

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

PARAMOUNT GRAPHICS, INC.¹

Employer

and

Case 36-RD-1599

STUART G. VICKERY, an Individual

Petitioner

and

GRAPHIC COMMUNICATIONS UNION,
DISTRICT COUNCIL NO. 2, LOCAL
747M

Union

DECISION AND ORDER

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 record² in this proceeding, the undersigned makes the following findings and conclusions:³

Summary

The Employer, Paramount Graphics, Inc., operates commercial printing and packaging facilities located in Portland and Beaverton, Oregon. The Employer relocated significantly all aspects of the production operations of Portland Paper Box ("PPB"), a company it recently acquired, from PPB's Portland facility to the Employer's Beaverton

¹ The name of the Employer appears as amended in the hearing. The Petitioner filed a decertification petition naming Portland Paper Box ("PPB") as the Employer. However, Paramount Graphics, Inc., purchased PPB and its assets and has since dissolved PPB as a company.

² Both parties filed timely briefs, which were duly considered.

³ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 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. The labor organization involved claims to represent certain employees of the Employer.

facility.⁴ The Petitioner, Stuart G. Vickery, an Individual, filed a decertification petition with the National Labor Relations Board on March 15, 2002, seeking to decertify a unit of all full-time and regular part-time production and maintenance (“P&M”) employees employed by PPB at its “Portland and Beaverton, Oregon facilities” and represented by Graphics Communications Union District Council No. 2, Local 747M (“Union”).

A pre-election hearing was conducted in connection with the petition. At this hearing and in the parties’ post hearing briefs, the parties raised the primary issue in this matter, which is whether the unit appropriate for a decertification election is limited to the employees originally represented by the Union at PPB, as contended by the Union, or whether the petition should be dismissed as the former PPB unit employees no longer constitute an appropriate unit for purposes of representation, as argued by the Employer.

I have considered the evidence presented at the hearing and the parties’ briefs on the issue. As discussed below, I will dismiss the petition because the PPB unit or packaging department at the Beaverton facility is no longer an appropriate unit.

Background

The Employer is engaged in the commercial printing business with places of business in Portland and Beaverton, Oregon. The products manufactured by the Employer include brochures, direct mailing items, catalogs, folders, postcards, coupons, booklets, newsletters, books, guides and the like. The Employer also produces packaging items, such as presentation folders, packaging for food products, internet products, and other specialty items.

The Beaverton location at issue here currently consists of approximately 140 production employees (“Beaverton unit”) who work in eight departments, each with its own manager or immediate supervisor, and divided among three separate buildings.⁵ Building 1 contains the Employer’s bindery, press, electrical prepress (EPP) /Prep, estimating, shipping and quality control departments. The number of employees in each of these departments is not specified in the record.

About 50 to 75 feet separate buildings 1 and 2 at the Beaverton facility. The disputed packaging department is located in building 2 and is staffed with about 10 employees. A public walkway and a private street separate building 1 and 2. Building 2 also houses an area dedicated to shipping just to the right of the break room. The record also indicates that bindery and quality control also operate in building 2, but it is unclear as to what operations are performed there by these departments or any other information concerning their operation in building 2.

In a third and separate building, the location of which is unspecified in the record, the Employer houses 15 employees in its print-on-demand department. Those employee classifications in print-on-demand include: Nex press operator, QMDI operator, digimaster operator, bindery operator, fulfillment operator and a mailing machine operator.

⁴ The record reveals that about six miles separates the Portland and Beaverton facilities.

⁵ There is testimony that the employer employs a sales force of 15 or 16 employees in a separate sales department.

In terms of product flow through the Beaverton production operations, the record reveals that a product or concept undergoes planning in the Employer's production-planning department. Following planning, the product is sent to EPP/Prep department where the electronic output information and plates are prepared on computers. EPP/Prep also creates a sample of the product for a client on what is called a CAD machine. Employees, in the printing department, lay the ink down and print the products on blank sheets of paper. It is unclear whether the printing department is a part of EPP/Press or whether it is another name for the press department. In any event, the information and plates produced by EPP/Press are then sent to the press department for that department to mass-produce the printing phase of the product. After the printing is completed, the printed sheets move to the packaging department where the sheets are then "stamped down," i.e., presumably attached to cardboard or whatever medium is used to create the final product. There is testimony that casting dies used in "stamping" are made in the packaging department using "imaging" done in the EPP/Pres department. Presumably, some products would proceed to bindery where binding of books and the like is done. The final product then moves to the shipping department where it is shipped out. Quality control employees oversee each phase of the process.

