

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

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Union

and

Case 5-UC-386

UNITED STATES POSTAL SERVICE

Employer-Petitioner

DECISION AND ORDER DISMISSING PETITION

On June 30, 2003, the United States Postal Service (herein Petitioner or Postal Service) filed the instant unit clarification petition, seeking to exclude the position of “Address Management Systems Specialist (EAS-15),” from the existing nationwide bargaining unit of postal clerks represented by the American Postal Workers Union, AFL-CIO (herein APWU).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Based on my investigation and the following facts, I dismiss the Postal Service’s petition for the reasons set forth below.

I. FACTUAL BACKGROUND

On October 27, 1997, the APWU filed a petition for unit clarification in Case 5-UC-353, seeking to include approximately 250 Executive and Administrative Service (EAS) employees in the bargaining unit based on the claim that these positions were not managerial, supervisory, or professional. Thereafter, in December of 1999, the parties entered into a non-Board settlement agreement in which they agreed to arbitrate six EAS positions, including the Address Management Systems Specialist position. The APWU also agreed to withdraw the unit clarification petition. A copy of the parties’ settlement agreement is attached as **Appendix A**.

Pursuant to the settlement agreement, the parties submitted to arbitration the issue of whether the Address Management Systems Specialists should be included in the bargaining unit. The arbitrator issued his award on April 29, 2003. He concluded that the position “is part of the APWU bargaining unit and that it is a violation of Article 1.2 of the National Agreement to exclude the position and the disputed work from the bargaining unit.” A copy of the arbitrator’s decision is attached as **Appendix B**.

Subsequently, the Postal Service filed the instant petition seeking to exclude the Address Management Systems Specialists from the bargaining unit, notwithstanding the arbitrator's decision.

II. POSITIONS OF THE PARTIES

A. The APWU's Position

The APWU argues that the petition must be dismissed on the ground that the parties agreed in the 1999 settlement agreement to resolve through arbitration all issues concerning whether the EAS positions, including the Address Management Systems Specialists, should be in the bargaining unit. The APWU asserts that as a result of the terms of this agreement, the Postal Service is prohibited from filing a unit clarification petition with the Board concerning matters it agreed to settle in arbitration. The APWU further contends that it withdrew the October 1997 unit clarification petition in Case 5-UC-353 in reliance on the settlement agreement. Thus having fulfilled its obligations under the agreement, it has no recourse to the Board, and consequently, neither should the Postal Service. The APWU maintains that its position in this matter is supported by the Board's decision in Verizon Information Systems, 335 NLRB 558 (2001), which, as discussed more fully below, involved the Board's dismissal of a unit clarification petition in light of a private representation agreement between the union and the employer.

B. The Postal Service's Position

The Postal Service argues that the Board may not defer a unit clarification petition to an arbitrator's decision where statutory interpretation of the NLRA is paramount. In support of its position, it cites the Board's decision in Marion Power Shovel Co., 230 NLRB 576 (1977), which held that questions of accretion that do not depend on contract interpretation, but involve the application of statutory policy, are a matter for a decision of the Board rather than an arbitrator. Because the arbitrator interpreted Article 1.2 of the collective-bargaining agreement, which the Postal Service contends is a compilation of statutory laws including the NLRA, the Board must exercise its jurisdiction to review the arbitrator's decision.

The Postal Service does not deny the validity or enforceability of the settlement agreement and, in fact, asserts that it has complied with every clause contained in the agreement, including the provisions relating to arbitration. Rather, the Postal Service contends there is no evidence that by entering into the agreement, it waived any legal right available before the Board. Consequently, the Postal Service contends by filing the instant petition, it is merely invoking its right to have the Board review the arbitration award on the ground that the award failed to correctly apply Board law in the accretion area. Specifically, the Postal Service contends that the arbitrator failed to properly apply accretion factors, including history of bargaining, common supervision, and other similar terms and conditions of employment, job classification, and interchange of

employees between the Address Management Systems Specialist positions and similar bargaining unit positions.

For these reasons, the Postal Service argues that the instant petition should be granted, and the Address Management Systems Specialists positions should be excluded from the overall APWU bargaining unit positions.

III. Analysis

I find the unit clarification petition concerns a matter that the parties agreed in their 1999 settlement agreement to resolve by arbitration. I find no hearing is necessary because application of well-settled Board law to certain undisputed facts warrants dismissal of the petition under well-established principles concerning enforcement of such agreements.

