

**ITT Grinnell and United Steelworkers of America,
AFL-CIO-CLC, Petitioner. Case 8-UC-158**

December 5, 1980

DECISION ON REVIEW AND ORDER

BY MEMBERS JENKINS, PENELLO, AND
TRUESDALE

On March 18, 1980, the Acting Regional Director for Region 8 of the National Labor Relations Board issued a Decision and Order Clarifying Bargaining Unit in the above-captioned proceeding. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review alleging that, contrary to the conclusion of the Acting Regional Director, the classifications of accounts receivable collection coordinator and credit escalation analyst should be excluded from the unit. The request for review was based essentially on the grounds that the Acting Regional Director allegedly had made erroneous factual findings and that his decision raised a substantial question of Board policy by departing from Board precedent. Similarly, the Petitioner requested review, alleging that, contrary to the Acting Regional Director's conclusions, the classifications of junior engineer, engineering assistant, secretary to the engineering supervisor and project managers, property accountant, accounts receivable coordinator, price analyst I, price analyst II, secretary to the assistant plant manager, cost accountant, and production control coordinator should be included in the unit. Its request for review was based on its contention, *inter alia*, that the Acting Regional Director had made erroneous factual findings.

By telegraphic order, dated July 17, 1980, the Employer's request for review was granted and the Petitioner's request for review was granted with respect to the classifications of secretary to the engineering supervisor and project managers, property accountant, and secretary to the assistant plant manager. The Petitioner's request for review was in all other respects denied. Thereafter, the Employer filed a brief on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

The Employer manufactures engineered pipe hangers at its facility in Warren, Ohio. On May 22, 1968, following a Board-conducted election, the

Petitioner was certified by the Board as the exclusive representative of the Employer's office clerical employees.¹ The most recent collective-bargaining agreement between the parties, effective from October 31, 1977, through October 31, 1980, describes the bargaining unit as follows:

The term "employee" as used in this agreement applies to all Wage and Hour/Clerical Employees located and employed at the Company's offices at 621 Dana Avenue, Warren, Ohio, and included in the bargaining unit for whom the Union is certified by the National Labor Relations Board as the exclusive bargaining representative; the term "employee" does not include the buyers, persons occupying confidential jobs directly associated with management, management trainees, administrative employees, watchmen and guards, or supervisors or professional employees as defined in the National Labor Relations Act.

The classifications at issue and our conclusions with regard thereto are set forth below.

1. Account receivable collection coordinator

The Acting Regional Director found that the Accounts Receivable Collection Coordinator (ARCC) performs only routine job functions and has only limited participation in decisions to extend or deny credit. He thus concluded that the ARCC position did not have managerial status and should be included in the unit. The Employer contends that the Acting Regional Director's factual findings with regard to the ARCC are in error and that the ARCC should be excluded from the unit as a managerial employee. We agree with the Employer.

The ARCC responds to inquiries regarding invoices and maintains the status of overdue receivables on a daily basis for the weekly division management reports. As the Acting Regional Director found, the ARCC can make only *recommendations* with regard to a customer's credit level. However, as urged by the Employer, 60 percent of the ARCC's time is spent resolving payment disputes over already invoiced amounts. And this responsibility, since it requires the exercise of discretion and involves regular customer contact, distin-

¹ The unit in which the Petitioner was certified as the collective-bargaining representative in Case 8-RC-7083 is described as follows:

All office clerical employees at the Employer's Warren, Ohio facility, including the receptionists and mail girl, but excluding technical employees, plant clerical employees, confidential employees, professional employees, guards and supervisors as defined in the Act and all other employees.

On March 29, 1974, the unit was clarified by including the classifications of production and inventory control, administrative assistants, secretary to the manager of manufacturing, and engineering and quality control secretary.

guishes the ARCC from the accounts receivable clerks included in the unit. In this regard, the ARCC occasionally visits jobsites of customers during which, as the Employer's representative, he makes price adjustments. There is no evidence indicating a dollar limit on the ARCC's payment adjustment discretion or indicating that the ARCC requires any approval by higher management before committing the Employer on a given concession whether made at the facility in Warren or at the jobsite. The manager of accounting's testimony that the ARCC can make a judgment about whether a \$3,000 concession should be made on a \$100,000 order to expedite an account illustrates the ARCC's responsibility. Thus, while the ARCC is not empowered unilaterally to extend credit, he does exercise considerable discretion in granting invoice concessions. We therefore conclude that he is a managerial employee and as such should be excluded from the unit here.²

2. Credit escalation analyst

The Acting Regional Director concluded that the duties of the credit escalation analyst (CEA) are routine, primarily clerical in nature, do not involve the exercise of discretion on behalf of the Employer, and therefore would warrant a finding that the CEA should be excluded from the unit as managerial. The Employer contends that the Acting Regional Director failed to consider its alternative argument that the CEA was, in fact, a technical employee, and that the position should be excluded from the unit on this ground. We find merit in this contention.

