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

THE BEACON JOURNAL PUBLISHING COMPANY, INC., d/b/a THE AKRON BEACON JOURNAL NEWSPAPER[1]	
Employer	
and	**Case No. 8-UC-339**
NORTHEAST OHIO NEWSPAPER GUILD Local 1, of the NEWSPAPER GUILD SECTOR OF THE COMMUNICATION WORKERS OF AMERICA, AFL-CIO[2]	
Petitioner	

DECISION AND ORDER

Upon a petition filed under Section 9(c) of the National Labor Relations Act, hereafter referred to as the Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereafter 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,[3] 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.[4]

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[1] The name of the Employer was amended at the hearing.
[2] The name of the Petitioner was amended at the hearing.
[3] The Employer and the Petitioner filed post-Hearing briefs that have been duly considered.

3. The Union is a labor organization within the meaning of the Act and claims to represent certain employees of the Employer.

The Beacon Journal Publishing Company, Inc. d/b/a The Akron Beacon Journal Newspaper is an Ohio corporation which is engaged in publishing a daily newspaper at its 44 Exchange Street Akron, Ohio facility.

The Petitioner and the Employer have maintained a collective bargaining relationship for approximately 65 years. The Petitioner and the Employer are parties to a collective bargaining agreement with effective dates from August 25, 2000 to August 24, 2003.[5] The Petitioner is the exclusive collective bargaining representative for approximately 125 employees in the following unit, as set forth in the current collective bargaining agreement:

> All employees of the editorial department excepting: one editor, one managing editor, one associate editor, one public editor, one administrative editor, one executive news editor, one AME/Business/Projects/CAR, one futures editor, one sports editor, one director of photography, one night managing editor, one copy desk chief, one metro editor, one business editor, one manager news recruiting and development/ACE, one weekend editor, one AME futures, one chief librarian, one Beacon magazine editor, one art director, one editor/stark bureau, one technology manager, one news media editor, one chief editorial writer, one administrative assistant to the editor, one editorial board secretary, one deputy futures editor, one deputy business editor and one night editor, one deputy sports editor and four deputy metro editors.

The contract further defines the jurisdiction of the Petitioner as follows:

(a) The kind of work either normally or presently performed within the unit covered by this Contract.

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[4] The Parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act.

[5] The previous collective bargaining agreement had effective dates from August 25, 1997 to August 24, 2000.

(b) Any kind of work similar in skill, or performing similar function as the kind of work either normally or presently performed in said unit, and
(c) Any other kind of work assigned to be performed within said unit
Performance of such work, whether by currently or normally used processes or equipment or by new or modified processes or equipment, shall be assigned to employees of the EMPLOYER covered by this contract.

The Petitioner seeks to clarify the editorial bargaining unit to include the four color pre-press operators (CPP). The Petitioner submits that the CPP operators should be included in the unit because changes in the production of the newspaper have resulted in the CPP operators performing work formerly done by unit members. The Petitioner also argues that the CPP operators share a community of interest with the other employees in the unit. The Employer contends that the accretion of the CPP operators into the bargaining unit is not appropriate since such employees have historically been excluded from the unit and the CPP operators are not a new position. Further, the Employer takes the position that the Petitioner made no attempt to negotiate the inclusion of the CPP operators during the most recent negotiations. The Employer further argues that even if the petition is appropriate, the CPP operators do not share an overwhelming community of interest with the bargaining unit employees to warrant an accretion.

For the reasons set forth below, I find that the CPP Operators should not be accreted into the editorial bargaining unit. I find that the CPP operator is not a newly created position nor has it substantially changed since the effective date of the current collective bargaining agreement. Furthermore, the facts demonstrate that CPP operators have historically been excluded from the editorial unit.

On May 31, 2000, the Parties entered into negotiations that culminated into the current collective bargaining agreement. The Parties met 25 times from May 31, 2000 to August 25, 2000. On June 16, 2000, the Petitioner informed the Employer that it was

commencing an organizing campaign for the employees working in the CTS room, which includes the four CPP operators at issue here. On June 26, 2000, the Petitioner sent another letter to the Employer informing the Employer that the CPP operators were performing unit work and should be accreted into the unit. The Employer responded to the Petitioner's demand in a letter dated June 28, 2000, which denied that the CPP operators performed unit work or that the CPP operators shared a community of interest with the unit employees to justify their accretion into the unit. The Parties never resolved the issue of the accretion of the CPP operators into the unit. There is no evidence that the issue of inclusion of the CPP operators was ever specifically raised at any of the 25 negotiating sessions. The Parties executed the current collective bargaining agreement. The collective bargaining agreement does not specifically exclude or include the CPP operators.