Prior to May of 2000, the Employer did not have the machinery and equipment necessary to perform the packaging department functions and contracted out that work. In May of 2000, the Employer initiated its purchase of Portland Paper Box, a company that owned the die cutting and related machinery needed by the Employer to enable it to perform the die cutting and related packaging operations in house. Prior to this acquisition, PPB conducted packaging operations at the Portland facility.

Essentially, PPB used its machines to stamp out cartons and print, fold and glue the cartons it produced. The employees at PPB were represented by the Union for some undetermined time but that there had been a series of labor agreements between PPB and the Union, the most recent of which by its terms was effective from April 1, 1995 through March 31, 1998. There is some indication that the '95 - '98 labor agreement was extended to March 31, 1999. The most recent labor agreement recognized the Union as the representative of a production and maintenance unit at PPB's Portland facility. At all times relevant herein and excluding the former PPB employees, the production employees at the Beaverton facility have been unrepresented.

The Employer's purchase of PPB was completed in February of 2002 and all but one of PPB's employees and most of its machinery were gradually moved from Portland to the Employer's Beaverton location. However, not all of PPB's machinery was usable in the Employer's Beaverton operations. Consequently, that equipment was "mothballed." For example, an offset press used by PPB was not usable in the Employer's Beaverton operations and the PPB operator and helper of this machine have consequently been in training to use an offset press in the Employer's Beaverton press department. The Employer has six offset presses at its Beaverton location. The two former PPB employees in training on the Beaverton offset press were the first PPB employees moved to Beaverton. However the timeframe for their move is unclear in the record.

Next to move to Beaverton were two die cutter employees who moved to the packaging department when the 201 die cutter machine they worked on was moved to

Beaverton. Two general employees were moved to the packaging department in March of this year. After that, the 1080 die cutter machine and window machine were moved from Portland to Beaverton with four more production workers and the shuttle driver. The shuttle between PPB and Beaverton was no longer needed after the 1080 die cutter move and, so, the shuttle driver was transferred to the Employer's Beaverton shipping department. One production worker, a former sheeter operator and general worker at PPB, now works two to three days a week as a second man on an offset press at Beaverton and as a general worker in the packaging department for the rest of the week.

In sum, the record indicates 13 former PPB employees now work at Beaverton. Three work in departments outside of packaging (press and shipping), two regularly work part of their time in packaging and in other departments. One PPB employee is still located at PPB and works part-time.⁶ The rest are located in packaging.⁷ The exact nature of their work and the skill level necessary to perform their work at Beaverton is unclear, but it appears that the work of a significant majority of these 13 employees is related to the work they performed at PPB. Although some of the work is on different machines, those machines appear to perform the same or similar jobs as the PPB machines performed, but at greater speeds and with more functions.

The former PPB employees have some different benefits than the Employer's other Beaverton production employees in that the former PPB unit employees do not have a co-payment required in their health care plan, as do the other employees, although the plan is the same; the former PPB employees receive two additional paid holidays as well as two additional floater days that the other employees do not receive; and the former PPB employees have different funeral leave and death benefits policies than do the other employees. The majority of the former PPB employees also have the same immediate supervision (packaging department manager) they had when at PPB.

The record fails to show the hours employees work. However, it appears that all P&M employees at Beaverton wear the same uniform. Packaging department employees make \$13.45 to \$19 an hour. Quality control employees make \$21 to \$29 an hour. EPP/Prep make \$29 an hour. Press department operators make \$21 to \$26 an hour and helpers make \$12 to \$16 an hour. Bindery employees make \$9.50 or \$9.75 an hour to \$22 an hour. Drivers in the shipping department make \$12 to \$14 an hour, receiving clerks make \$18 an hour and shipping clerks make \$15 an hour. Print on demand department employees, depending on their job classification, make between \$7.50 and \$24 an hour.

⁶ It appears this employee will eventually move to Beaverton.

⁷ The Employer indicates that some of these employees will be moved to other departments. However, this has not yet occurred. The record indicates that one bindery employee works four hours a day in die making, but no more information is proffered, such as who supervises this person, what his wage rate is, etc.

The record also indicates that two employees who have always worked for the Employer at its Beaverton location, now work in the packaging department on a recently acquired piece of equipment, an Alpina machine, on which the former PPB employees also work. No further information is proffered concerning these employees.

