

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

**BEACON JOURNAL PUBLISHING COMPANY d/b/a
THE AKRON BEACON JOURNAL¹**

Employer

and

Case No. 8-RC-15854

**TEAMSTERS LOCAL UNION NO. 473 a/w
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition 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 in this proceeding, the undersigned finds:³

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.

¹ The Employer's name appears as corrected at the hearing.

² The Petitioner's name is corrected to reflect its formal title.

³ Both parties submitted post-hearing briefs, which I have duly considered.

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 a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time classified and display department marketing consultants, advertising assistants and sales support editors employed by the Employer at its Akron, Ohio facility, but excluding all office clerical employees, and professional employees, guards and supervisors as defined in the Act.

The Employer publishes a daily newspaper called the **Beacon Journal** distributed primarily in Summit County, Ohio and four contiguous counties. Its operations are housed in a three-story building located at 44 E. Exchange Street, Akron, Ohio. There are approximately 65 employees in the unit found appropriate herein.

The Petitioner seeks to represent a unit limited to all full-time and regular part-time inside and outside marketing consultants in the Employer's classified advertising department, some 31 in number. The Employer argues that the only appropriate unit encompassing these employees must also include the typists, tear sheet clerks, and sales support editors also working in the classified department, the 25 marketing consultants employed in the display advertising department, as well as the advertising assistants who work in each of these departments. Further, the Employer argues that the 9 persons employed in the Operations department must also be included in any appropriate unit.

Overall, the Employer has approximately 850 full and part-time employees. Of that number, 475 are currently in bargaining units represented by various labor organizations. Graphic Communications International Union represents the employees in what is referred to as the production or mechanical area of the newspaper. The Communications Workers of America represents employees in the Composing Room. The Newspaper Guild represents reporters, editors and other employees in the Newsroom. The Petitioner already represents two units of

the Employer's employees; the mailers in the production area and the drivers, district managers and rack managers in the Circulation Division.

The employees in question are part of the Employer's Advertising Division. There are four departments within that division; classified, display, operations and advertising creative services (ACS).⁴ Mitchell Allen, the vice-president of Advertising and Marketing, heads the division. Skip Knight, classified advertising director, heads the classified department. Jandell Herum, display advertising director, leads the display department. Nancy Whitehead, advertising operations manager, heads the operations department.

Historically, "classified" advertising is identified with ads, referred to as "liners" and consisting solely of lines of text, located in the classified section of a newspaper. This section of a newspaper is identified by the fact that its pages consist of ten columns of print running left to right across the page. Display ads on the other hand frequently contain both text and graphics. Such ads are physically larger than liners and, historically, are located in sections of the newspaper other than the classified section. However, the record is clear that many of these historical distinctions no longer hold true. Classified ads are frequently located outside the classified pages and vice versa.

The Employer's classified department is largely responsible for selling advertising in certain market segments: recruitment (help wanted); automotive, real estate, obituaries, funeral home services, church notices and legal notices. This department also sells the ads placed by individuals seeking to sell all manner of personal items. The display department handles advertising from national market sales (advertisers from outside the State of Ohio) and all other market segments not handled by the classified department. The record establishes, however, that there is substantial overlap between the two departments, both in type of advertising sold and customers serviced. For example, the classified consultants who sell liners to auto dealers or recruiting firms can, and do, sell display ads to these same customers. Classified employees

⁴ The Petitioner does not seek to represent any employees working in the ACS department. The Employer does not argue that any ACS employees must be included in any unit found appropriate herein.

who deal in church advertising and obituaries sell predominately display-type ads that appear in the “display” areas of the paper. The classified consultants assigned to real estate advertising sell both liner and display ads on a regular basis. There is one instance where the lines are not as blurred. When display consultants received a request from one of their customers for a classified liner ad, they routinely refer it to a classified consultant. The record evidence shows this is due to their unfamiliarity with the computer software used in completing an order for a liner ad. However, it is equally clear that many classified consultants also have to refer liner orders to other consultants in the department that possess the necessary familiarity with this software program.

The classified department includes both inside and outside marketing consultants. The inside consultants spend their work time in the classified area located on the second floor of the Employer’s facility. They utilize the telephone to solicit and accept orders. Once an ad is placed, the inside consultant then inputs the relevant information into the Employer computer system. Some of these individuals are assigned to certain commercial customers who have contracted with the Employer to place ads on a regular basis. Others accept phone calls from individuals or businesses that place ads on a one-time or sporadic basis. In addition, this department includes individuals called customer service representatives who work part-time on inside classified sales during peak periods each week. The outside consultants work primarily away from the Employer’s facility, visiting contract customers at the latter’s places of business. These consultants primarily sell display ads, although these ads may appear in the classified section of the newspaper.

