

In the Matter of a Controversy)
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 between)
)
 SACRAMENTO REGIONAL TRANSIT)
 DISTRICT,)
)
) Petitioner)
)
) and)
)
) AMALGAMATED TRANSIT UNION,)
 LOCAL 256,)
) Respondent)
)
) (Re Computer Operator and Data)
) Entry Clerk Jobs))
)

HEARING OFFICER'S
RECOMMENDATIONS

This matter came on for public hearing, pursuant to Administrative Code Sections 15800 et seq in accordance with Section 102403 of the Public Utilities Code, in Room S-7 of the McGeorge School of Law, 3200 Fifth Avenue, Sacramento, California 95817 on April 7, 1982. Representing the District was Mark W. Gilbert, Esq.; representing the Union was Neyhart, Anderson, Nussbaum, Reilly & Freitas, by Joseph Freitas, Jr., Esq.

The Hearing Officer was Donald H. Wollett, appointed by the Director of the Department of Industrial Relations to hear all testimony, to study the record, and to submit to the Director "a recommendation as to the appropriate Unit, if any, that the classifications in question should be assigned." The record consists of 130 pages of transcript and 7 exhibits. Post-hearing briefs were received by the Hearing Officer from both parties on May 11, 1982.

THE QUESTION

Should the jobs of Computer Operator/Data Entry Clerk and Data Entry Clerk be included in or excluded from the Unit as described in the Memorandum of Agreement for a representation election issued by the California Conciliation Service in 1975?

The aforementioned 1975 Agreement described the Unit as follows:

"All clerical employees excluding supervisory employees as defined by N.L.R.A., and excluding Secretary to the General Manager and the principal clerk for: Assistant General Manager, Assistant to the General Manager, Director of Planning & Marketing, Transportation Superintendent, and Attorney."

The list of eligible voters which was attached to the Unit description contained 35 job titles and names of employees, and was entitled: "Clerical, Stenographic, and Technical Employees & Functions."

The Union won the election by a substantial margin. Since then there have been changes in the technology of storing and retrieving data. As a consequence of these technological modifications, some new jobs have been created including the two that are at issue in the proceeding: Computer Operator/Data Entry Clerk and Data Entry Clerk.*

*The District sought agreement from the Union to exclude these jobs from the Unit; the Union refused. The District sought to introduce evidence with respect to the exclusion from the Unit of other jobs by agreement between the District and the Union. The Hearing Officer rejected the District's offer of proof in this regard on the grounds of relevancy.

The District made a second offer of proof, to wit, to put into the record evidence of organizational activity in a group of salary jobs which are not part of any bargaining unit as part of a claim that the two employees should be given a choice. (Tr. 128) The

GOVERNING LAW

Section 102403 of the District's enabling legislation states:

"If there is a question whether a labor organization represents a majority of employees or whether the proposed unit is or is not appropriate, such matters shall be submitted to the State Conciliation Service for disposition. The State Conciliation Service shall promptly hold a public hearing after due notice to all interested parties and shall thereupon determine the unit appropriate for the purposes of collective bargaining. In making such determination and in establishing rules and regulations governing petitions and the conduct of hearings and elections, the State Conciliation Service shall be guided by relevant federal law and administrative practice, developed under the Labor-Management Relations Act, 1947, as presently amended." (Emphasis supplied)

Hearing Officer also rejected this offer of proof.

The ground for that ruling is set forth in the transcript is inartfully stated. The point was (and is) that the National Labor Relations Board directs self-determination elections only in cases where it determines that either of two units may be appropriate; accordingly the Board leaves to the employees affected the question of which of the two units they prefer. See Gorman, Labor Law at page 72 (West Publishing Co., 1976). The Hearing Officer knows of no case where the NLRB has directed a self determination election giving the employees a choice between inclusion in an existing bargaining unit and no representation at all. This appears to be the situation in this case. The offer of proof did not suggest that an alternative bargaining unit had been formed. The offer of proof consisted of rather amorphous evidence of organizational activity among a residual group of jobs without specifying the definition of another unit or suggesting that the employees in such a unit were interested in representation by anyone.

The parties also agreed that federal law should govern.
(Tr. 10, 127)

Accordingly, it is the finding of the Hearing Officer that the provisions of the Labor-Management Relations Act of 1974, as amended, and the decisions and practices of the National Labor Relations Board and the courts interpreting that statute shall control the disposition of the issues in this proceeding -- both procedurally and substantively.