Parties' Positions

The Petitioner is essentially seeking a decertification election among the former employees of PPB and the petition itself seems to indicate this. At the hearing, the Union initially maintained that the petition is facially flawed and unsupported by an adequate showing of interest in that the petition notes the size of the unit at approximately 140 employees, which includes the 14 or so former PPB employees and the balance of the Employer's production employees at the Beaverton facility. The Union further maintains that the packaging department constitutes an appropriate unit because they continue to share a sufficient community of interest despite their relocation from Portland to Beaverton. Alternatively, the Union appears to be seeking a severance of the packaging department from the balance of the Employer's seven production departments at the Beaverton facility. The Union does not expressly request that I direct an election in this matter. The Union does not claim to represent any other employees at the Employer's Beaverton facility other than the former PPB employees and/or the packaging department employees.

Contrary to the Union, the Employer contends that the packaging department is not an appropriate unit. Rather, the employees in the packaging department have been functionally integrated and effectively accreted into a significantly larger unit of production employees. The Employer contends that this larger production unit is the appropriate unit. Consequently, the Employer argues that the Petition should be dismissed as the Union is seeking representation of a unit that is no longer appropriate.

Analysis

In a relocation case such as this one, the Board's role is to distinguish whether the Employer's Beaverton facility is basically the same operation as PPB's Portland operation, simply removed to a new site, or whether the Beaverton facility is somehow a different operation from the PPB's Portland operations. In the former case, a collective-bargaining relationship in effect at the old location is logically applied at the new one. In the latter, for purposes of this case, the collective-bargaining relationship ceases to exist. Given the complexity of modern business transactions, the determination of exactly what relationship the new plant bears to the old is not always easy to make. Nonetheless, the Board has developed standards in contract-bar and failure-to-bargain cases to determine when there is a sufficient continuity of operations to justify applying an existing agreement or bargaining relationship to a new location. These cases hold that an existing contract or bargaining relationship will remain in effect after a relocation if the operations at the new facility are substantially the same as those at the old and if transferees from the old plant constitute a substantial percentage - approximately 40 percent or more - of the new plant employee complement. *Harte & Co.*, 278 NLRB 947 (1986); *Westwood Import Co.*, 251 NLRB 1213, 1214 (1980), enfd. 681 F.2d 664 (9th Cir. 1982); *General Extrusion Co.*, 121 NLRB 1165, 1167-1168 (1958). See also *Marine Optical*, 255 NLRB 1241, 1245 (1981), enfd. 671 F.2d 11 (1st Cir. 1982); *J.R. Simplot Co.*, 311 NLRB 572, 586 (1993); *King Scoopers, Inc.*, 332 NLRB No. 5 (2000).⁸ I am instructed by such precedents as *Harte & Co.* and *J.R. Simplot Co.*, supra, to test for

⁸ The Employer's cite to *Gitano Distribution Center*, 308 NLRB 1172 (1992) is distinguishable from the situation here where the Employer relocated an entire operation to a new location, whereas in *Gitano*, only a portion of the employees in a recognized unit were transferred to a new location. See *Steelworkers Local 7912 (U.S. Tsubaki)*, 338 NLRB No. 5, fn. 1 (2002).

indicators of "continuity" (or "discontinuity") between "old" and "new" plant operations as one ingredient of the determination whether a union representing employees at the old plant is entitled to continuing recognition as the bargaining agent for employees at the new plant. The Board recognizes that, in any relocation or consolidation situation, answering the question whether the union representing the employees at the former location should continue to represent the workers at the new location involves balancing the unrepresented employees' interest in choosing whether to have union representation against the transferees' interest in retaining the fruits of their collective activity.

The appropriate point in time, for measuring whether a substantial percentage of the new work force is composed of transferees from the old location, is on the date that the transfer process was substantially completed. There appears to be no dispute to the fact that the relocation or consolidation at the Beaverton facility of the PPB operations was relatively complete at the time of the hearing in this matter.

Applying the Board law noted above to the record in this proceeding, it is readily apparent that the PPB operations conducted at the Portland facility are only a small but integral part of a much larger and diversified operation at the Beaverton facility. Thus, the operations at the Beaverton facility are not substantially the same operations conducted at the Portland facility. Moreover, the 14 or so former PPB employees, who were relocated to the Beaverton facility, represent far less than 40 percent of the complement of production employees at the Employer's Beaverton facility.

Although the Employer requests that I find the larger production unit, consisting of approximately 140 employees, an appropriate unit, I do not reach that decision because the Union does not claim to represent the larger unit. Moreover, it is not clear from the record what would be an appropriate unit. Regardless, what is readily apparent is that a packaging department unit is not appropriate. I have made this finding mindful that the Board has long followed a restrictive policy in determining whether the addition of a new group of employees to an existing unit is proper because such an accretion forecloses the basic right of a group of employees to select their bargaining representative. *Northland Hub, Inc.*, 304 NLRB 665, 677 (1991).