Inside and outside consultants are also employed in the display department. This department is also housed on the second floor of the Employer’s facility, contiguous with the classified department. The two inside consultants are responsible for selling movie and bingo ads and selected national advertising. The outside consultants market display ads to customers within specific geographic territories. Like the outside classified consultants, they spend most of their work day outside the Employer’s facility visiting customer locations.

The record is clear that all the marketing consultants are expected to seek out new advertising and continue to cultivate business from existing customers. In so doing, all are expected to employ a variety of “tools”, including market research. When a sale is made, all consultants are expected to participate in preparation of the advertising copy that ultimately appears in the newspaper. In so doing, they all use the same equipment; telephones, copy machines, and fax machines. In carrying out their job duties, all the consultants follow similar procedures regarding the placement of their ads, utilizing the same forms. The record indicates that all consultants are evaluated based upon the same set of criteria, regardless of which department they work in.

Each department also employs advertising or “ad” assistants. The exact number of employees in this classification is unclear from the record. The outside ad assistants are shared by both departments. These individuals assist outside sales consultants by going out into the field to deliver ad proofs, pick-up checks and drop off other materials to advertisers. The inside ad assistants help their respective sales consultants by preparing sales documents and correspondence and making phone calls. It appears from the record that the ad assistants have more dealings with the inside display consultants than the inside classified consultants. In addition, the classified department employs additional support staff. Specifically, there are typists who are involved in typing ad copy. The tear sheet clerk is responsible for sending to customers copies of the page(s) from the newspaper in which their ads appear. The three sales support editors are involved in editing advertising copy.

The Operations department provides what the Employer refers to as administrative support for the rest of the Advertising Division. There are 9 employees in this department. The Pre-print coordinator is responsible for placement and coordination of the weekly advertising circulars (pre-prints) from customers such as Sears and K-Mart. These pre-prints are provided with the newspaper on weekends and other occasions. The special section coordinator is involved in insuring that all components of so-called “special sections”, including advertising, are produced within the applicable deadlines. These “special sections” include pull-out portions of

the newspaper centered on a specific topic, including an Auto Show section, a Garden section, and the Market Report. The Employer runs approximately 50 of these each year.

The Employer's witnesses claim that there is regular interaction between these two coordinators and marketing consultants. However, it is clear from the record that many of the consultants have no contacts with these individuals. To the extent that such interaction does occur, its frequency is unclear. There are also two paginator/writer positions. The paginator is responsible for arranging the daily obituaries on the designated page(s). The writer creates the text for the special sections referred to immediately above. The extent of these employees interaction with the marketing consultants is not reflected in this record. The make-up coordinators determine the physical location in the newspaper of the ads sold by both departments. The Employer's supervisors who testified claim that the latter individual interacts with the sales consultants on matters like placement of an ad, determining whether there are available space remaining for color ads and when it becomes necessary to cancel an ad. However, the consultants who testified at the hearing did not confirm that these contacts were regular in nature. The graphic designer creates artwork for the display ads. The system technician is responsible for servicing and trouble shooting the computers used throughout the division. In doing so, he goes to the workstations of individuals throughout the Advertising Division.

While each department has separate immediate supervision, there is significant evidence of overlap of supervision between the display and classified departments. Specifically, both department managers are involved in evaluating applicants for sales consultant positions in either department, although the individual manager makes the ultimate hiring decisions within their department. While each manager evaluates his own consultants, they do collaborate on evaluations for ad assistants that work in both departments. While the department managers may initiate discipline within their departments, division head Mitchell Allen is intimately involved in all disciplinary decisions of any consequence. The record is replete with evidence that Allen is present in both departments frequently each day and is

involved in matters ranging from discipline to sales strategies. There is no record evidence of any involvement by the operations manager, Nancy Whitehead, in either the display or classified department. The converse is also true; there is no evidence that the managers of the display and classified departments participate in the workings of the operations department.

Inside sales consultants in both the display and classified departments are paid according to a system that provides them with a base salary plus commission. The outside sales consultants are paid strictly on commission. The other employees in both departments receive a salary. Employees in question in the operations department are salaried, with one exception. The special section coordinator receives a salary plus commission. The benefits provided to all the employees in question are identical and the same personnel policies are applicable to all. The normal hours of work for all consultants are the same, 8:00 A.M. to 5:00 P.M. The record indicates however that both groups of inside consultants sometimes work later and both groups of outside consultants may experience schedule variations due to the geographic territories they cover. All consultants now receive the same training when they are hired. The Employer's witnesses also testified that there are periodic training sessions that all current consultants participate in.

