

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

JOHN EDWARD PLUM, A SOLE PROPRIETOR
d/b/a PIONEER ELECTRIC COMPANY

Employer

and

Case 6-RD-1473

KEVIN PIEPRZYK, An Individual

Petitioner

and

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL 712, AFL-CIO, CLC

Union

DECISION AND ORDER
AND
ORDER REVOKING CERTIFICATION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Patricia J. Daum, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.¹

Upon the entire record in this case,² the Regional Director finds:

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

¹ 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 St., NW., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by August 29, 2002.

² The parties did not file briefs in this matter.

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 is the incumbent representative of certain employees of the Employer.

4. No 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.

Pursuant to a Certification of Representative issued on December 11, 2000, in Case 6-RC-11902, the Union presently represents a bargaining unit consisting of:

All full-time and regular part-time electricians and helpers employed by the Employer at its New Brighton, Pennsylvania, facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

By the instant petition, Kevin Pieprzyk, who the record indicates is the Employer's only remaining statutory employee, seeks to decertify the Union.

The Employer, a sole proprietorship, with an office and place of business in New Brighton, Pennsylvania, is engaged in the construction industry as an electrical contractor performing residential and commercial electrical installations, repair and service work. There is no collective-bargaining agreement in effect for the bargaining unit involved herein.

The undisputed testimony of Employer owner John Edward Plum at the hearing in this matter was that, at the time of the election in Case 6-RC-11902, there were five employees in the bargaining unit, but that due to a downturn in business, the unit had been reduced to only one statutory employee for a substantial period of time prior to the filing of the instant petition. In this regard, Plum testified that Kevin Pieprzyk has been the Employer's only active, full-time employee for approximately a year, and that unit work has also been performed during that time

by Plum himself and by Plum's son, Steven Patrick Plum, who is a part-time employee.³ At the hearing, following a review of relevant payroll records, all of the parties stipulated that if the voting eligibility formula of Daniel Construction Company, Inc., 133 NLRB 264 (1961), as modified 167 NLRB 1078, 1081 (1967), was applied to this case, Kevin Pieprzyk would be the only eligible voter.

With regard to the Employer's future workforce needs, Plum testified that the Employer's work is primarily residential, that such work could be performed by the Employer's existing workforce, and that he did not foresee the need to hire another employee to perform that work. While Plum acknowledged that on certain commercial jobs there might be a need to hire an additional employee, he maintained that he would try to complete any such jobs with his existing workforce and would consider hiring another employee only if he absolutely had to do so. He further testified that he did not know whether either of the two commercial bids he had submitted three to four months before the instant hearing were still active, or whether those jobs had already been awarded to another bidder. Finally, in this regard, he testified that the last similar commercial job performed by the Employer was approximately five years ago.

Based upon the record herein, it appears that, since the time the Union was originally certified to represent the unit, the Employer's bargaining unit workforce has declined from five to only one statutory employee. Moreover, based on the testimony of Employer Owner Plum, it appears that the unit will consist of only one statutory employee for the foreseeable future.⁴

It is contrary to Board policy to certify a representative for bargaining purposes in a unit consisting of only one employee. Mount St. Joseph's Home for Girls, 229 NLRB 251, 252

³ Plum further testified that until approximately a month-and-a-half prior to the hearing, two additional unit employees were on layoff status, but that they had not actually worked for the Employer for "quite a while, the majority of the year."

⁴ At the hearing, based on the Employer's testimony and after reviewing relevant records, the Union indicated its intent to disclaim interest in representing the bargaining unit from that point forward.

(1977). In view of this policy, the Board does not direct elections in units composed of only one employee. Denver-Colorado Springs-Pueblo Motor Way, 129 NLRB 1184, 1186 (1961). Where a unit previously found by the Board to be appropriate has been reduced to one employee, the Board has found that, in view of the changed circumstances, the unit is no longer appropriate, and has accordingly revoked the prior certification and dismissed the petition for an election. Sonoma-Marin Publishing Company, 172 NLRB 625, 626 (1968).

Accordingly, based on the record in this matter, I find that the unit is no longer appropriate and I shall, therefore, revoke the prior certification and dismiss the instant petition.

ORDER

Upon the basis of the above and the entire record in this case,

IT IS HEREBY ORDERED that the certification heretofore issued in Case 6-RC-11902 be, and it hereby is, revoked.

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

Dated at Pittsburgh, Pennsylvania, this 15th day of August 2002

/s/Gerald Kobell

Gerald Kobell
Regional Director, Region Six

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