The record reveals that unlike the unit employees who perform substantially routine clerical functions under established guidelines, the CEA is responsible for functions that require both specialized training and independent judgment. The CEA performs some routine functions such as categorizing various credits and submitting them to management for its use in forecasting volume fluctuations. Additionally, however, the CEA is required to utilize accounting skills in analyzing and segregating sales and adjustments, and reviewing customer purchase orders. In the course of her duties, the CEA has contact with customers and reports directly to Raymond Gospodarski, manager of accounting. The CEA is salaried and must have a 2-year associate degree in accounting or equivalent experience. There is no evidence of interchange with other unit employees other than the routing of work to billing clerks. Thus, it appears that the CEA possesses skills and job functions which are distinct from those of the clerical employees in the

unit and which require the use of specialized training, initiative, and independent judgment. Accordingly, we find that the CEA is a technical employee and as such should be excluded from the unit.³

3. Secretary to the Assistant Plant Manager

The Petitioner alleges that the record indicates that the incumbent in this position has never been involved in secretarial duties pertinent to labor relations matters and therefore the Acting Regional Director erred in excluding the position as confidential in nature. We find the Petitioner's contention without merit and agree that the secretary to the assistant plant manager should be excluded from the unit.

The Board has long defined confidential employees as those who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. *The B. F. Goodrich Company*, 115 NLRB 722, 724 (1956). In this regard, although the position of assistant plant manager is of recent origin at the Warren facility, it is clear, as found by the Acting Regional Director, that the assistant plant manager has significant responsibility for formulation and effectuation of labor relations policy. And the record establishes that his secretary serves him in a confidential capacity, particularly since she has sole responsibility for his filing and typing, including the typing of interoffice memos to the personnel manager involving labor relations matters. Accordingly, we agree with the Acting Regional Director that the secretary to the assistant plant manager is a confidential employee and should be excluded from the unit.

4. Secretary to the Engineering Supervisor and Project Managers

The Acting Regional Director found that although the record is silent as to the present duties of the engineering supervisor and project managers, the engineering supervisor has been designated to participate in contract negotiations in the future. Since he additionally found that the secretary at issue will act in a confidential capacity to the engineering supervisor when negotiations commence, he concluded that this secretary should be excluded from the unit as a confidential employee. The Petitioner argues, in essence, that the Acting Regional Director's "assumption" that the engineering supervisor will participate in the future in labor relations matters is insufficient ground for exclusion of the secretary as a confidential employee.

² See, e.g., *Enclosure Corporation*, 225 NLRB 629, 631-632, 641 (1976).

³ See, e.g., *Western Gear Corporation, Heavy Machine Division*, 160 NLRB 272, 276 (1966).

As noted earlier, a confidential employee must act in a confidential capacity to a person who formulates and effectuates management labor relations policies. Here, the job description of the engineering supervisor is silent about any duties concerning personnel matters and the formulation of labor relations policies. Additionally, although the incumbent in the position of engineering supervisor testified with regard to other classifications, he was not called upon to discuss his own role in formulating the labor relations policy of the Employer. The only witness whose testimony was relevant to the issue of the confidential status of the secretary to the engineering supervisor and project managers was Assistant Plant Manager Meiss. Meiss indicated that at the time of the hearing the only asserted "confidential" typing done by the engineering supervisor's secretary consisted of pricing information and not labor relations matters. As yet, the secretary had not typed either contract proposals or correspondence bearing on grievances. Meiss did state that the engineering supervisor would contribute to upcoming contract negotiations and the latter secretary would type the supervisor's proposals. However, inasmuch as Meiss did not state what these contributions would be or when they would begin, his testimony is speculative and not sufficient alone to constitute the basis for a finding of confidential status.⁴ Accordingly, we shall include the position of secretary to the engineering supervisor and project managers in the unit.

5. Property accountant

The Acting Regional Director found that since the record indicates that Rozzi, the current property accountant, will work in a confidential capacity to Kavaleri, the controller at the Warren facility, she should be excluded from the unit as a confidential employee. The Petitioner asserts, in essence, that the Acting Regional Director's conclusion in this regard is based on speculation as to what Rozzi's relationship with Kavalerios might be in the future and as such should not serve to exclude

her from the unit. For the reasons set forth below, we agree with the Petitioner that the property accountant should be included in the unit.

The record indicates that the position of property accountant was created to help Compel who has been the salary payroll and property accountant at the Warren facility for 40 years. The record also establishes that Kavalerios files reports and recommendations bearing directly on the formulation of labor relations policy, has been consulted regarding grievances, and has been designated to participate in contract negotiations. Additionally, it appears that in the past and up to the time of the hearing, Compel was doing essentially all of Kavalerios' typing.

While this evidence might support a finding that Compel is a confidential employee, it is not sufficient to exclude the property accountant as well. The record reveals that at the time of the hearing the property accountant was solely occupied with setting up and maintaining property records. Although, as the Employer contends, the task may be of limited duration allowing the property accountant eventually to assist Compel with typing for Kavalerios it is not clear that such typing will encompass labor relations matters or that the property accountant will in any other manner be required to act in a confidential capacity to Kavalerios. Accordingly, the confidential status of the property accountant is wholly speculative and we shall include her in the unit.⁵

ORDER

It is hereby ordered that the certification in Case 8-RC-7083, heretofore issued to United Steelworkers of America, AFL-CIO-CLC, be, and it hereby is, clarified by specifically including therein the categories of secretary to the engineering supervisor and project managers, and property accountant, and excluding therefrom the categories of accounts receivable collection coordinator, credit escalation analyst, and secretary to the assistant plant manager.

⁴ See, e.g., *ITT Grinnell Corporation*, 212 NLRB 734 (1974).

⁵ See, e.g., *Springhill Bank and Trust Company*, 238 NLRB 127 (1978).