

National Association for the Advancement of Colored People, Employer-Petitioner, and Community and Social Agency Employees Union, District Council 1707, American Federation of State, County and Municipal Employees, AFL-CIO. Case 2-UC-140

March 26, 1979

DECISION ON REVIEW AND ORDER

**BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND MURPHY**

On August 31, 1978, the Acting Regional Director for Region 2 issued a Decision and Order Clarifying Bargaining Unit in the above-entitled proceeding ordering that the existing bargaining unit¹ be clarified to exclude 12 job classifications as managerial or confidential² and to include the administrative assistant to the general counsel and 8 program directors.³ 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 of the Acting Regional Director's decision. Contending that the eight program directors should be excluded from the unit as supervisory or managerial and that the administrative assistant to the general counsel should be excluded as supervisory or confidential, the Employer maintains that the Acting Regional Director's contrary findings regarding their status are erroneous and depart from officially reported precedent.

By telegraphic order dated November 3, 1978, the National Labor Relations Board granted Employer's request for review only with respect to the eight program directors' supervisory status.⁴ In all other re-

¹ As set forth in the parties' most recent collective-bargaining agreement, effective from January 1, 1977, to June 30, 1978, the unit consists of:

All of the employees who work in the service of, and are compensated by, the National Office of the Association, excepting the following: Executive Director, Assistant Directors, Director of the Washington Bureau, Director of Branches and Field Administration, Assistant Director of Branches and Field Administration, General Counsel, Associate General Counsel, Attorneys in the Legal Department, Regional Directors, Directors of Public Relations, Associate Public Relations Director, Director of Office Administration, Assistant Office Manager, Editor of *The Crisis*, the Comptroller, Chief Accountant, Director of Housing, Director of Youth and College Division, Director of Education, and Director of Labor.

² The associate director for operations, director of personnel, secretary to the director of personnel, associate director for branch and field services, associate director for programs, director of research, policy and plans, secretary to the director of research, policy and plans, executive assistant to the executive director, deputy executive director, secretary to the deputy executive director, administrative secretary to the executive director, and administrative assistant to the comptroller.

³ The eight program directors ordered included are the directors of communications, economic development, religious affairs, the emergency relief fund, voter education, armed services and veteran affairs, membership, and life membership.

⁴ The Board's telegraphic order also granted the Employer's motion to stay the Acting Regional Director's decision insofar as it pertains to the matter under review.

spects, the request for review was denied. Thereafter, both the Employer and the Union filed briefs 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 reviewed the entire record in this case and makes the following findings:

The Employer, a New York nonprofit corporation with its principal office and national headquarters located in New York, New York, is engaged as a civil rights organization in promoting the elimination of racial prejudice and in seeking to attain equal status for minorities in the United States. The Employer has about 1,700 branch offices located throughout the United States, 7 regional offices, and 30 state affiliates. There are about 125 employees on a nationwide basis, 80 of whom work at the New York headquarters. The parties have had a collective-bargaining relationship for over 20 years.

The executive director, who is assisted by an executive assistant,⁵ is responsible for the Employer's overall functioning.⁶ The next level below the executive director is that given the informal title of "senior staff," comprised of the associate directors of operations, branches and field services, and programs, the general counsel, the director of the Washington Bureau, the comptroller, and the director of public relations. Each of the three associate directors is responsible for the supervision of a portion of the Employer's operations. All of the eight program directors whose status is disputed here report directly to one of the associate directors.

As a result of the Employer's reorganization in August 1977, 14 new job positions were created. Of the eight program director positions disputed here, three—the directors of communications, religious affairs, and economic development—were established by this reorganization and are not now in the bargaining unit.

The director of communications, Angela Shaw, was hired in January 1978. Shaw is responsible for coordinating programs to identify the treatment of minorities in the electronic media. As the Acting Regional Director stated, she is required to review pending Federal Communications Commission legislation, to meet with various professional organizations in the communication field, to prepare and submit recom-

⁵ It is projected that a deputy executive director will also be hired, a position that is not yet filled.

⁶ The Employer's 64-member board of directors meets quarterly and has the authority to "establish major administrative and other policies concerning the affairs of the Association." A subordinate 15-member executive committee meets monthly and is empowered to "decide such matters of policy as may arise between regular Board meetings."

mendations on communications policy to the executive director and the board of directors for approval, to testify before regulatory agencies, to submit travel and monthly activity reports to the associate director for programs, and to draft press releases relating to the area within her charge subject to review by the associate director for public information.