The Board's express authority under Section 9(c)(1) to issue certifications includes the implied authority to police such certifications and to clarify them as a means of effectuating the policies of the Act. Thus, Section 102.60(b) of the Board's Rules and Regulations, Series 8, provides that a party may file a petition for clarification of a bargaining unit where there is a certified or currently recognized bargaining representative and no question concerning representation exists.

The Board explained the purpose of unit clarification proceedings in Union Electric Co., 217 NLRB 666, 667 (1975):

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 agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiescence and not express consent.

In Verizon Information Systems, 335 NLRB 558 (2001), the Board addressed the enforceability of voluntary agreements reached between unions and employers concerning representational matters. In Verizon, the union and the employer had entered into a "Memorandum of Agreement" establishing a specific procedure for voluntary recognition outside of the Board's processes, including the right to have the unit issue decided by an arbitrator. Despite the agreement, the union subsequently filed a unit clarification petition seeking to represent a unit of the employer's employees.

The employer requested the Regional Director to dismiss the petition or hold it in abeyance on the ground that the parties had agreed on a procedure to resolve the unit scope issue. The Regional Director denied the request, concluding the Board does not defer to arbitration in representation proceedings involving unit scope issues that turn on statutory policy.

On review of the Regional Director's decision, the Board, noting that "[n]ational policy favors the honoring of voluntary agreements reached between employers and labor organizations," found that because the union elected to proceed under the agreement and derived benefits from it, the union was estopped from thereafter avoiding the arbitration provision of the agreement and seeking recognition through the Board's processes. 335 NLRB at 559-560. To hold otherwise, stated the Board, would permit the union to take advantage of the benefits accruing from the agreement while avoiding its commitment by petitioning to the Board. 335 NLRB at 560, citing Lexington House, 328 NLRB 894 (1999).

In the present case, the APWU and the Postal Service entered into a similar agreement in which they agreed to arbitrate the issue of whether the Address Management Systems Specialists should be included in the APWU bargaining unit. Pursuant to this agreement, the parties fully arbitrated the issues and the APWU prevailed. Subsequently, the Postal Service filed the instant petition seeking to overturn the arbitrator's decision.

Applying the Board's holding in Verizon, I find that the APWU and Postal Service reached an enforceable agreement establishing a procedure to resolve the issue of whether EAS positions, including the Address Management Systems Specialists at issue herein, should be included in the bargaining unit. As in Verizon, any other result would permit the Postal Service to enjoy the benefits of the settlement agreement, while avoiding its commitment, by petitioning the Board after every unfavorable decision from the arbitrator concerning the various EAS positions.

In arguing that the instant petition should not be dismissed, the Postal Service relies on Marion Power Shovel, 230 NLRB 576 (1977), in which the Board held that "[t]he determination of questions of representation, accretion, and appropriate unit do[es] not depend upon contract interpretation but involve[s] the application of statutory policy, standards, and criteria. These are matters for decision of the Board rather than an arbitrator." 230 NLRB at 577-78. This case, however, is clearly distinguishable, as the union in that matter sought dismissal of the employer's unit clarification petition on the ground that the Board should defer to the arbitration provision of the collective-bargaining agreement. Unlike the present case, there was no explicit agreement between the parties to resolve the representational issues outside the Board's processes, and no detrimental reliance on the terms of such an agreement.

The Postal Service further argues that by entering into the settlement agreement, it did not waive its right to file a representation petition with the Board. As the Board held

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in Verizon, however, the issue is not whether the Postal Service waived any legal right. Rather, the issue is “whether the Petitioner - having elected to proceed under the agreement and derived benefits from it - should be permitted to pick and choose which provisions it wishes to invoke and which it prefers to avoid. The question, then, is really one of estoppel.” 335 NLRB at 560-561. By applying this principle of estoppel as set forth by the Board in Verizon, I likewise find that the policies of the Act are best effectuated by holding the Postal Service to the explicit terms of its bargain.

ORDER

The petition 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, NW, Washington, DC 20570. This request must be received by the Board in Washington by October 14, 2003.

Dated September 30, 2003
At Baltimore, Maryland

WAYNE R. GOLD
Regional Director, Region 5



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