present at the 1999 negotiations. He provided testimony that the Union disagreed with the Employer's refusal to include the Art Department employees and made it clear to the Employer that the "issue was open and we would resolve this outside of the negotiations." Mr. Weakley testified that although he could not recall his exact words, he told them "that we were going to take it outside of negotiations and were going to resolve it."

As noted above, the parties did not reach an agreement with respect to the issue of the Art Department employees. Nonetheless, the parties agreed to a collective-bargaining agreement. This agreement, however, was not reduced to writing as of the time of the hearing in the instant matter although it was in effect at that time.

THE ART DEPARTMENT

As noted above, the classification of employees employed in the Art Department has existed since the early 1970's and is currently comprised of four employees: **Frank Hyde; John McCall; Karen Shafer; and Spiro Contis**. Employee Frank Hyde testified that he has been employed by the Employer since 1990 as a sketchman (also referred to as artist, draftsman or journeyman) in the Art Department. His job involves taking specifications or information from the sales people in order to generate drawings, which the sales people then use to make a sale with the client.

The Art Department has a single room used by the employees of that department that consists of four drawing tables and four or five computers. Mr. Hyde testified that he has a lot of contact with the sales people. In addition, he has direct contact with the customers and architects. He explained that this would generally occur when the salesmen brought a client or an architect to a meeting at the Employer's office to discuss the proposals.

Occasionally, the drawings created in the Art Department are modified on the shop floor. Mr. Hyde testified that he is not involved in the following: manufacturing (other than completing the drawings to be used by the sales people); fabricating; assembling; wiring; painting; installing; cleaning; maintaining; shipping and receiving; erecting and installing of signs; or connecting completed signs to electrical outlets. Nor does he bend or repair tubes used as conductors of electricity, erect or install neon tubing used for interior lighting, repair and service transformers or ballasts, handle wirers, cables

and insulators within or on the sign or operate any equipment used to manufacture, install or service signs.

Mr. Hyde testified that he receives all contractually-mandated benefits, including paid holidays, paid vacation, personal days, as well as insurance, and medical/dental benefits. In addition, he continues to accrue seniority in the bargaining unit, has accumulated certain pension rights in the National Electrical Benefit Fund and is vested in that plan. Similarly, his compensation, work hours, supervision, job duties, as well as tools, qualifications and skills required by his job have remained relatively the same. According to Mr. Hyde, he was never notified by the Employer of any change in his status or that he was not covered by the terms of the collective-bargaining agreement. He provided further testimony, however that he was aware that the issue of the inclusion of the Art Department employees in the bargaining unit had been “brought up” and that “possibly the Department might be getting out of the Union.”

ANALYSIS AND CONCLUSIONS

As re-stated in the Board's recent decision in Bethlehem Steel Corporation, 329 NLRB No. 32 (1999), unit clarification is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement, or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category-excluded or included-that they occupied in the past. Clarification is not appropriate, however, for upsetting an established practice of such parties concerning the unit placement of various individuals. Union Electric Co., 217 NLRB 666, 667 (1975).

Thus, where a position or classification has historically been excluded from or included in the unit, and there have not been recent, substantial changes that would call into question the placement of the employees in the unit, the Board generally will not entertain a petition to clarify the status of that position or clarification, regardless of when in the bargaining cycle the petition is filed. See, e.g., Plough, Inc., 203 NLRB 818, 819 fn. 4 (1973). As an exception to this general principle, the Board will clarify a unit to exclude a position or classification that has historically been included in the unit where the Petitioner has established a statutory basis for the exclusion (e.g., that the individuals are statutory supervisors, as in Shop Rite Foods, supra; or that they are guards and that the unit includes nonguards, as in Peninsula Hospital Center, 219 NLRB 139, 140 (1975)). In those situations, the only issue as to whether the Board will entertain the petition is whether it is filed at an appropriate time. The Washington Post Co., 254 NLRB 168, 168-169 (1981); Wallace-Murray, 192 NLRB 1090 (1971). The Board has also processed a unit clarification petition to confirm the exclusion of an historically excluded position in order to prevent the enforcement of an arbitration award which would have effectively accreted the position to the unit in contravention of established Board policy. Williams Transportation, 233 NLRB 837 (1977).

