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Cardinal Health Care, Inc. *and* International Brotherhood of Teamsters, Local 701. Case 22–RC–12773

February 15, 2008

DECISION AND DIRECTION

BY MEMBERS LIEBMAN AND SCHAUMBER

The National Labor Relations Board has considered determinative challenges in an election held on February 8, 2007, and the hearing officer's report recommending disposition of them.[1] The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 44 votes for and 43 against the Petitioner, with 3 determinative challenged ballots.

The Board has reviewed the record in light of the exceptions and brief and has adopted the hearing officer's findings and recommendations only to the extent consistent with this decision.

The Employer distributes medical supplies through a number of distribution centers, including a center in Edison, New Jersey. The Board election was conducted in the following unit:

> All full-time and regular part-time truck drivers, distribution people, distribution associates, transportation associates, traffic clerks, coordinators, and maintenance employees employed by the Employer at its 100 Raritan Center Parkway, Edison, New Jersey facility, but excluding all office clerical employees, professional employees, inventory representatives, quality systems analysts, guards and supervisors as defined in the Act and all other employees.

The Petitioner challenged the ballots of electronic data interchange (EDI) coordinators Diane Checchio and Beth Henderson on the basis that they were office clericals, and the ballot of inventory coordinator Barbara Pawlikowski on the basis that she was an inventory representative.

The hearing officer applied the three-part test articulated in *Caesar's Tahoe*, 337 NLRB 1096, 1097 (2002), to determine whether the challenged voters were properly included in the stipulated bargaining unit. Under that test,

> [T]he Board must first determine whether the stipulation is ambiguous. If the objective intent of the parties is expressed in clear and unambiguous terms in the stipulation, the Board simply enforces the agreement. If, however, the stipulation is ambiguous, the Board must seek to determine the parties' intent through normal methods of contract interpretation, including the examination of extrinsic evidence. If the parties' intent still cannot be discerned, then the Board determines the bargaining unit by employing its normal community-of-interest test. [Id.]

Applying the first prong of the test, the hearing officer found that the description of the stipulated unit is ambiguous as to the status of the disputed classifications. The hearing officer found that payroll coordinator Mary Aiello's exclusion from the unit, without objection from either party, refuted the Employer's claim that the parties' objective intent was to include all coordinators.

The hearing officer next considered evidence of the parties' subjective intent under the second prong of the *Caesar's Tahoe* test. The Employer presented testimony that its subjective intent was to include in the unit all employees who held the title "coordinator."[2] The Petitioner, on the other hand, presented testimony that it believed that the term "coordinator" referred only to the four distribution coordinators, whom the parties had discussed prior to the negotiation of the stipulation. In view of the above evidence and the stipulation's exclusion of "all other employees," the hearing officer concluded that the parties' subjective intent could not be accurately discerned. Reaching the third step of the *Caesar's Tahoe* analysis, the hearing officer found that Checchio, Henderson, and Pawlikowski did not share a community of interest with the bargaining unit employees.[3] Therefore, he sustained the Petitioner's challenges to the ballots of the three employees.

The Employer excepts to the hearing officer's determination, asserting that the hearing officer failed to enforce the parties' election agreement, under which all

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Members Liebman and Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[2] The Employer asserts that it did not include payroll coordinator Aiello on the eligibility list because she "obviously" is a confidential employee, based on her access to payroll and other personal information.

[3] The Employer concedes that, if the third prong of the analysis is reached, the record does not demonstrate that Checchio and Henderson share a community of interest with employees in the unit.

"coordinators" were eligible to vote. The Employer contends that the hearing officer misapplied the *Caesar's Tahoe* test by relying on extrinsic evidence, i.e., the exclusion of payroll coordinator Aiello, to conclude that the stipulation was ambiguous, rather than objectively comparing the challenged voters' job classifications to those identified in the election agreement. The Employer asserts that the language of the stipulation, which included coordinators without any limitation, is unambiguous and should be enforced by overruling the challenges.[4]

We find merit in the Employer's exceptions regarding the first prong of the *Caesar's Tahoe* test. Applying that test, we find, contrary to the hearing officer, that the language of the stipulation unambiguously includes the three challenged coordinators in the bargaining unit.