I also realize that an accretion may be determined improper even though an overall bargaining unit might also be an appropriate unit. *Melbert Jewelry Co.*, 180 NLRB 107, 110 (1969); *Northland Hub, Inc.*, *supra*. Factors considered by the Board in determining whether an accretion is proper are functional integration, bargaining history, employee interchange, level of management control, similarity of working conditions, job, and physical separateness. Additionally, special weight is given to the interest of the employees sought to be accreted in exercising their right to self-organization. Generally, a valid accretion has been found "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." *Id.*, citing *Melbet Jewelry, supra*.

Proceeding with these guiding principles in mind, I find that the packaging department employees have little or no separate identity and, thus, cannot exist as a separate and appropriate unit. My decision in this regard is based on an analysis of the following factors.

With respect to functional integration, the record reveals that the relocation of PPB's operations to the Beaverton facility essentially completed the Employer's business plan to have a complete production operation or process within the Employer's control and housed at one location. The record also reveals that there is no question that the work in packaging is an integral part to the flow of products in the Employer's Beaverton operations.

Regarding interchange, the record further reveals that over a third and up to a half of the original PPB unit is no longer working in packaging, is being retrained to work elsewhere in the Employer's production operations, and/or is splitting time between packaging department work and work in one or another of the remaining seven departments making up the Employer's production operations at Beaverton. Additionally, two original Beaverton facility employees are now working in the packaging department along with the former PPB employees.⁹

On the issue of separate management or supervision, the record reveals that each of the eight production department managers (immediate supervisors), which includes the packaging department, meet on a daily basis to plan and coordinate production in the Beaverton facility. This further highlights the integration of the packaging department into the overall production operations at Beaverton and highlights that the packaging department is not a semi-autonomous or independent department within the Employer's production operations.

Regarding working conditions, the packaging department works in the same building with other employees from other departments and shares common break areas, restrooms and parking facilities. The packaging department is also subject to the same employee manual as employees working in other production departments. While the record establishes some difference in the current benefits for the former PPB employees, those differences are a function of a collective-bargaining history rather than a function of the nature of the packaging department's work. Moreover, while this bargaining history is significant as are the differences flowing from that history, those differences pale in comparison to the common benefits applicable to all production employees working at the Beaverton facility.

Although the Union has essentially requested that the packaging department be severed from an overall production unit at the Beaverton facility, it is not clear whether the Union's request in this regard is made on the basis that the employees in packaging represent a distinct craft. Indeed, the record would not support such a basis. In *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994), the Board defined a craft unit as a "distinct and homogeneous" unit of journeymen, apprentices, and helpers who are primarily engaged in tasks not performed by others that require substantial craft skills

⁹ In particular, the record reveals two of the former PPB employees now work in the press department and two devote a portion of their time performing work outside that of the former PPB unit. The Employer also points to one former PPB employee who is being cross-trained to work in CAD/design and another former PPB employee who is being cross-trained in saddle stitching in the bindery department when there is no work for him on the right angle machine (which is one of PPB's machines). Additionally, a former PPB driver has been assigned to Beaverton's shipping department. The record also indicates that one former PPB general helper works two to three days a week as a second man on the offset press outside the packaging department.

and the use of specialized tools and equipment. The factors the Board considers are formal training or apprenticeship programs, functional integration, overlap of duties, whether work assignments are based on need or made along craft lines, and common interests in wages and other terms and conditions of employment. Here, the record simply does not establish that the work performed by the packaging department requires substantial craft skills and/or the use of specialized tools. The Union also did not produce evidence showing that a formal training or apprenticeship program exists for the work performed in the packaging department. What the record does indicate is that, with relatively limited training, employees are able to operate the equipment transferred over from PPB's Portland operations. So, while it may be that the packaging department employees are skilled in the operation of the machines in their department, they are, at most, skilled machine operators rather than skilled craftsmen.

In any event, I find that the record discloses insufficient evidence to warrant the conclusion that the packaging department represents a craft unit as defined by Board law. *Die Casting Division of Electric Auto-Lite Company*, 84 NLRB 334 (1949). I further find that packaging department employees should not be severed from the remaining production employees because it has little or no separate identity and, thus, cannot exist as a separate and appropriate unit. Rather, the record establishes that the packaging department has an overwhelming community of interest with other production employees.

ORDER

In view of the above findings and conclusions, **IT IS HEREBY ORDERED** that the petition filed herein shall be, and it hereby is, 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 5 p.m., EST on **December 6, 2002**. The request may **not** be filed by facsimile.

DATED AT Seattle, Washington this 22nd day of November 2002.

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