I note that the Union here is not asserting a statutory basis for excluding the art department employees from the unit. Moreover, the record testimony in the instant matter does not establish the existence of a grievance filed in order to compel the inclusion of the disputed classifications in the bargaining unit. Thus, neither of the above noted exceptions applies to this case.

As noted above, the classification of employees at issue in the instant matter has been in existence since the early 1970's. The Union contends that these art department employees are currently and have always been included in the bargaining unit since that time. To support its position, the Union points to the following conduct on the part of the Employer following the 1996 negotiations: the Employer never notified any art department employees that their status as a union member had changed; the Employer continued to provide all contractual provisions contained in the 1996 collective-bargaining agreement to all department employees (with the exception of Karen Shafer); and the Employer continued to have a portion of their wages deducted for union dues. On brief, the Union argues that this case is governed by John P. Scripps Newspaper Corp. d/b/a the Sun, 329 NLRB No. 74 (1999), where the Board set forth a new standard in unit clarification proceedings involving new employees and bargaining units defined by the work performed. I would find Scripps to be distinguishable since this case does not involve a newly-created classification of employees, as did the Scripps case.

On the other hand, the Employer contends that these employees were excluded from the collective-bargaining unit as a result of the 1996 negotiations and that the Union understood that the purpose of the Employer's proposal with respect to Article III, Section 1 was to exclude the art department employees from the collective-bargaining unit. To support its argument, Employer's counsel argues on brief that a review of other relevant sections of the 1996 agreement confirms the intent of the parties to exclude the art department from the unit. For example, as noted above, any reference to "sketchmen" was removed from the 1996 agreement. Counsel for the Employer also points to the fact that the recognition clause contained in Article IX of the 1996 agreement contains no reference to the art department or to "sketchmen." It should be noted, however, that this clause remained unchanged from that used in agreements from the 1970's. In addition, as noted above, the Wage Schedule of the 1996 agreement was modified by setting forth the wages of the following classifications: Journeymen; Senior Apprentices; Apprentices; and Helpers. Thus, the term "sketchmen" is omitted from this list (as opposed to those used in earlier agreements), as are other specific types of classifications such as "Sign Electricians" and "Sign Erectors," whose status with respect to the collective-bargaining unit is not at issue. In these circumstances, I find that the Employer has not sufficiently demonstrated that the collective-bargaining agreement clearly excludes the art department employees from the unit. Therefore, I find that no valid issue has been raised concerning the unit placement of the art department employees that is appropriate for resolution in a unit clarification proceeding. Accordingly, I shall dismiss the Union's petition.

As for the Employer's RM petition, the Employer contends that the Union's current attempts to regain the art department employees into the bargaining unit create a question concerning representation under Board law. I disagree. As noted above, the Union here has not made any demand for recognition in such a unit, contending that it represents such employees only as a part of an overall unit. Moreover, the Union asserts that no question concerning representation exists and that it only seeks to clarify the existing unit. The Union has not argued that the art department constitutes a separate appropriate unit. Similarly, the Employer has not argued that these employees constitute a separate appropriate unit, aside from arguing that the proper procedure for resolving the issue concerning the placement of the art department employees is the initiation of a petition filed pursuant to Section 9(c) of the Act and, therefore, an election should be conducted among these employees to determine "whether they wish to be represented for purposes of collective bargaining by this or any other labor organization."

Under these circumstances, I shall dismiss the Employer's RM petition. See Gould-National Batteries, Inc., 157 NLRB 679 (1966)(where the Board dismissed an employer's RM petition, finding that the union had not made any demand for recognition and where the RM petition was filed only to join the union's request for clarification of the existing unit). See, also, Woolwich, Inc., 185 NLRB 783, 784 (1970).

ORDER

IT IS ORDERED that the petitions filed herein be, and they hereby are dismissed.

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 December 30, 1999.

Dated December 16, 1999

/s/ LOUIS J. D'AMICO

Regional Director, Region 5

at Baltimore, MD

(SEAL)

385-7533-2020; 393-6081-2050