The stipulation identifies the classifications included in the bargaining unit and specifically includes "all full-time and regular part-time . . . coordinators." The Employer, however, does not employ any individuals with the sole designation of "coordinator." Rather, it employs nine individuals in various coordinator positions, including inbound coordinator, outbound coordinator,[5] valuelink coordinator, field corrective action (FCA) coordinator, and payroll coordinator, as well as the disputed EDI coordinator and inventory coordinator classifications.

The Board's recent decision in *USF Reddaway, Inc.*, 349 NLRB No. 32 (2007), addressed a stipulation similar to the stipulation in the instant case and therefore is instructive. At issue in that case was the unit placement of a parts/mechanic in a stipulated unit that included "[a]ll mechanics, fuelers, truck washers, truck inspectors, trailer mechanics and tire persons." This stipulation did not mirror the precise classification titles utilized by the employer, i.e., mechanic/fueler, mechanic/floater, parts/mechanic, fuel/tire/trailer employee, and equipment washer/general helper. The Board concluded, however, that a "reasonable reading" of the stipulation would include all of these classifications, finding that "the parties used shorter job designations in the stipulation." Thus, the Board did not find that the abbreviation of the employer's job classifications rendered the stipulation ambiguous. Rather, the Board concluded that the unit description was unclear because it specifically included trailer mechanics, an inclusion that would have been unnecessary if "all mechanics" meant what it said.[6]

In the present case, as in *USF Reddaway*, the stipulation contains an abbreviated reference to "all . . . coordinators" rather than listing the titles of the various coordinator classifications. Unlike in *USF Reddaway*, however, no type of coordinator is also specifically addressed in the unit description in a manner that might cast doubt on the parties' intent to include the entire category of coordinator positions. Therefore, applying the Board's reasoning in *USF Reddaway*, we find that the stipulated unit description unambiguously includes all coordinators in the unit.

In view of the inclusion of "all . . . coordinators," we further find, contrary to the hearing officer, that no ambiguity is created by the exclusion of "all other employees" at the end of the unit description.[7] Nor do we find that the Employer's exclusion of payroll coordinator Aiello from the eligibility list, without objection by the Petitioner, is relevant to our inquiry concerning the objective intent of the parties as expressed in the stipulation. Such extrinsic evidence may be relevant under the second prong of the *Caesar's Tahoe* analysis, which looks to the parties' subjective intent. However, the Board only reaches that issue if the stipulated unit description itself is found ambiguous. Having found that the unit description unambiguously includes the EDI coordinators and the inventory coordinator, we do not reach an analysis of subjective intent.[8]

Because we find that the stipulated unit description is unambiguous under the first prong of *Caesar's Tahoe*, we enforce the parties' agreement by including the disputed positions in the unit. Accordingly, we reverse the hearing officer and overrule the challenges to the ballots of employees Checchio, Henderson, and Pawlikowski.

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[4] In addition, even if the stipulated unit is found ambiguous, the Employer argues that the negotiations leading up to the election agreement demonstrated a subjective intent to include the challenged coordinators in the unit and that Pawlikowski shares a community of interest with unit employees.

[5] The record shows that the parties refer to the inbound coordinators and the outbound coordinators collectively as distribution coordinators.

[6] Member Liebman found that the stipulation's inclusion of "all mechanics" unambiguously placed the disputed parts/mechanic in the unit. 349 NLRB No. 32, slip op. at 2 fn. 5.

[7] In *Halsted Communications*, 347 NLRB No. 20 (2006), the Board stated that "[i]f the classification is not included, and there is an exclusion for 'all other employees,' the stipulation will be read to clearly exclude that classification." Unlike the situation in that case, however, we find here that the use of the abbreviated term "coordinators" to refer to several classifications unambiguously included those classifications within the stipulation. We would therefore not apply the "all other employees" clause to exclude these "coordinators."

[8] The unit placement of Aiello under the terms of the stipulation is not at issue in this proceeding, and we need not pass on the Employer's assertion that she is properly excluded as a confidential employee.

DIRECTION

It is directed that the Regional Director for Region 22 shall, within 14 days from the date of this Decision and Direction, open and count the ballots of Diane Checchio, Beth Henderson, and Barbara Pawlikowski. The Regional Director shall then prepare and serve on the parties a revised tally of ballots and issue the appropriate certification.

Dated, Washington, D.C. February 15, 2008

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD