World Theatre Corporation *and* International Alliance of Theatrical Stage Employees, Local 20, Petitioner. Case 18–RC–15612

March 30, 1995

DECISION AND DIRECTION

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

The National Labor Relations Board, by a three-member panel, has considered a determinative challenge in an election held on August 5, 1994, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Decision and Direction of Election issued on July 12, 1994. The tally of ballots shows 5 for and 5 against the Petitioner, with 1 determinative challenged ballot.

The Board has reviewed the record in light of the exceptions[1] and brief, and has decided to adopt the hearing officer's findings and recommendations, as further discussed below.

In his Report and Recommendation to the Board on Challenged Ballots Affecting the Results of the Election, the hearing officer found, inter alia, that the few instances when Technical Director Paul Froid called in his nephew, Chris Cameron, to work for the Employer did not establish that Froid had statutory authority to hire, whether he credited Director of Operations Brian Sanderson's or Froid's version of the events. We agree with the hearing officer.

Cameron twice helped Froid with between-show maintenance projects and was paid $5 per hour by Froid out of Froid's own pocket. Froid did not put Cameron on the Employer's payroll. Cameron also performed stage crew work on one occasion. The hearing officer noted that under Sanderson's version of this event, although he did not approve of Cameron's employment in advance, he subsequently approved Cameron's timesheet and paid Cameron a special wage rate not paid to other extra employees. Further, under Froid's version, Sanderson approved the hiring of Cameron in advance, based on Froid's recommendation. The hearing officer noted that other nonsupervisory employees also recommend potential crew members to Sanderson.

Contrary to the Employer's contention, we agree with the hearing officer that the Chris Cameron incidents do not warrant a finding that Froid was a statutory supervisor. The record shows that on the first two occasions when Cameron assisted Froid with maintenance projects, Cameron was not on the Employer's payroll, because Froid paid Cameron out of his own pocket. We note that even if Froid charged the Employer extra time on his timesheet for some of Cameron's work, Froid testified that Sanderson approved Cameron's work and told Froid to make sure that Cameron got on the payroll the next time Cameron worked for the Employer. Thus, the record shows that the next time Froid called in Cameron to help with last minute stage crew work, Sanderson approved Cameron's timesheet and paid Cameron $8.50 per hour which was not usually paid to other extra employees. The fact that Froid recommended Cameron's hiring is not dispositive where, as here, unit employees routinely recommend other employees for hire. The record shows that the final hiring decision rests with Sanderson.

In its brief in support of exceptions, the Employer also contends, relying on testimony by Sanderson, that Froid ''hired an additional person for a 'load-out' without Sanderson's prior approval.'' The record is unclear as to whether this testimony refers to the Cameron incident discussed above or an additional instance of alleged hiring by Froid. The record contains no specific evidence that Froid hired other employees, and there is no further testimony indicating that the load-out incident involved the hiring of anyone other than Cameron. Under these circumstances, we cannot find that the vague references in Sanderson's testimony to a load-out incident are sufficient to warrant a finding that Froid possessed the statutory authority to hire.

Based on the above, we find that the record demonstrates that Sanderson, and not Froid, possesses the authority to hire crew members. Because we also agree with the hearing officer that the Employer failed to show that Froid possessed any of the other indicia of supervisory authority listed in Section 2(11), we agree that Froid has not been shown to be a supervisor within the meaning of the Act.

DIRECTION

IT IS DIRECTED that the Regional Director for Region 18 shall, within 14 days from the date of this Decision and Direction, open and count the ballot of Paul Froid. The Regional Director shall then and serve on the parties a revised tally of ballots and issue the appropriate certification.

[1] In its exceptions, the Employer requests oral argument. The request is denied as the record, exceptions, and brief adequately present the issues and the positions of the parties.