The record contains some conflicting testimony regarding interaction between the sales consultants in the two departments. It would appear that the inside classified consultants do have some contact with other employees, including outside consultants in their own department or employees in the operations and display departments. However, the testimony regarding all other marketing consultants establishes that there is ongoing interaction among them, regardless of departmental labels. There is no dispute that they work together on accounts where customers overlap and in selling advertising for the various "special sections". Further, the record contains numerous examples of other daily interaction between the consultants on a wide variety of projects.

The record reflects that least 15 employees have permanently moved between the display and classified departments within recent years, many involving consultants moving from

one department to the other. There is only incident of what could be called a temporary transfer referenced in the record. It involved a situation where an outside display consultant was assigned to cover the territory of an outside classified consultant who was on an injury-related absence. In another incident, several outside classified accounts were absorbed by the display department when the classified consultant who handled them left resigned.

There is no history of collective bargaining involving any of the employees in question.

In resolving a question of the appropriateness of a petitioned-for bargaining unit, the Board need only determine that the unit sought is an appropriate one, not that it is the optimum unit. **Overnite Transportation Co.** 322 NLRB 723 (1996), **Morand Bros. Beverage Co.**, 91 NLRB 409 (1950). However, the Board will not approve arbitrary groupings of employees that do not have a separate and distinct community of interest from other employees. **Seaboard Marine**, 327 NLRB No. 108 (1999). In the newspaper industry, the Board has long held that the optimum unit is one consisting of all so-called “non-mechanical” employees, i.e. all those not involved in the actual printing of the paper. **The Evening News**, 308 NLRB 563, 567 (1992). However, the Board has also recognized that smaller newspaper units may be appropriate. **The Peoria Journal Star, Inc.**, 117 NLRB 708 (1957).

The Board has long looked to several factors in determining whether or not a group of employees share the requisite community of interest to warrant inclusion in a separate unit. In **Kalamazoo Paper Box Corp.**, 136 NLRB 134, 137 (1962), it set forth this criteria:

“a difference in method of wages or compensation; different hours of work; different employment benefits; separate supervision; the degree of dissimilar qualifications, training and skills; differences in job functions and amount of working time spent away from employment or plant situs...; the infrequency or lack of contact with other employees; lack of integration with work functions of other employees or interchange with them; and the history of bargaining.

In the instant matter, the facts are clear that all marketing consultants are compensated by commission. The hours of work for all marketing consultants are similar if not identical. They all have the same fringe benefits and are subject to the same employment policies. The

qualifications for attaining any of the consultant positions are identical. While the Petitioner argues at length to the contrary, it is obvious that the selling of advertising involves the same skills and techniques, regardless of whether one is selling classified or display ads. The manner in which the consultants carry out their duties, the “tools” they use and the procedures they follow in actually “ordering” an ad for placement in the newspaper are the same. This overall similarity of skills and function is perhaps best reflected by the fact that the Employer provides identical training to all consultants regardless of department.

The classified marketing consultants do not possess the sort of unique, specialized training and skills that the Board demands in determining that a group of employees constitute a separate unit. **Bally’s Park Place, Inc., 255 NLRB 63 (1981)**. In fact, any differences in skills and duties referenced in the record do not appear to fall along department lines, but instead exist between the inside and outside consultants of both. As for functional integration, both groups are involved in selling advertising that appears throughout the newspaper. As the Board has observed, all employees involved in “selling”, regardless of whether they sell different products, should normally be included in one unit. **Larry Faul Oldsmobile Co., Inc., 262 NLRB 370, 371 (1982)**.

As noted earlier, the outside classified consultants have regular contact and interaction with consultants in the display department. While the inside classified consultants appear to be somewhat isolated in their work, the record reveals that even they have some ongoing dealings with the display employees. This is not surprising, as the two departments are physically located next to each other on the same floor of the Employer’s facility. In fact, it appears from the record as if the inside classified consultants have as much contact with display consultants as they do with the outside consultants in their own department.

The Petitioner argues at length that classified consultants and display consultants have a separate identity due to factors such as separate immediate supervision and lack of interchange. While display and classified departments each have separate immediate

supervision, it is clear that there is ongoing overlap and interaction between these two department managers. While the individual managers enjoy some limited discretion regarding discipline within their departments, the record is clear that their superior, Mitchell Allen is directly involved in all but the most minor disciplinary action. Further, it is clear that Allen is present in both departments on a daily basis and has an ongoing involvement in all aspects of the operations of both. In sum, the authority exercised by the department managers in this case falls far short of the sort of supervisory autonomy in hiring and discipline that the Board has found supportive of a finding that a separate departmental unit is appropriate. **Cf. Texas Electric Service Co., 261 NLRB 1455, 1457 (1982)**. As for lack of any evidence of ongoing temporary interchange between the departments, I have concluded that this does not outweigh the other factors which militate in favor of a finding that the petitioned-for unit is inappropriate.

I am also mindful of the Petitioner's arguments that bargaining units based upon departmental lines may be appropriate. Yet, the Petitioner has cited to no authority for the proposition that units of newspaper employees may be presumed appropriate merely because they conform to some administrative grouping within an employer's table of organization. In fact, as the Employer notes in its brief, the Board strictly scrutinizes narrowly drawn newspaper units. **Valley News and Green Sheet, 223 NLRB 455 (1976)**. The fact that a union seeks a unit co-extensive with an employer's departmental or divisional boundaries is no substitute for clear evidence that the petitioned-for unit has a distinct community of interest. In fact, the case law indicates that the Board deems factors like similar job duties and skills to take precedence over the vagaries of an employer's organizational chart. **Seaboard Marine, Ltd., 327 NLRB No. 108 (1999)**.⁵

In conclusion, based on the record as a whole, I have concluded that the petitioned-for unit is inappropriate and must include other classifications of employees, including the inside

and outside display sales consultants, due to their common skills, duties, functions, compensation, and working conditions.⁶

I have also determined that the ad assistants and the sales support editors should be included in the unit found appropriate herein. The ad assistants are intimately involved in assisting the marketing consultants in carrying out their duties and are in regular contact with them, particularly with the outside consultants. The fact that several ad assistants ultimately became consultants evidences exactly how much these positions have in common. Therefore I find that they should be included in the unit found appropriate herein. This is consistent with the Board's treatment of a very similar courier position in **Boston After Dark, Inc., 210 NLRB 38, 39 (1974)**. As for the sales support editors, as this does not appear to be a clerical position, excluding these employees from the unit would seemingly leave them in a residual group that would not be part of any potential bargaining unit. Further, based upon the fact they have ongoing involvement with the marketing consultants in composing the ads sold by the latter, work in the same area of the Employer's facility and have the same immediate supervisor as the classified consultants, I deem it appropriate to include them. See **KJAZ Broadcasting Company. 272 NLRB 196 (1984)**.

I reach a different conclusion regarding the typists and tear sheet clerk employed in the classified department. The description of their duties in the record shows that they are similar to that of office clerical employees. **The Peoria Journal Star, Inc. supra**. In addition, I note that these individuals employ different skills, are compensated differently and perform different functions from the sales employees. Therefore, the smallest appropriate unit containing sales consultants need not include these individuals the Union does not seek to represent.

⁵ In fact, the Petitioner does not seek a unit that includes all non-supervisory employees in the classified advertising department but rather seeks only the sales employees and would exclude the remaining employees in the department.

⁶ While it did not state so expressly during the hearing or in its brief, I assume that the Petitioner seeks to represent the part-time classified sales personnel called customer service representatives. In any event,

I would also exclude the employees in the operations department. I recognize that there is interaction between employees in that department and some of the sales consultants. However, to the extent that the record contains limited specifics in this regard, it establishes that this interaction is normally brief and most often consists of a consultant delivering a form of some sort to an operations employee. Further, it is clear that operations employees possess different skills, perform different functions and, with one exception, have different compensation. While there clearly is supervisory interaction between the display and classified departments, there is no such evidence of similar interaction among those managers and the operations manager. An appropriate unit could be fashioned that would include consultants and operations employees, had the Petitioner sought to represent them. As it does not, I find that the Employer has failed to establish that the inclusion of any operations employees is compelled in order to fashion an appropriate unit. **Overnite Transportation, supra.**

I have been administratively advised that the Petitioner may wish to proceed in any unit found appropriate. As set forth above, I have determined that the appropriate unit is composed of the classified and display department marketing consultants, advertising assistants and sales support editors and I shall direct an election in that unit.

I have concluded that these individuals must be included in the unit deemed appropriate, as they interchange and interact with the other classified sales staff.

DIRECTION OF ELECTION⁷

An election by secret ballot shall be conducted by the undersigned among the employees in the unit 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 unit 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 **Teamsters Local Union No. 473 a/w the International Brotherhood of Teamsters, AFL-CIO**.

LIST OF VOTERS

In order to ensure that all eligible voters 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 that may be used to communicate with them.

Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Co., 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and

⁷ Because the unit in which the election is directed is substantially larger than the unit sought, I shall allow the Petitioner ten days from the date of this decision to file with me additional evidence of interest necessary to support a 30 percent showing of interest in the larger unit. If the Petitioner is unable within

addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this decision. **North Macon Health Care Facility, 315 NLRB 359 (1994)**. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

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 **April 2, 1999**.

Dated at Cleveland, Ohio this 19th day of March 1999.

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8

440-1760-7200

such a period to obtain the additional showing or if it does not desire to participate in an election in the larger unit and so notifies me, I shall dismiss the petition.