

In the Matter of AMERICAN WINDOW GLASS COMPANY, EMPLOYER and  
NATIONAL FEDERATION OF SALARIED UNIONS, PETITIONER

*Case No. 6-RC-21.—Decided June 2, 1948*

*Messrs. Nicholas Unkovic and Walter McGough, of Reed, Smith, Shaw and McClay, and Messrs. J. Morris and J. L. Williams, all of Pittsburgh, Pa., for the Employer.*

*Mr. Harry C. Jones, of Pittsburgh, Pa., for the Petitioner.*

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Pittsburgh, Pennsylvania, on January 22, 1948, before Henry Shore, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

American Window Glass Company, a Pennsylvania corporation, is engaged in the manufacture of window glass and special glass products. It has plants located at Arnold, Belle Vernon, and Jeannette, Pennsylvania, and sales offices located in various States. Its main office, located at Pittsburgh, Pennsylvania, is the only one herein involved. During the year 1947 the Employer purchased raw materials valued in excess of \$1,000,000, of which more than 50 percent represented shipments from outside the Commonwealth of Pennsylvania. During the year 1947 it manufactured products at its three plants valued at in excess of \$1,000,000, of which more than 50 percent was shipped to points outside the Commonwealth.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

## II. THE ORGANIZATION INVOLVED

The Petitioner is an unaffiliated labor organization, claiming to represent employees of the Employer.

## III. THE QUESTION CONCERNING REPRESENTATION

The Employer refused to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

We find that a question affecting commerce exists concerning the representation of employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

## IV. THE APPROPRIATE UNIT

The Petitioner seeks a unit of all office clerical employees at the Employer's offices in Pittsburgh, Pennsylvania, excluding confidential secretaries, department heads, professional employees, and supervisors. The Employer contends the unit is inappropriate because it includes employees of the Budget Department and the general ledger bookkeeper, who it contends are confidential employees, and certain other individuals whom the Employer would exclude either as supervisors or as professional employees.<sup>1</sup>

There are in the Budget Department, in addition to the department head,<sup>2</sup> three girls who do *routine* clerical and typing work, and a man classified as an assistant supervisor. This department projects sales and costs, including potential wage increases, for an ensuing 12-month period. The employees of this department make analyses, perform mathematical computations, and prepare reports, in the course of which work they have access to figures usually available only to officers of the Employer. Although they compute, upon request, what the labor costs would be if certain increases were put into effect, and the Employer's wage determinations are based partly upon their reports, no one in this department has any voice in making these or any other policy determinations. We find that the three clerical employees of the Budget Department do not assist in a confidential capacity anyone exercising managerial functions *in the field of labor relations*, and accordingly, we shall include them in the unit.<sup>3</sup>

<sup>1</sup> The unit sought by the Petitioner consists of 28 employees, 12 of whom the Employer seeks to exclude

<sup>2</sup> All parties are in agreement that department heads are supervisors who should be excluded from the unit.

<sup>3</sup> *Matter of Denver Dry Goods Company*, 74 N L R B 1167, *Matter of Sheffield Farms Company, Inc.*, 73 N L R B 572, and see *Matter of Bioun & Sharpe Mfg Co.* 70 N L R B 709.

The dissenting opinion argues that these three purely clerical employees should be excluded because of their access to confidential information concerning potential wage increases, and the danger that they might breach their trust and divulge such information to the Petitioner. The record does not indicate, however, that these three clerks are paid on a higher scale, are required to meet more exacting standards before being hired, or are treated differently in any respect, than other clerical employees of the Employer, to denote that they are the recipients of a special trust. Their interests are therefore closely allied with those of their fellow employees. Excluding them from the unit would not prevent them from joining the Petitioner, or from divulging to their fellow employees who are members of the Petitioner such confidential information as they may obtain in the course of their work. Of course it does not follow, from the position of these clerks at the bottom of the Employer's office hierarchy, or from their possible interest in associating themselves with their coworkers in a labor organization, that they will be disloyal to the interests of their Employer. If they should be, the remedy is for the Employer to discipline them, not for us to preclude their organizational freedom. Excluding these employees in an attempt to maintain secrecy regarding the Employer's projected labor costs would require, to be consistent, the exclusion of many other employees whom the Board customarily includes, such as time-study men, telephone operators, messengers, and typists, who might have access to such information in the course of their work. Accordingly, we see no reason in this case to deviate from the Board's long-standing policy of including such employees provided they do not assist in a confidential capacity anyone exercising managerial functions in the field of labor relations.

The assistant supervisor of the Budget Department, S. G. Eichler, has the responsibility for the preparation of a portion of the budget and directs the other budget employees in this work. Although he works under supervision, Eichler does not do routine work. Unlike other assistant supervisors, he regularly takes the place of his supervisor, who is required to be away from the office about 20 percent of the time. Eichler does not have authority to discharge but his recommendation would carry weight. His salary is 60 to 70 percent higher than the next highest paid employee in the department. On these facts we will exclude Eichler as a supervisor.

The general ledger bookkeeper, Mrs. Homan, also has access to confidential financial data regarding the Employer, but she also does not assist in a confidential capacity anyone exercising managerial func-

tions in the field of labor relations.<sup>4</sup> We shall therefore include her in the unit.

