

dispute over the assignment of work is here presented which is cognizable in a Section 10 (k) proceeding.

Accordingly, I would quash the notice of hearing herein.

turing Company etc), 119 NLRB 307. However, this question is not involved in this proceeding

Westinghouse Air Brake Company, Union Switch & Signal Division¹ and Westinghouse Air Brake Office and Technical Union, Petitioner. *Case No. 6-RC-1970. January 23, 1958*

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before H. G. Borchardt, 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 this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organizations involved claim 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.

4. The Petitioner seeks a unit of all office and plant clerical and technical employees at the Employer's Swissvale, Pennsylvania, plant including time-study employees, but excluding all professionals, guards, and supervisors as defined in the Act. The Employer contends that the time-study and technical employees should be excluded from such unit. It further contends that a large number of the employees sought are confidential and a few are professional and should be excluded on those bases. It would also exclude temporary and laid-off employees.

In the alternative, the Petitioner seeks separate units of clerical and technical employees. If the Board should find such units appropriate, it requests a *Globe* election. The Petitioner will, however, accept any unit or combination of units the Board finds appropriate. The Employer maintains that the Board should not consider the Petitioner's alternative unit positions.

The Petitioner asserts that it does not seek to represent any employees currently represented by other labor organizations.² More-

¹ The name of the Employer appears as amended at the hearing.

² The Society of Engineers, Union Switch and Signal Company was certified on February 13, 1948, as the bargaining representative for all engineering employees, in 119 NLRB No. 169.

over, the parties stipulated that certain employees were professionals³ and should be excluded from any unit the Board might find appropriate herein.

It is well established that the Board will not include technical employees in a unit with office and plant clerical employees, if any party objects to their inclusion.⁴ The Petitioner argues that the combined unit it seeks is however, appropriate, because it is, in effect, a residual unit of office, plant clerical, and technical employees. Some technical employees are presently represented by the Society of Engineers. We find no merit in such contention. If the technical employees are to be represented, they must be grouped in a separate unit.

Ordinarily, the Board will find inappropriate a technical unit which does not comprise all the Employer's technical employees.⁵ Nevertheless, in a situation such as this, we will recognize a residual unit of all⁶ the remaining unrepresented technical employees.⁷ Here, no other union seeks to represent the residual technicals and they will go unrepresented if we dismiss the petition insofar as it seeks to represent them. Accordingly, we find that the Petitioner's alternate unit request is the proper one and we find appropriate two separate units: a unit of office and plant clerical employees and a residual unit of technical employees.

The Technical Unit

The parties are in agreement that the employees in the classifications of diagram draftsman—class A and B, detail draftsman—class A and B, and wiring plan designer—class A, B, and C are technical employees.

The remaining employees who allegedly are technicals have the following classifications: accountant, artist—class A and B, advertising

cluding industrial design engineers in the Engineering Brake Division, tool engineers in the Tool Design Department, apprentice engineers, and laboratory technicians. On May 13, 1953, the United Electrical, Radio and Machine Workers of America, Local 610 (UE), was certified for all production and maintenance employees, electrical and mechanical inspectors, inspection department employees, chasers, and storeroom employees. The Employer is still recognizing both unions as representatives of their respective units of employees. It has a current contract with the UE but, at present, there is no written contract with the Society of Engineers, now designated as Union Switch and Signal Division, Society of Engineers.

³ These employees have the following job titles: transportation engineer, equipment planning engineer and senior engineer, process engineer—class A and B, synthetic standards engineer, tool standards engineer, plant and senior plant engineer, industrial engineer, patent engineer, patent attorney—class B, service engineer—class A and B and senior service engineer, inspection engineer, manufacturing engineer—class A and B, sales engineer—class A and B, technical writer—class A and B, economic analyst, and test engineer—class A and B. The parties also stipulated that the librarian was a professional employee and should be excluded on that basis.

⁴ *Plankinton Packing Company*, 116 NLRB 1225.

⁵ *The Monarch Machine Tool Co.*, 98 NLRB 1243.

⁶ No party contends and it nowhere appears that there are unrepresented technicals other than those in dispute.

⁷ Cf. *Altis-Chalmers Manufacturing Company*, 117 NLRB 749; *Boeing Airplane Company*, 116 NLRB 1775.

and publicity copywriter, layout designer, cost estimator—class A and B, tabulating machine operator—class A and B, photographer—class A and B, photographic technician, tester—class A and B, tracer—class A and B, time-study observer—class A and B, and production control expediter—class A and B.

The Employer contends that its accountants are professional, managerial, or technical employees. Although all the accountants have college degrees and some have master's degrees in accounting, neither their work nor their training satisfies the definition of professionals in Section 2 (12) of the Act.⁸ Moreover, it does not appear that they qualify as managerial or technical employees. Accordingly, we shall include them in the clerical unit.