Like all program directors, Shaw has a secretary who performs all required typing. The record indicates that the hiring of clerical employees is the responsibility of director of personnel, William Penn. After recruiting, interviewing, and testing all clericals, Penn initially determines an applicant's fitness for a particular department. Once selected, however, all clerical personnel must successfully complete a 1-month probationary period. All program directors, including Shaw, are required to submit performance appraisals of the clericals in their respective departments for the probationary period. According to Penn's uncontradicted testimony, the program director's evaluation would be the "determining factor" as to whether or not the clerical employee would remain in the department. Penn elaborated that after a bad evaluation from a program director, the clerical employee would be "automatically terminated from that particular department" although personnel might have the clerical transferred to another department rather than have the employee terminated.⁷ In light of Penn's undisputed testimony, we must disagree with the Acting Regional Director's finding that the evaluations "have no substantial and immediate impact on the secretary's employment."

Penn also testified, without contradiction, that each program director, including Shaw, has the authority to authorize overtime for the person he or she supervises. According to Penn, the program directors authorize overtime on their own without the prior or subsequent approval of the personnel department.

Unlike the other program directors, Shaw has an assistant director. The assistant reports directly to Shaw and receives assignments from her. The associate director for programs, Kenyon Burke, who administratively supervises Shaw and the communications department, explained that he hired Shaw and her assistant, both of whom started at the same time. Burke added, without contradiction, that had Shaw "already been in place, then she would have hired the Assistant." This authority was not discussed by the Acting Regional Director.

The director of religious affairs is Reverend Julius Caesar Hope. His function is to develop programs to

involve religious bodies in the Employer's policies and programs. Like other program directors, Reverend Hope administers his own budget, travels extensively, and submits monthly activity reports. He has a secretary and he reports to the associate director for programs. Director of Personnel Penn's uncontradicted testimony regarding the program directors' responsibility to evaluate clericals within their departments and to authorize overtime applies to Reverend Hope as well.

The new position, director of economic development, was not filled at the time of the hearing. This director's responsibilities will require the development of programs identifying the factors behind minorities' economic problems. The position will also require reviewing economic legislation, preparing economic analyses, meeting with officials of regulatory and legislative bodies, and giving technical assistance on economic issues when requested. The director of economic development will report to the associate director for programs and will have a budget and a secretary. According to Penn's testimony, this director will also evaluate the secretary within the department and authorize overtime.

The five remaining positions at issue here, the program directors of the emergency relief fund, voter education, armed services and veteran affairs, membership, and life membership, are presently included in the unit. Penn's testimony regarding the program directors' responsibility to evaluate clerical employees within their respective departments and to authorize overtime is not refuted as to any of these directors.

The director of the emergency relief fund, Carolyn Coleman, works in the Atlanta regional office and is one of two program directors at issue here who does not work at the New York headquarters. Coleman is responsible for administering the program from which limited financial assistance, \$10 to \$150, is provided to persons in need. The program services Mississippi, North Carolina, South Carolina, and Georgia. Coleman processes requests for assistance, decides whether there is need based upon guidelines devised by the Employer, and forwards the applications and checks to the associate director for operations in New York for her signature and approval. She also counsels families on nutrition and economic problems, assists in fund raising, conducts workshops on poverty and nutrition issues, and requests and distributes funds in disaster or other emergency situations subject to the approval of the associate director for operations or the executive director. Like other program directors, Coleman travels extensively, has a budget, submits monthly activity reports, and has a secretary.

The director of voter education, W. C. Patton, is responsible for increasing voter registration in areas

⁷ Program directors are also responsible for submitting annual evaluations of the clerical within their respective departments. At the time of the hearing which was held in late May and early June 1978, the annual evaluation forms were being revised and Penn had not yet received an annual evaluation in his capacity as director of personnel. Penn assumed that position in October 1977.

with a heavy concentration of the unregistered black voters, encouraging and motivating people to vote, and monitoring the voting records of elected officials. Patton administers a budget of about \$40,000; identifies the election districts where voter education campaigns are to be conducted based upon his review of voting records, population studies, and other electoral information; decides which groups will receive grants and the amount of the grant for voter registration drives; directs voter registration campaigns relying upon his knowledge and experience; conducts workshops on voter education of the Employer's various regional and state association meetings as well as the national convention; meets with elected officials and representatives of organizations interested in voter registration; prepares literature and other material; submits monthly reports to the associate director for programs; and is directly accountable to the comptroller for his disbursements. Patton's office is in Birmingham, Alabama, and he has a secretary, a unit position, who performs all his clerical work. In connection with voter registration campaigns, Patton has, on occasion, hired temporary campaign workers.⁸

