

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL *and* UNION OF AIR LINE PILOTS ASSOCIATION PROFESSIONAL AND ADMINISTRATIVE EMPLOYEES, PETITIONER. *Case No. 13-RC-1817. December 29, 1951*

Decision and Direction of Elections

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Ivan C. McLeod, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

Upon the entire record in the case, the Board finds:

1. The Employer, a labor union,² maintains its principal office in Chicago, Illinois, and smaller offices in several cities located throughout the United States. It is engaged primarily in representing its 6,400 pilot members in their relationship with about 40 national and international airlines.

This work requires that the employees covered by the petition travel extensively throughout the country to participate in bargaining negotiations, grievance proceedings, and organizational work. Further, the record establishes that the Employer's Washington office represents the Employer generally in its dealings with Federal agencies having jurisdiction over matters affecting the interests of airline pilots.

The Board has never in its 16 years of experience been called upon before to decide a case involving the employees of a labor union. Accordingly, no standards have been established for testing the Board's jurisdiction in such cases. However, it seems clear that the Congress intended that labor unions be treated like any other employer with regard to their own employees, because Section 2 (2)

¹ At the hearing the Employer objected to the introduction in evidence of more than 150 documents which it alleged were purloined from its files by representatives of the Petitioner. The hearing officer properly overruled the Employer's objection and received the questioned documents. It is well established as a general rule "that the admissibility of evidence is not affected by the illegality of the means through which the party has been enabled to obtain the evidence." Wigmore on Evidence, 3rd Edition, Section 2183; *Stevison v. Earnest*, 80 Ill. 513, 517. It has been Board practice to admit allegedly purloined documents, unless it is established that an agent of the Government has been a party to their unlawful seizure. See *Andrew Jergens Company of California*, 27 NLRB 521, Cf. *Hoover-Cardinal Corporation*, 67 NLRB 49.

² The Employer is not a "labor organization" within the meaning of Section 2 (5) of the Act; its participants or members are not "employees" within Section 2 (3), because they are employed by airlines which are subject to the Railway Labor Act, and it exists for the purpose of dealing with persons which are not "employers" within the meaning of Section 2 (2).

However, it is an "employer" under the Act. Section 2 (2), in defining the term "employer," excludes persons "subject to the Railway Labor Act," but the Railway Labor Act does not purport to regulate unions. It specifically provides in Article I, Fifth (paragraph): "Nor shall the jurisdiction or powers of such employee organization be regarded as in any way limited by the provisions of this chapter or by the orders of the [Interstate Commerce] Commission."

of both the original and amended Acts provide in part: "The term 'employer' . . . shall not include . . . and labor organization (*other than when acting as an employer*)."³ As the Board normally assumes jurisdiction over enterprises which are multistate in character,⁴ and as no valid reason has been advanced for applying a different standard here, we find that the Employer is engaged in commerce within the meaning of the Act, and that it would effectuate the policies of the Act to assert jurisdiction.

2. The Petitioner is a labor organization which claims to represent certain employees of the Employer.

3. 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.

The Appropriate Unit

The Petitioner seeks a bargaining unit composed of the attorneys in the Employer's legal and conciliation department; the engineers in the engineering department; the statistician in the statistical department; the contract negotiators in the employment agreement department; the employees who organize and service affiliated organizations in the education and organization department;⁵ the council coordinator in the council coordination department; the bookkeeper in the accounting and bookkeeping department; the publicity man in the publicity department; the Washington representative; and the works project expediter. The Petitioner takes the position that all 18 of these employees are professionals within the meaning of the Act and can properly constitute a single bargaining unit; but, in the event the Board finds otherwise, it wishes to represent all these employees in any units which the Board might establish.

The Employer took the position at the hearing that the requested unit was inappropriate, on the ground that all the 18 individuals involved were either supervisors or confidential employees. We find no merit in this contention, except as to Charles Rohles, the Employer's bookkeeper, whose status is discussed below. It appears from the record that except for Rohles and Herbert, David Behncke, as president, and Maurice Conners, as personnel and office manager, have exercised sole and exclusive supervision over the Employer's employees. Further, the record establishes that only Behncke and

³ Emphasis supplied.

⁴ *The Borden Company, Southern Division*, 91 NLRB 628.

⁵ The record indicates that only Frank J. Albright, Glenn R. Johns, and William Schneider were engaged in this work at the time of the hearing. A fourth person in this department, Victor Herbert, is conceded by the parties to be a supervisor.

Connors have had legal access to confidential information concerning the Employer's own labor relations—the Board's test for confidential employees.⁶

The Professional Employees

The three attorneys who comprise the Employer's legal and conciliation department handle general legal work and represent the Employer in court and administrative proceedings. The two engineers, who comprise the Employer's engineering department, investigate air accidents, prepare information on air safety, advise airplane manufacturers on equipment designed, and do other general engineering work. The statistician, who possesses a master's degree in business administration, has done considerable graduate work in the statistical field. His duties involve the preparation of analytical studies of statistics which are used by the Employer in presenting its views on proposed legislation, changes in the Civil Air Regulations, modifications of aircraft design, and a number of other subjects affecting the welfare of airline pilots. Each of the six men discussed above works by himself or with the assistance of a secretary only; each works without immediate supervision and does nonroutine work which requires the consistent exercise of discretion and judgment.

