

Westinghouse Electric Corporation, Buffalo Divisions and Buffalo Section, Westinghouse Engineers Association (Independent), Petitioner. Case 3-UC-125

June 30, 1978

DECISION ON REVIEW

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND MURPHY

On July 28, 1977, the Regional Director for Region 3 issued a Decision and Clarification of Bargaining Unit in the above-entitled proceeding wherein he held that certain employees classified as product line administrators (PLAs) were not managerial employees since they do not formulate and effectuate management policies by expressing and making operative the decisions of the Employer. 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 Regional Director's Decision. By telegraphic order dated October 3, 1977, the National Labor Relations Board granted the Employer's request for review. Thereafter, the Employer and the Petitioner 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 considered the entire record in this proceeding with respect to the issues under review, including the briefs on review, and makes the following findings:

The Employer's Buffalo Divisions is functionally divided into five divisions: Large Motor Division with AC and DC Departments, Industry Systems Division, General Control Division, Medium Motor Division, and Industrial Equipment Division. Each division has assigned to it a certain number of design engineers who are represented by the Petitioner as the recognized collective-bargaining representative in the following described unit:

All design engineers, industrial engineers, manufacturing engineers, production planning engineers, purchasing engineers, quality control engineers, works engineers, field service engineers, programmer-analysts, systems analysts, quality assurance engineers, test engineers, employed by the Employer at its Cheektowaga, New York facility; excluding the assistant engineers, advisory engineers, guards and supervisors as defined in the Act and all other employees.

The recognized collective-bargaining unit is substantially the same as the certified professional employees unit and the parties stipulated to its appropriateness. The Employer seeks review of the Regional Director's determination that five PLAs¹ were not managerial employees.

The function of the PLAs is principally related to sales. They furnish price quotations in connection with negotiations, inquiries, and orders for standard and near-standard equipment, supply technical data, and provide shipment dates. Orders are usually received from district sales offices setting forth the customers' requirements. The PLAs review these orders, interpret the specifications and relate them to the Employer's inventory, and compute prices.

As found by the Regional Director, effective October 1976, the Employer reorganized its Large Motor Division, AC Department, into three sections: Sales Applications Engineering, Development Engineering, and Product Service. One of the principal purposes of the reorganization was to integrate the previously independent sections of Sales Engineering and Development Engineering under one department head. There were 13 PLA positions created in the AC Department in an effort to utilize the employees' engineering training and expertise in applying products to a customer's need. Of the 15 PLAs now in the AC Department, 5 are the former bargaining unit professional engineering employees who are involved in this proceeding. Prior to the reorganization, sales engineers performed the marketing negotiation and pricing responsibilities of the PLAs.

The Regional Director found that, although classified as PLAs, these individuals continued to perform design engineering work heretofore performed by them within the bargaining unit and that this continued design engineering work occupied a substantial part of their day-to-day activities. In addition, the Regional Director found that, although these particular PLAs have authority to exercise some discretion in applying discounts, their discretion is limited to decisions within the confines of the Employer's established policies.²

We agree with the Regional Director's conclusion that the professional engineering functions of the individuals involved herein are substantially the same as they had been performing as members of the collective-bargaining unit. We also agree with the Regional Director's conclusion that the earlier *Westing-*

¹ Employees Kyne, Smalter, Pritchard, Horn, and Plumb.

² The Regional Director found that PLA Smalter has no discretion when pricing motors since he is directly involved in the electrical utility field where the Employer's policy is not to apply any discounts below the "book" price.

house cases,³ relied on by the Employer in support of its claim that the PLAs are managerial employees, do not require a similar finding in the present case. In the 1963 case, the Board excluded certain PLAs from a unit of professional employees because they were not required to utilize the skills of professional employees in order to perform the functions and duties assigned to them. In the 1973 case, the Board found that certain PLAs in the employer's low voltage industrial equipment facility at Chicago, Illinois, were managerial employees, properly excluded from a unit of clerical and technical employees, because they exercised "wide discretion in determining the price of products." It was also found that supervisory review of their price setting functions did not affect those prices but only served as guidance for future price settings.

In the present case, however, it is clear that the five employees are basically engineers who in varying degrees apply their professional engineering backgrounds and expertise to assist the Employer's marketing function while continuing to spend substantial portions of their time performing work typically done by members of the professional engineers' unit. With regard to their status as PLAs, the record shows that the individuals were classified as PLAs with little or no training or briefing as to what their "new" functions would entail; the change in classification did not result in any increase in compensation or fringe benefits; and a relatively small percentage of their time was actually spent in "pricing" customer orders.

The pricing function itself basically involves (1) analyzing the customer's specifications to determine the component parts required, ascertaining by computer whether the parts are available in the Employer's inventory, and, where specified parts are not available to the Employer, taking exception to the specifications and suggesting modifications to bring the customer's requirements in line with the Employer's available "hardware,"⁴ (2) determining the book price by referring to the Employer's established price lists, and (3) applying the "book multiplier" or "discount" in accord with the Employer's established schedules. Although the "book multiplier" and "discount" rates vary, depending on the customer classification, within each classification, the PLAs cannot fix prices below the established ranges without first

³ *Westinghouse Electric Corporation*, 144 NLRB 1296 (1963); *Westinghouse Electric Corporation*, 205 NLRB 1099 (1973).

⁴ The Employer does not contend that the analytical aspects of the pricing function can be performed by nonprofessional employees.

consulting with Sales Manager McCausland.⁵ In addition, the record shows that the individuals involved generally do not engage in any direct negotiations with customers but deal almost exclusively with the regional PLAs or the sales representatives located in the regional sales offices.⁶

It is clear that the exercise of discretion which is inherent in the performance of professional functions is not the exercise of "wide discretion" in formulating and effectuating company policy which confers managerial status. In *General Dynamics Corporation, Convair Aerospace Division, San Diego Operations*, 213 NLRB 851, 857-858 (1974), the Board said:

Work which is based on professional competence necessarily involves a consistent exercise of discretion and judgment, else professionalism would not be involved. Nevertheless, professional employees plainly are not the same as management employees either by definition or in authority, and managerial authority is not vested in professional employees merely by virtue of their professional status, or because work performed in that status may have a bearing on company direction.

From the facts of this case, it is clear that the individual PLAs involved herein are professional engineers, both in the continued performance of their design engineering work and in the analytical aspects of the pricing function, and that unlike the PLAs in the 1973 case, the PLAs here do not exercise "wide discretion" in formulating and effectuating management policies. Accordingly, they are not managerial employees.

For the foregoing reasons, the Regional Director's Decision and Clarification of Bargaining Unit is affirmed.

⁵ On March 7, 1977, shortly after the Employer reorganized its marketing procedures, Sales Manager McCausland issued an internal memorandum setting forth the authority of the PLAs to apply "book multipliers." Included therein were such remonstrations as: "All pricing in this category must be reviewed by me." "If you feel that better than .78 is required you must review the job with me." "All jobs over 100k must be discussed with me." and "All requests for annual contracts must be discussed with me."

In addition, McCausland testified as follows:

Q. What if the PLA establishes a discount within the limit of his authority? In other words, the percentage to which he can discount, that you think is none the less, too much of a discount under the circumstances?

A. Again, talking about the job: I would tell him why I thought he shouldn't have gone as low as he did. We would discuss it again and he would give me his reasons and when it was through, I probably would tell him that I would appreciate it if he didn't do it again.

⁶ The record also shows that the regional PLAs or the sales representatives have substantial influence both with the PLAs and their supervisors on the final "discounted" price to be quoted to the customer.