The Employer employs approximately 560 full-time and part-time employees. The Employer utilizes two separate divisions in the production of the newspaper, the advertising division and the editorial division. Each division is segregated and has its own hierarchy of supervision with no overlap between the two. The Employer maintains an integrated Human Resources/Labor Relations Department, which is responsible for all employee relations.

The editorial division has nine departments that report to Janet Leach, Editor of the Newsroom. Leach reports directly to the Publisher, James Crutchfield. Bruce Winges, Night Managing Editor, is the highest ranking management official on the night shift and is ultimately responsible for getting the newspaper to the presses. The editorial division is located on the third floor of the Employer's facility. The nine departments

within the editorial division are: Photography; AME Local News; Projects and CAR; AME Graphics/Presentation; AME Features; Sports; Copy Editing; Weekend News and the Library.

The Photography Department within the editorial division has fifteen employees and is physically located in the Newsroom. There are eleven photographers, two picture editors, one photo librarian and one Director of Photography.

The advertising division contains five departments that report to Mitch Allen, the Vice-President of Advertising and Marketing. Allen reports directly to Crutchfield. The advertising division is located on the second floor and a portion of the third floor of the Employer's facility. The five departments are: the Creative Technical Services (CTS) room; Retail Advertising and Direct Marketing; Classified Advertising; National and Major Accounts; and Marketing Communications.

The CTS room and a number of advertising teams are located on the third floor of the Employer's facility. The CTS room has seven teams: CPP; Pagination; Ad-makeup; Digital Pre-Press; Traffic Control; Outside Ad Services and Special Publications. Nancy Whitehead is the CTS Room manager. Whitehead reports to Allen. Jodi Sullivan is the Assistant CTS Room manager. Sullivan reports to Whitehead.

The CPP area is an enclosed room in with a single doorway into the CTS Room. The four CPP operators have the same vacation, sick pay and other benefits as the other employees in the CTS room. Two CPP operators work the day shift and two CPP operators work the night shift. The four employees rotate weekend coverage in order to ensure that at least one CPP operator is on duty at all times. The night shift CPP operators report to Michael Marcus, CTS Room evening supervisor, while the day shift

CPP operators report to Phil White, Systems and Quality Manager. White has primary supervisory responsibility for CPP.

CPP has meetings weekly every Tuesday at 5:00 p.m. that are conducted by Tracy Kane, Pre-Press Coordinator and occasionally Phil White, Nancy Whitehead or Jody Sullivan. Since approximately February or March 2001, some of the editorial staff have attended the CPP meetings to discuss the quality of the photographs since the use of the new Intellitune software. CPP operators also attend a monthly advertising division meeting which is held at the Employer's facility.

The CPP operators are primarily responsible for the scanning and toning of advertising photographs, editorial photographs, artwork and other images. Scanning is the process of inputting the image into the Employer's computer system. Toning is the process used to describe the manipulation of images to present the highest quality and most realistic printable image without compromising artistic character. After completion of the toning process, the CPP operators convert the file from a red/green/blue format to a cyan/magenta/yellow format, which is used by the presses. Once the scanning, toning and converting are completed, the computer file of the image is placed into one of the Employer's common servers called "Scoop." From the "Scoop" server, the image is accessible to Page Designers and Editors to use in computerized page layout.

The record reflects that in approximately 1991, the Employer commenced a conversion from its manually assembled newspaper to a computerized assembly of the newspaper, called pagination. The conversion to a paginated newspaper was not complete until 1998.

When the newspaper was manually assembled, the advertising photographs, editorial photographs, artwork and other images were treated differently than they are under the pagination process. Prior to 1998, the Engraving Department was primarily responsible for the scanning, toning and converting of black and white photographs and other images.[6] After the images were scanned and toned, the Engraving Department would convert the image from the RGB color format to the CMY color format that was utilized by the press and a negative was created from the image. Color photographs were directly scanned into a RGB format by the photographer who took the image and a negative was developed from the scanned image.

When the negatives were created, the Engraving Department worked with the Composing Room to set up and paste the negatives into a physical layout. The Composing Room manually developed the layout of each page. The plates for the presses were made based on the negatives of each page and the newspaper was printed from the plates.

