

Kim/Lou, Inc. d/b/a Bell Convalescent Hospital and Service Employees International Union, Local 399, AFL-CIO, CLC, Petitioner. Case 21-RC-20316

December 20, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND WALSH

The National Labor Relations Board has considered determinative challenges in an election held March 22, 2001, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 33 for and 32 against the Petitioner, with 2 determinative challenged ballots.¹

The Board has reviewed the record in light of the exceptions and briefs and has adopted the hearing officer's findings and recommendations only to the extent consistent with this decision. The parties agreed to a unit including, inter alia, "nursing assistants" and excluding "all other employees" not specifically included in the stipulated unit.² The Petitioner subsequently challenged the ballot of Ligaya Figueroa, claiming that she was employed in the position of "central supply/patient supplies/nurse aide," which was not listed among the specific inclusions in the stipulated bargaining unit description. The Petitioner argued that Figueroa therefore fell within the explicit unit exclusion of "all other employees."

The hearing officer recommended that the challenge to the ballot of Figueroa be overruled. Finding the stipulation ambiguous, the hearing officer applied community-of-interest principles and recommended that Figueroa be included in the bargaining unit as a dual function employee.

The Petitioner excepts to the hearing officer's recommendation that the challenge be overruled. The Petitioner contends that the hearing officer failed to apply the clear language of the stipulation and improperly applied community-of-interest principles to find that Figueroa should be included in the unit.

¹ In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to sustain the challenge to the ballot of Young Koopark.

² The stipulated unit included "[a]ll full-time and regular part-time certified nursing assistants, restorative nursing assistants, nursing assistants, cooks, dietary aides, activities aides, housekeeping, maintenance, and laundry employees at the Employer's facility located at 4900 East Florence Avenue, Bell, California; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act."

For the reasons set forth below, we agree with the Petitioner that the hearing officer erred in overruling its challenge. It is well settled that, in reviewing a stipulated unit, the Board's function is to ascertain the intent of the parties with regard to inclusion or exclusion of a disputed voter and then to determine whether such intent is inconsistent with any statutory provision or established Board policy. *Viacom Cablevision*, 268 NLRB 633 (1984). If the objective intent of the parties concerning the questioned portion of the unit description is expressed in clear and unambiguous terms, the Board will hold the parties to their agreement. *Id.* In order to determine whether the stipulation is clear or ambiguous, the Board will compare the express language of the stipulated bargaining unit with the disputed classifications. *Id.* The Board will find a clear intent to include those classifications that match the express language, and will find a clear intent to exclude those classifications not matching the stipulated bargaining unit description. *Id.* Under this view, if the classification is not included, and there is an exclusion for "all other employees," the stipulation will be read to clearly exclude that classification. See *National Public Radio, Inc.*, 328 NLRB 75 (1999); *Prudential Insurance Co.*, 246 NLRB 547 (1979). "The Board bases this approach on the expectation that the parties are knowledgeable as to the employees' job title, and intend their descriptions in the stipulation to apply to those job titles." *Viacom Cablevision*, supra at 633.

However, where the stipulation is unclear, extrinsic evidence may be considered to determine the parties' intent regarding the disputed classification. See *Gala Food Processing*, 310 NLRB 1193 (1993). If, after this analysis, the parties' intent remains ambiguous, reliance may be placed upon community-of-interest principles to determine whether the disputed employee belongs in the unit. *Lear Siegler, Inc.*, 287 NLRB 372 (1987).

Contrary to the hearing officer's findings, we find that the stipulation in this case is unambiguous. The stipulation reflects a clear intent on behalf of the parties to include "nursing assistants" and to exclude "all other employees." Figueroa's title, "central supply/patient supplies/nurse aide," clearly does not fit the express language of the stipulation. Furthermore, the use of the language "all other employees" in the stipulation's exclusions serves as further evidence of the parties' clear intent to exclude Figueroa from the unit. See *National Public Radio, Inc.*, supra; *Prudential Insurance Co.*, supra.

Thus, the stipulated agreement clearly and unambiguously reflects the intent of the parties. As the parties' stipulation does not contravene any provision of the Act or any Board policy, we need not consider extrinsic evidence or community-of-interest principles. Accordingly,

we conclude that the parties intended and stipulated to exclude "central supply/patient supplies/nurse aide" employee Figueroa from the bargaining unit and therefore sustain the challenge to her ballot.

ORDER

The National Labor Relations Board reverses the hearing officer's recommendation that the ballot of Ligaya

Figueroa be opened and counted and that a second revised tally of ballots be served upon the parties, and remand to the Regional Director for further appropriate action.