Three employees, Mr. Kennedy, Mr. Keller, and Miss Bronder, are classified by the Employer as assistant supervisors, and the Employer contends that all three are supervisors within the meaning of the Act. They have substantially the same authority and functions in their respective departments; each of them may assign work to other employees in his department when the regular supervisor is not present, and such assignments are usually of a standardized nature. They have no authority to hire, discharge, or discipline employees.

Kennedy does clerical work in Accounts Payable, and replaces his supervisor when the latter is ill or on vacation. Kennedy works with two other employees. His salary is 40 percent higher than the next highest paid employee in the department. Keller works in Inventory Control with one other employee who does typing and comptometer work. Keller, who has been with the Employer for 45 years, thoroughly understands the inventory system and keeps important records. His salary is 100 percent higher than that of the other employee. He takes the place of the supervisor about 1 day a month, when the supervisor is away on business, and during the supervisor's routine absences for sickness and vacation. Bronder works in the Billing Department with three other employees. She works on records with one of these employees, the other two being typists. Her authority is likewise limited to those times when the supervisor is ill or on vacation, except that she rates and checks the work of one other employee. Bronder's salary exceeds the salary of the next highest paid employee in her department by about 20 percent.

The authority of these three employees is too infrequently and sporadically exercised to warrant supervisory classification, and we find none of them is a supervisor within the meaning of the Act.<sup>5</sup>

The Employer would also exclude employees Wilson, Nees, and Barbour of the Cost Department as professional employees. These three individuals do cost analyses, and are at the present time engaged in the installation of a new cost system which they helped to develop for the Employer. All three have studied accounting at local business schools for 3 years, and have been given specialized accounting training by the Employer. None, however, has a college degree.

The Employer would also exclude one Wolfram as a professional employee. Wolfram was formerly the head of the Billing Depart-

<sup>4</sup> *Matter of Sheffield Farms Company, Inc., supra, Matter of Credit Bureau of Greater Boston*, 73 N L R. B. 410

<sup>5</sup> *Matter of Fred H. Colc d/b/a Cole Instrument Company*, 75 N L R B 348

ment, but is now on a special assignment involving accounting work. He is at present, and for the next 8 months will be, engaged in appraising the Employer's assets and surveying the Employer's records for the purpose of reorganizing the property record accounting system. In the course of this work he will have to assign new useful lives to the assets listed on the books for the purpose of tax depreciation. In addition to special training by the Employer, Wolfram has had 3 years of university study in the field of accounting. He does not have a college degree.

The Employer contends that the work of all four of the above employees involves the consistent exercise of discretion and judgment, and requires a great deal of intellectual effort as distinguished from routine duties. It does not appear, however, that the work of these employees requires "knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning . . ." within the meaning of Section 2 (12) of the amended Act.<sup>6</sup> We therefore find that they are not professional employees, and we shall include them in the unit.

We find that all office clerical employees employed at the Employer's Pittsburgh, Pennsylvania, office, including budget department employees, the general ledger bookkeeper,<sup>7</sup> assistant supervisors,<sup>8</sup> cost analysts,<sup>9</sup> and the appraiser,<sup>10</sup> but excluding confidential secretaries, department heads, professional employees, and supervisors,<sup>11</sup> constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

### DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with American Window Glass Company, Pittsburgh, Pennsylvania, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Sixth Region, and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including

<sup>6</sup> See *Matter of Jersey Publishing Company*, 76 N L R B. 467.

<sup>7</sup> Elizabeth Homan

<sup>8</sup> James J. Kennedy, Lucille Bronder, W. F. Keller, but not S. G. Eichler.

<sup>9</sup> D. F. Wilson, J. F. Nees, H. F. Barbour

<sup>10</sup> R. W. Wolfram

<sup>11</sup> Including S. G. Eichler

employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented by National Federation of Salaried Unions for the purposes of collective bargaining.

MEMBER GRAY, dissenting in part:

One of the issues involved in this case is whether the employer shall have the right of protection of his confidential information essential to the collective bargaining process, which information is basically and completely *his*.

It is proposed to include in a unit with other office employees, three clerical-mechanical operators in the Budget Department. Budget departments exist solely for the purpose of planning and helping management plan future operations. In this process, the company sales manager, for example, estimates—plans—his sales volume for a coming period. That volume of projected sales is costed by clerical people. In the process of that costing, these clerical employees compute and, therefore, come into knowledge of, amounts of money left, if any, for the purpose of granting wage increases, if and when demanded by collective bargaining organizations. This information is wholly and completely the rightful knowledge of the employer.

These employees involved are human and, thus, prone to reveal information not available to others, especially in the mutual confidence of a union meeting, in which surrounding, knowledge of “potential wage increases” is exceptionally valuable.

Despite the confidence of the majority that it will not happen, it would be too much to believe that these employees could resist the temptation to tell what they know. The employer is entitled to guard this information. If the union desires to develop similar information, it must accept the work and responsibility of research. It should not be able to draw upon the employer’s confidential data through what, I term, would be improper avenues.