The CPP operator position was established in 1997. As part of the conversion to pagination, the Employer shifted the responsibility of toning color images from the Engraving Department to CPP. The Engraving Department was eliminated in 1998, at which time CPP assumed responsibility for the scanning that was performed by the Engraving Department. From 1998 to 2001, the Photo Desk in the Editorial Department toned a portion of the black and white photographs manually. In March 2001, the Employer installed a new software program called Intellitune for the toning of black and

[6] The record reflects that the employees in the Engraving Department are represented by the Graphic Communications International Union.

white photographs. The responsibility for black and white photograph toning was transferred to CPP at that time.[7]

Since the completion of the pagination transition, the photographs contained in the newspaper are taken with either a film camera or a digital camera.[8] The photographer initially scans the images into the Employer's computer system. After the initial scan, the photographer adds a caption to the photograph and crops the image. If the image is a color photograph, the photographer then uses Photoshop software to tone the image in the RGB color format and to achieve a realistic representation of what the photographer intended to capture.[9] The photographer then places the image file on one of the Employer's common servers for the CPP operators to tone the image for print and convert the image into the CMYK color format.

Once the images have been converted to the CMYK color format, the files are saved into "scoop," where the images will be picked up by the Page Designers and placed in the computerized page layout. Once the Page Designers have completed the computerized layout process, a negative of each page is made for the plates and the paper is printed on the presses.

The testimony at the hearing demonstrates that the CPP operators scan and tone images for both the advertising division and the editorial division.[10] The record reflects that there is regular communication between the Editorial division and CPP, specifically

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[7] In 1998, the Composing Room was also eliminated as pagination replaced the need for manual paste ups of the pages.
[8] If the image is taken with a digital camera, the photographer uploads the image into the computer system.
[9] The record reflects that photographers have historically been responsible for the toning of their photographs to achieve the aesthetic that they intended when taking the photograph.
[10] The testimony adduced at the hearing generated a widely divergent percentage of the proportion of advertising images to editorial images. Nevertheless, the record does fairly represent that the CPP operators regularly work on both types of images.

with respect to the status of CPP's toning of an image or in order to convey the Editorial division's desired effect from the toning process.

The Board stated in Ziegler, Inc., 333 NLRB No. 114 (April 12, 2001),

> Unit clarification, as the term itself implies, 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. (citations omitted.)

In Gould, Inc., Electrical Components Division, 263 NLRB 442, 445 (1982), the Board defined accretions as "the addition of new employees to an already existing group or unit of employees." The Board considers a variety of factors including, "integration of operations, centralization of managerial and administrative control, geographic proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history and interchange of employees."[11]

There is substantial evidence in the record to demonstrate that the CPP operator position is not a new one. The record indicates that the CPP operator position was established in 1997 during the Employer's transition from a manual paste-up operation to pagination. The CPP operator position was established prior to the execution of the current collective bargaining agreement between the Parties. The evidence in the record indicates that at least two of the CPP operators have held that position since 1998. The

[11] Id. at 445.

CPP operator position is not a new one, nor an addition of new employees to an already existing group.

I also find that the position of the CPP operators has not substantially changed to warrant the accretion of the CPP operators into the unit. While the record indicates that the toning of black and white photographs was re-assigned in March 2001 from the photo desk to the CPP operators, it is also clear from the record that the photo desk employees toned black and white photographs for a period of three years. The black and white photographs were originally toned by the Engraving Department employees, represented by a different union, until it was disbanded in 1998. I find that the re-assignment of black and white photograph toning is not a substantial change to warrant an accretion of the CPP operators into the unit.

In Compact Video Services, Inc., 284 NLRB 117, 119 (1987), the Board stated its traditional accretion analysis,

> The Board has followed a restrictive policy in finding accretions to existing units because employees accreted to an existing unit are not accorded a self-determination election and the Board seeks to insure that the employees' right to determine their own bargaining representative is not foreclosed….The Board thus will find a valid accretion "only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted". (citing Safeway Stores, 256 NLRB 918 (1981)).

While the Petitioner submits that the CPP operators share an overwhelming community of interest with the unit, the record clearly demonstrates that the unit is part of the editorial division of the Employer's operation, while the CPP operators are part of the CTS room, which is a department within the advertising division. The record evidence

demonstrates that the CPP operators are physically located within the CTS room with the other CTS employees. While the Editorial division is on the same floor of the building, the Editorial division is a self-contained area that is adjacent to the CTS room.