THE NATURE OF THE PROCEEDING

There are four distinct procedures pursuant to which a unit-determination issue may be raised:

1. The initial organizational phase, where a union(s) petitions for the establishment of a bargaining unit(s) and there is no history of collective bargaining;

2. Severance from an existing unit which has been established (either by recognition or certification); a group of employees wishes to split off;

3. Accretion, which is the opposite of severance, arising where there is an existing unit and new jobs are acquired or created (usually by acquisition of another enterprise); the question is whether or not they are to be absorbed into and made a part of the existing unit;

4. Unit clarification, which usually involves the creation of a new job or change in the content of an existing job; the question is whether the new job or the changed job should be included in or excluded from an existing unit. (See Gorman, page 70).

Clearly what we have in this case is a petition for unit clarification filed by the Employer and necessitated by the fact

that six months or so ago, long after the election in 1975, two new jobs were created, raising the question of whether they belong in or out of the existing unit of clerical and technical employees.**

The Union argues, on the strength of Sections 15805 of the California Administrative Code, and Section 102403 of the enabling legislation, that the District lacks standing to file a petition for unit clarification because Section 15805 speaks only of petitions concerning questions of representation of employees being filed "by any labor organization" that claims to represent a majority of the employees in an appropriate bargaining unit. It says nothing about "employers." "Unit" arguably refers to Section 102403 which speaks only of a "proposed" unit, not an established unit as here.

The Hearing Officer finds this to be an inordinately narrow reading of the language of Sections 15805 and 102403. Furthermore, as pointed out above, the Hearing Officer explicitly finds that federal law, both procedural and substantive, is controlling. Sections 15805 and 102403 must be read in light of federal law which clearly permits an employer to file a petition for unit clarification. Accordingly, it is the finding of the Hearing Officer that the District does have standing in this matter.

**This is not a petition for a decertification. Decertification is a proceeding initiated by employees, not by an employer, pursuant to which they desire to get rid of an incumbent bargaining representative. Similarly, this is not a petition for severance from an existing unit. Petitions for severance are also filed by employees, not by an employer. It is for these reasons that District's reliance on General Electric Company, 31 LRRM 1533 (1953), which involved a petition by employees to sever technicians for the purpose of decertification, is inappropriate.

DISCUSSION

In deciding unit clarification questions, the NLRB uses the criteria which are followed in making unit determinations in the first instance. The principal criterion is "community of interest." The Hearing Officer has followed the Board in coming to grips with the merits of the issues before him.

The National Labor Relations Board has adhered to its ruling in Sheffield Corp., 49 LRRM 1265 (1961), not to exclude technical employees from bargaining units with other employees automatically but to determine unit placement on a case-to-case basis. See, for example, Electronics Research, Inc. 87 LRRM 1546 (1974).

In Collins Radio, 86 LRRM 1176 (1974), the Board held that computer operators, keypunch operators, and clerical employees belong in one unit because, among other things, they are highly integrated with each other operationally and have frequent contact.

In Avon Products, 105 LRRM 1128 (1980), the question was whether or not the 115 employees in the data processing department should be included in a wall-to-wall unit of production and maintenance employees on the ground that they formed an integral part of the work process of the other employees. On the basis of this evidence of integration between the data processing department and the other departments of the enterprise, the NLRB found that the 115 employees at issue belonged in the larger unit.

A clerical department is a service department for other departments to use. The members of that department store and retrieve data and perform other clerical functions.

The District's computer department consisting of the employees in the two jobs at issue in this case is also a service department serving the "user" departments of the District by storing and retrieving data and performing related functions. (Tr. 57)

The computer system is a "tool to be used by every department and every user that needs information." (Tr. 79) The service work performed by the employees who operate the computer system is essentially clerical work which is now done by machines rather than manually. (Tr. 68) The storing of data is like "filing...inside the computer." (Tr. 83) "The computer is replacing a lot of that manual work that was done to store information." (Tr. 89)

The work of the two employees in question in this case has a dramatic impact on the work of clerical employees (Tr. 63). The testimony of the department manager, Errol Belt, is instructive on this point:

THE WITNESS: Information clerk.

ARBITRATOR [sic] WOLLETT: There's a whole bunch of those.

THE WITNESS: Yes.

ARBITRATOR WOLLETT: I presume they all do about the same thing. Is that true?

THE WITNESS: I presume the same thing. Their responsibility is answering inquiries from the public as to the operation of different routes and the time that those routes are running and where they can be caught. That will be streamlined; in that we will be able to build files that will enable the clerks -- and this is in the future -- which will enable these clerks to key in the information over a terminal and find out where a person is located and it will show up on the screen a bus route that is nearest that particular position. So, it could streamline their operation quite a bit.

ARBITRATOR WOLLETT: All right.