The Employer also contends that the layout designers are professional employees. These employees work with the design engineers and, at times, with the senior engineers and engineers—class A. They make the initial layout after components are designed or planned. They also make preliminary layouts for overall machinery. Although they are highly trained, it appears that they are technical rather than professional employees. We shall, therefore, include them in the technical unit.

With regard to the time-study observers—class A and B, the Employer contends that they are managerial or confidential employees. They run tests and make proposals to management recommending changes which may effect changes in pay rates and production methods. It does not appear from the record that their duties and responsibilities are more confidential or managerial in nature than those of time-study men in general. As neither party questions their standing as technical employees, we shall include them in the unit.⁹

The artists—class A and B have art school, in addition to high school, training. They work in the Employer's advertising and publicity department and make layouts for ads carried in trade papers. They also do the layout and artwork for handbooks published for the use of the Employer's customers. The Petitioner did not refute the Employer's contention that these employees are technicals and it appears that they do exercise considerable skill in performing non-repetitive, detailed work. Accordingly, we shall include them in the unit.¹⁰

The advertising and publicity copywriters have high school educations plus formal education which equips them for comprehending highly technical engineering subjects and language and translating such subjects and language into ideas and terms that laymen can

⁸ *Automatic Electric Company*, 78 NLRB 1057.

⁹ *Florence Stove Company*, 98 NLRB 16.

¹⁰ *National Cash Register Company*, 95 NLRB 27, 30-31.

understand. Again, the Petitioner presented nothing to refute these employees' technical status and we find that they are technical employees and shall include them in the unit.

The photographers—class A and B have specialized training in photography school or as apprentices to commercial photographers. The photographic technicians have specialized training in technical laboratory work. The Petitioner took no position regarding the Employer's contention that such employees are technicals and we find that their training and work warrants including them in the technical unit. We, therefore, include them.

The Employer contends that the production control expeditors—class A and B are technicals and also managerial employees. The Petitioner contends that they are plant clerical employees. The record fails to reveal that the expeditors have any special training to qualify them as technical employees and, although they have considerable authority with regard to the routing of the Employer's production processes, there is no evidence that they are managerial employees. Their powers are those generally exercised by expeditors in industrial enterprises. Although there is testimony that they may recommend the hiring or firing of the clericals who work with them, any such recommendation would be channeled through the expeditor's supervisor to the superintendent and there is no evidence that the expeditors' recommendations are effective. Accordingly, we find that the production control expeditors—class A and B are plant clericals and we shall include them in the office and plant clerical unit.¹¹

The Employer urges that tracers—class A and B are technical employees. Essentially, these employees are beginning draftsmen who work closely with the draftsmen and eventually progress into their positions. They are in the same department as the draftsmen and are subject to the same supervision. On these facts, we shall include them in the technical unit.¹²

The testers—class A and B work primarily in the Employer's quality control department and, at times, in some of the sections of the engineering department. These employees perform testing and developing work. They are skilled employees with a knowledge of the Employer's various equipment, devices, materials, and processes. They make calculations, plot data, and write final and progress reports. They must plan test procedures and suggest improvements on devices and methods. We find that they are technical employees and shall include them in the unit.¹³

The Employer contends that the cost estimators—class A and B are also technical employees rather than clerical ones. These workers

¹¹ *La Pointe Machine Tool Company*, 109 NLRB 514.

¹² *Cf. Bethlehem Steel Company*, 95 NLRB 1508.

¹³ *Kelsey Hayes Wheel Company*, 85 NLRB 666, 671.

have specialized schooling in engineering and accounting. They must be able to read and understand engineering drawings and must be familiar with the Employer's manufacturing operations. We find, on these facts, that they are technicals and we include them in the unit.

With regards to the tabulating machine operators—class A and B, the Employer alleges that they, too, are technicals. However, the Employer concedes that the tabulating machine operators—class C are properly within the office and plant clerical unit. Although the machines involved in the operations and the duties of the tabulating machine operators—class A and B require considerable skill, it would appear that these employees are trained office clericals rather than technical employees. Accordingly, we shall include them in the clerical unit.¹⁴

Office and Plant Clerical Unit

The Petitioner and Employer are in agreement concerning most of the employees to be included in the unit. However, the Employer contends that approximately 50 of the employees sought are confidential employees and should be excluded.

The Employer's works manager and director of employee relations testified regarding the duties of some of these employees. The parties then stipulated that, were testimony taken on the other employees, it would be to substantially the same effect.¹⁵

Most of the employees alleged to be confidential perform secretarial, stenographic, typing, or clerical work for supervisors, who, perforce, handle some labor relations matters such as grievances, pay raises, etc. The record testimony reveals that these alleged confidential employees work on grievance reports, rate changes, and that some may take minutes occasionally at meetings involving labor problems.