While there is some evidence in the record to reflect very occasional and minimal supervision of CPP operators by editorial division supervision, it is clear that each division is separately supervised with its own chain of command. While the record does indicate several occasions where the CPP operators on the night shift have had communications with Bruce Winges, Night Managing Editor in the editorial division, it is clear from the record that Winges' primary responsibility is getting the newspaper to the presses on time. There was no evidence in the record to show that Winges regularly supervises the CPP operators.

The Petitioner submits that the production of a newspaper is a highly integrated operation.[12] The record does demonstrate that there is regular communication between editorial division employees, including page designers, photographers, photo editors and the cartoonists and the CPP operators. However, I find that this regular communication does not in itself establish an overwhelming community of interest between the CPP operators and the bargaining unit employees.

In Robert Wood Johnson University, 328 NLRB 912, 914 (1999), the Board concluded that "unit clarification may not be used to add to a unit an employee classification which historically has been excluded from the unit." Such historical exclusion of an existing classification has been found to be a determinative factor in precluding an accretion. In United Parcel Service, 303 NLRB 326, 327 (1991), the Board stated:

> The limitations on accretion,…, require neither that the union have acquiesced in the historical exclusion of a group of employees from an existing unit, nor that the excluded group have some common job-related characteristic distinct from unit employees. It is that fact of historical exclusion that is determinative.

It is clear from the record evidence and the supporting briefs that the CPP operators have not been included in the unit since the position was established. The record also demonstrates that the majority of the work accomplished by the CPP operators was previously performed by employees in the Engraving Department, who were not represented by the Petitioner.

The Petitioner contends that the CPP operators perform unit work as described in the jurisdiction portion of the collective bargaining agreement. The Petitioner submits that the CPP operators primary responsibility of scanning and toning the images is sufficiently similar to the work performed by unit employees, specifically the photographers, in the editorial division. The evidence shows that photographers regularly tone their work to develop the best journalistic reproduction of what the photographer saw when the picture was taken. This initial toning is artistic and is utilized to improve the character of the image. The record testimony demonstrates that the CPP operators are limited to specific parameters in the toning that they perform to create the best contrast within the image to produce the best printable image.

The record reflects that the unit description and jurisdiction sections of the collective bargaining agreement define the Editorial unit by the work performed rather than by job classification.

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[12] American Publishing Co. of Michigan d/b/a The Evening News, 308 NLRB 563, 567 (1992).

The Petitioner cites John P. Scripps Newspaper Corp. d/b/a The Sun, 329 NLRB No. 74 (September 30, 1999) in support of its position that the similarity of the work performed by the CPP operators and unit employees in the editorial division mandates a determination that the CPP operators be accreted into the Editorial unit. In the cited case, the employer and the union were parties to a collective bargaining agreement with effective dates from 1987 to 1999. The collective bargaining agreement defined the scope of the bargaining unit by the work performed rather than by classification. In 1990, the employer added a new department within its advertising division called Creative Services. The Board set forth a new standard for unit clarification proceedings involving bargaining units defined by the work performed. It held,

> If the new employees perform job functions similar to those performed by unit employees, as defined in the unit description, we will presume that the new employees should be added to the unit, unless the unit functions they perform are merely incidental to their primary work functions or are otherwise an insignificant part of their work.[13]

The Petitioner contends that the toning performed by the CPP operators is unit work that is performed by the photographers in the editorial division. The Petitioner also submits that the black and white photograph toning was performed by the photo desk in the editorial department prior to the time that the Employer acquired the Intellitune software and re-assigned black and white photograph toning to the CPP operators.

I find the Petitioner's reliance on John P. Scripps Newspaper Corp. d/b/a The Sun, 329 NLRB No. 74 (1999) to be misplaced as the facts of that case provide that the creative services department was newly established during the term of the collective bargaining agreement, prior to the execution of a successor agreement. While the Board developed a new legal standard regarding unit clarification situations for new employees

where the scope of the unit is based not on classifications but on work performed, I find that the instant case is inapposite as the CPP operators have existed in substantially the same form since its establishment in 1997. I find that the traditional accretion analysis is the appropriate standard.

Based on the foregoing, and the record as a whole, I shall order that the unit clarification petition be dismissed.

ORDER

IT IS HEREBY ORDERED that the petition be 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. 20570-0001. This request must be received by the Board in Washington by August 20, 2001.

Dated at Cleveland, Ohio, this day of August 6, 2001.

/s/ Frederick J. Calatrello

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

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[13] 329 NLRB No. 74, p. 10 (1999)