Julius Williams, the director of armed services and veteran affairs, is responsible for processing inquiries and complaints from active and inactive minority servicemen relating to discriminatory treatment in the military and to problems with the Veterans Administration. He reviews legislation, visits military installations and veterans service-related organizations, meets with the Employer's veterans committee members, and prepares statements and recommendations subject to management approval. He also develops programs subject to the approval of the associate director of programs. In addition, the Pentagon has used him to resolve racial conflicts within military bases. Williams has a budget and an expense account and, like the other program directors, he has a secretary who performs all of his clerical work.

At the time of the hearing, the director of membership had been vacant since March 13, 1978, and the director of life membership was held by Edward Muse. Their job functions are similar. Both positions report to the associate director for branch and field services and require the submission of monthly reports of their activities.

The director of membership works in the New York headquarters with four clerical employees, the supervisor of typing and processing, and three other clericals. Although the supervisor of typing and processing, a unit position, generally oversees the work of the remaining three clericals, the director has similar responsibility to that of other program directors to

evaluate the clerical employee within the membership division and to authorize overtime. The director of membership is also responsible for developing and coordinating the Employer's membership campaign in consultation with and subject to the approval of the associate director for branch and field services. In this regard, the director develops materials for use in the Employer's 1,700 branch offices and youth units, conducts membership workshops and campaigns, and travels extensively. The membership director also processes new and renewal membership reports and maintains current membership lists.

The responsibilities of the director of life membership, Edward Muse, are basically comparable except that his duties involve generating life members, corporate life members, and golden heritage life members.⁹ Subject to the approval of the associate director for branch and field services, Muse develops and coordinates life membership campaigns for the Employer's 1,700 branches and 30 states associations, solicits and processes life memberships, keeps records of the various categories of life memberships, conducts membership workshops, and meets with corporate and other organizations to stimulate life memberships. Like other program directors, Muse has a secretary and his division also is assigned three other clerical positions which were unfilled at the time of the hearing.

On these facts, especially considering the director of personnel's uncontradicted testimony that the program directors have the responsibility to assign overtime and to give performance appraisals for their clericals which, at the very least, can affect the clericals' tenure of employment within their respective departments, we find that the eight program directors are supervisors within the meaning of the Act and we shall clarify the unit to exclude their job classifications as well as those already excluded by the Acting Regional Director.¹⁰ In making this determination, we also note that the eight program directors in question are the highest ranking employees in their respective departments and that their inclusion in the unit would therefore leave no on-the-spot supervision over clerical employees in eight of the Employer's departments—all of which reinforces our conclusion.¹¹

⁹ Life members are persons who have contributed at least \$500; corporate life members contribute at least \$2,500; and golden heritage life members contribute at least \$1,000.

¹⁰ Also unrefuted was the associate director for programs' testimony that Director of Communications Shaw has the authority to hire her assistant in the event of a vacancy.

¹¹ Regarding the directors of voter education and the emergency relief fund whose respective departments are located in Birmingham, Alabama, and Atlanta, Georgia, and thus remote with respect to the New York headquarters, a contrary finding would leave them and their clericals without immediate supervision.

⁸ As the Acting Regional Director stated, the record neither indicates the "frequency or scope" with which temporary workers have been used nor whether they are bargaining unit members.

ORDER

It is hereby ordered that the unit of employees covered by the collective-bargaining agreement between the National Association for the Advancement of Colored People and Community and Social Agency Employees Union, District Council 1707, American Federation of State, County and Municipal Employees, AFL-CIO, be clarified to *exclude* not only the classifications of associate director for operations, director of personnel, secretary to the director of personnel, associate director for branch and field services, associate director for programs, director of research, policy and plans, secretary to the director of research, policy and plans, executive assistant to the

executive director, deputy executive director, secretary to the deputy executive director, administrative secretary to the executive director, and administrative assistant to the comptroller, but also to exclude the director of communications, director of economic development, director of religious affairs, director of the emergency relief fund, director of voter education, director of armed services and veteran affairs, director of membership, and director of life membership, and to include the classification of administrative assistant to the general counsel.

CHAIRMAN FANNING, dissenting:

I would adopt the Acting Regional Director's Decision and Order clarifying bargaining unit for reasons stated by him.