As each of the foregoing employees possesses the educational background requisite for professional status, and as all six are employed in jobs within their respective fields of specialized training, and otherwise meet the statutory tests for professional status, we find that they are professional employees within the meaning of the Act. As such, they may, in accordance with their own desires expressed in the election hereinafter directed, constitute a separate appropriate bargaining unit, or become a part of the over-all unit discussed below.

The Nonprofessional Employees

The Employer's bookkeeper, Rohles, whom the Petitioner would include in the bargaining unit, oversees the work of the three clerks who keep the Employer's membership and dues recorded. As Rohles testified, without contradiction, that he regularly recommends the hiring and discharge of employees in his department, we shall exclude him as a supervisor.

The remainder of the employees sought by the Petitioner are similar in some respects to office employees in a regular commercial enterprise. However, they differ from regular office employees in one important aspect, in that they, together with the professionals, con-

⁶ See *Republic Steel Corporation*, 94 NLRB 1294.

stitute this Employer's "production employees." Each of them, while not meeting the strict requirements for professional status contained in Section 2 (12) of the Act, is a trained specialist who performs a particular function necessary to the operation of the Employer. Thus, the members of the employment agreement department negotiate the labor contracts between the Employer and the airlines—probably the Employer's most important single function; the members of the education and organization department organize and assist affiliated organizations; the council coordinator oversees the activity of the Employer's local councils throughout the country; the publicity man prepares and edits the Employer's magazine, the *Air Line Pilot*; the Washington representative handles general relations with the Federal Government; and the works project expediter follows the work in the Employer's several departments to see that it is completed on schedule. Further, these employees differ from usual office workers in that most, if not all of them, are required to travel extensively throughout the United States to carry out their normal duties.

In view of the foregoing, and upon the entire record, we find that the nonprofessional employees discussed above, excluding Rohles, possess skills sufficiently dissimilar from those of the Employer's regular office employees to constitute a separate appropriate bargaining unit apart from the office employees. We further find that a sufficient community of interest exists between the nonprofessionals and the professionals that both groups together may constitute a single appropriate bargaining unit. Accordingly, we shall direct separate elections in the following voting groups:

(A) The Employer's professional employees (consisting of its attorneys, its engineers, and statistician).

(B) The Employer's nonprofessional employees (consisting of its contract negotiators in the employment agreement department, the employees who organize and service affiliated organizations in the education organization department, the council coordinator, the publicity man, the Washington representative, and the works project expediter, but excluding office employees and supervisors).

The employees in nonprofessional voting group (B) will be polled as to whether or not they desire the petitioning union to represent them.

The employees in professional voting group (A) will be asked two questions on their ballot: (1) Do you desire to be included in a unit with the nonprofessionals? (2) Do you desire to be represented for the purposes of collective bargaining by the petitioning union? If a majority of the professional employees vote "Yes" to the first question, indicating their wish to be included in a unit with the nonprofessional employees, they will be so included. Their votes on the

second question will then be counted together with the votes of the nonprofessionals to decide the representative for the combined bargaining unit. If, on the other hand, a majority of the professional employees vote against inclusion, they will not be included with the nonprofessional employees; their vote on the second question will then be counted to decide whether or not they want to be represented by the Petitioner in a separate professional unit. If a majority vote for the Petitioner in either the professional unit alone, the nonprofessional unit alone, or the combined unit, the Regional Director conducting the election directed herein is instructed to issue a certificate of representatives to the Petitioner for such unit or units.

[Text of the Direction of Elections omitted from publication in this volume.]

WESTERN ELECTRIC COMPANY, INCORPORATED *and* COMMUNICATIONS
WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 35-RC-528.*
December 29, 1951

Supplemental Decision and Certification of Representatives

After the conduct of an election pursuant to a stipulation for certification upon consent election, the filing of objections to the election by International Brotherhood of Electrical Workers, AFL, herein called the IBEW, and issuance of a report on objections and challenged ballots by the Regional Director, the Board issued a Decision and Direction¹ overruling certain of the objections, reserving final ruling on objection 4 concerning certain erroneous ballots, impounding 7 challenged ballots, and directing that certain other challenged ballots be opened and counted. Thereafter the Regional Director counted the challenged ballots as directed and issued a revised tally of ballots. The IBEW objected to the revised tally, challenging the Regional Director's declaration that one of the challenged ballots which had been opened was void. The IBEW also requested a recount of all ballots cast in the election. On November 13, 1951, the Board granted the IBEW's request for a recount and deferred ruling on other matters. At the recount the Petitioner and the IBEW challenged 32 ballots which had been originally tallied as valid votes, but thereafter the Petitioner withdrew the 23 challenges which it had made. On December 7, 1951, the Regional Director issued his report of results of recount and recommendations. The Petitioner filed a brief.

¹ 96 NLRB 318.

97 NLRB No. 141.