THE WITNESS: Maintenance clerk. The maintenance clerk position is a position right now that requires a lot of manual entries into books on -- recordkeeping on particular vehicles that are in inventory. Also they do a lot of reports off of time cards, off of labor -- they have a number of labor reports that they have to keep, as far as how much overtime a particular individual is working. They're maintaining seniority on that overtime. And there's a lot of manual effort there. That will be completely streamlined.

ARBITRATOR WOLLETT: What do you mean, "streamlined"?

THE WITNESS: When a -- right now, the maintenance clerk might get some work orders or

defect cards that are filled out by operators, or mechanics, or mechanic supervisors which describe a particular discrepancy on a piece of equipment.

That piece of paper -- that work order or defect card -- has to be filed with a particular vehicle for record purposes, safety purposes, and for information for the supervisor so he can make proper assignment of work.

There's also information relating to road calls, and accidents, and incidents that might occur on a particular vehicle.

Right now, to maintain that information, one is three to six months' outdated by the time all the information is put together. And the computer system will allow that information to be accessible at one time after it gets entered into the system. And it should make their job a little more easier and it should aid the supervisor's in finding out more information about a particular vehicle.

Scheduling clerk -- well, the scheduling clerk right now -- one of the responsibilities is typing up schedules, maintaining schedules, maintaining the route schedules that are handed out to the drivers on any changes that occur. And rather than being a manual effort, it could be possible that this will be an automated effort and that the schedules will be produced automatically whenever a schedule analysis makes a route change

or a change in routes in miles, or hours, or service. They would be coordinated with the schedule and also with the schedule analysis and the transportation, and maintenance, and all the areas. So, it should ease their job as far as typing efforts, because that's basically all there is -- typing.

Utility clerk; I don't know what a utility clerk is.

ARBITRATOR WOLLETT: Forget that one.

THE WITNESS: Technical positions, accounting and payroll. The accounting technician is responsible for, in this particular case -- as I see it, they're more responsible for actual reconciling and interpreting accounts and interpreting documents received from different outside sources.

So, that's a reconciling effort and communicating with the public, and communicating with the departments.

Payroll technician is definitely the same way. They communicate with the departments. They communicate with individuals and answer questions in payroll and accounting. We will be able to give them more information on a faster basis. They will be able to answer questions easier. And they will be able to automate a portion of the payroll to make it easier.

They will be able -- I guess I kind of

described accounting and payroll already.

Accounting purchasing clerk, presently vacant, Vacated.

As far as the purchasing clerk, I assume -- I assume that's the reference here -- the purchasing clerk -- the responsibility there is to deal with the purchase orders that come in and the vendors, packing slips that may come in and forward those to accounting. And that's more or less of a matching job and a typing job."

It seems clear to the Hearing Officer from the record evidence that the computer system operates to make a whole range of clerical functions in accounting, payroll, purchasing and claims, dispatching and scheduling, and maintenance more accurate, more complete, and more efficient. The degree of functional integration between the jobs of computer operator and data entry clerk on the one hand and the other clerical and technical jobs in the unit compels, in the judgment of the Hearing Officer, a recommendation that they be included in that unit.

There is little objective evidence in the record which establishes disparate interests on the part of data entry clerk and computer operator. There is some difference in hours of work. Except for that working conditions apparently are similar. Nor is there any evidence that computer operators and data entry clerks have a high degree of skill which might be a basis for exclusion. They have little formal training; most of the skill is acquired on-the-job. (Tr. 52-53, 101-103)

Industry practice, to the extent that there is evidence of one, is mixed but appears to support the inclusion of these two


jobs in a clerical and technical unit where one exists. According to Employer Exhibit 5, the following Transit Districts in California include data entry operators and computer operators in a bargaining unit of clericals: AC Transit; Santa Clara County Transit District (unit of administrative, professional and technical employees); Southern California Rapid Transit District; and San Diego Transit Corporation. The situation is different in SanTrans (San Mateo) (no clerical employees in the bargaining unit; all data entry employees exempt); Golden Gate Transit (data entry employees excluded from any bargaining unit); Orange County Transit District (computer personnel not a part of any bargaining unit).

Applying the criteria used by the National Labor Relations Board to the testimonial and documentary evidence in this record, it is the judgment of the Hearing Officer that the answer to the question before him should be that the jobs of computer operator/data entry clerk and data entry clerk be included in the unit as described in the Memorandum of Agreement for representation election issued by the California Conciliation Service of 1975.

RECOMMENDATIONS

The Hearing Officer recommends that the jobs of Computer Operator/Data Entry Clerk and Data Entry Clerk be included in the bargaining unit of clerical, stenographic, and technical employees represented by Local 256 of the Amalgamated Transit Union.

May 24, 1982
Sacramento, California


Donald H. Wollett,
Hearing Officer