It is the Board's policy to exclude from bargaining units as confidential employees only those persons who assist and act in a confidential capacity to officials who formulate, determine, and effectuate management policies in the field of labor relations. Moreover, the Board adheres strictly to such definition of what constitutes a confidential employee.¹⁶ Most of the alleged confidential employees do not satisfy that definition.

¹⁴ *Lockheed Aircraft Corporation*, 100 NLRB No. 147 (not reported in printed volumes of Board Decisions and Orders).

¹⁵ The stipulation specifically did not apply to key punch operators, tabulating machine operators—class A, the librarian, and paymaster clerks. With regard to these employees, the record reveals that the librarian is stipulated by the parties to be a professional and excluded. The basis urged by the Employer for finding the others to be confidential are the following: the key punch operators and tabulating machine operators—class A work on figures involving wage rates and the paymaster clerks receive labor policy information in advance for distribution to the employees.

¹⁶ *The B. F. Goodrich Company*, 115 NLRB 722.

It is the Petitioner's position that the following employees might be confidential employees and should, perhaps, be excluded: the secretaries to the vice president, plant manager, director of employee relations, personnel manager, and the heads of the engineering, sales, accounting, and purchasing departments. We find no merit in the contention that the secretaries to the heads of the engineering, sales, accounting, and purchasing departments are in a confidential relationship to those formulating, determining, and effectuating labor relations policies. Accordingly, we shall exclude as confidential only the secretaries to the vice president, plant manager, director of employee relations, and personnel manager from the office and plant clerical unit found appropriate herein.

Temporary and Laid-Off Employees

The Employer contends that 11 of the employees on its payroll at the time of the hearing were temporary employees and should be excluded from any unit found appropriate. The Petitioner took no stand on the matter.

The record reveals that most of such employees were students or teachers working during their summer vacations. Temporary employees do not share the fringe and other benefits enjoyed by the regular employees and have no recall rights. Under these circumstances, we shall exclude the temporary employees.

The Employer would also exclude 10 employees who, at the time of the hearing, were laid off. The Petitioner contends that these employees have a reasonable expectation of reemployment and should be permitted to vote. The testimony adduced at the hearing indicates that there is virtually no possibility of these employees being recalled within the next year or for a long period thereafter. Accordingly, we shall not permit such employees to vote in the election and shall exclude them from the unit.

In view of the foregoing, we shall direct that elections be conducted in the following units of employees at the Employer's Swissvale, Pennsylvania, plant:¹⁷

(A) All office and plant clerical employees, including the accountants, production control expeditors—class A and B, and tabulating machine operators—class A and B, but excluding as confidential employee the secretaries to officials who formulate and effectuate labor policy, namely the vice president, plant manager, director of employee relations, and personnel manager; also excluding temporary and laid-off employees without reasonable expectation of reemployment, all other employees, professionals, guards, and supervisors as defined in the Act.

¹⁷ We find no merit in and hereby deny the Petitioner's request for a *Globe* election.

(B) All technical employees, including the diagram draftsmen—class A and B, detail draftsmen—class A and B, wiring plan designers—class A, B, and C, artists—class A and B, advertising and publicity copywriters, layout designers, cost estimators—class A and B, photographers—class A and B, photographic technicians, testers—class A and B, tracers—class A and B, and time-study observers—class A and B, but excluding temporary and laid-off employees without reasonable expectation of reemployment, all other employees, professionals, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER FANNING took no part in the consideration of the above Decision and Direction of Election.

Swift & Company and United Packinghouse Workers of America, AFL-CIO, Petitioner. *Case No. 15-RC-1567. January 24, 1958*

DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted on May 15, 1957, under the direction and supervision of the Regional Director for the Fifteenth Region, among employees at the Employer's Selma, Alabama, plant. At the conclusion of the election, the parties were furnished a tally of ballots which showed that, of approximately 41 eligible voters, 41 cast ballots, of which 25 were for the Petitioner, 9 were against the Petitioner, and there were 7 challenged ballots, a number insufficient to affect the results of the election.

On May 20, 1957, the Employer filed an objection to conduct affecting the results of the election. After an investigation, the Regional Director, on November 20, 1957, issued and duly served upon the parties his report, in which he found that: (1) the Employer's objection failed to allege any facts which, if true, would warrant setting the election aside, and recommended, accordingly, that the objection be overruled for lack of specificity; and (2) the objection did not raise substantial and material issues with respect to conduct affecting the results of the election, and recommended, alternatively, that the objection be overruled for lack of merit.¹ Thereafter, the Employer

¹ The Regional Director's recommendation for dismissal on the merits was based upon findings that the conduct in question occurred prior to the date of execution of the stipulation for certification upon consent election; was based upon hearsay which was contradicted by direct evidence; was engaged in by unidentified individuals or by individuals not authorized to speak for the Petitioner; or would not, if true, constitute grounds for setting aside the election.