

[The Board certified that a majority of the valid ballots was not cast for Retail Clerks Union Local 1460, Retail Clerks International Union, AFL-CIO, and that said organization is not the exclusive representative of the Employer's employees in the unit found appropriate.]

MEMBERS JENKINS and FANNING took no part in the consideration of the above Supplemental Decision and Certification of Results of Election.

American Radiator & Standard Sanitary Corporation,¹ Pacific Order Handling Division and Office Employees International Union, AFL-CIO, Petitioner

American Radiator & Standard Sanitary Corporation, Richmond Works and Office Employees International Union, AFL-CIO, Petitioner. *Cases Nos. 20-RC-3361 and 20-RC-3391. February 26, 1958*

DECISION AND DIRECTION OF ELECTIONS

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

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Bean and Jenkins].

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

2. The labor organization involved 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.

4. In Case No. 20-RC-3361, the Petitioner seeks to represent all office clerical employees at the Employer's Pacific Order Handling Unit, Richmond, California, excluding confidential employees, managerial employees, professional employees, guards, and all supervisors as defined in the Act. In Case No 20-RC-3391, the Petitioner seeks to represent all office clerical employees, including personnel clerks and timekeepers employed by the Employer at its Richmond, California, manufacturing plant, but excluding production and maintenance employees, the plant nurse, the laboratory technician, man-

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

agerial employees, professional employees, guards, and all supervisors as defined in the Act.

The Employer does not stipulate to the appropriateness of either of the units but agrees that office employees at the order handling unit should not be grouped with the office employees at the manufacturing plant located in adjacent buildings, because the two groups of office employees are under different administrative branches of the Employer and the scope of jurisdiction of their work differs.

The Pacific Order Handling Unit, organizationally under the vice president in charge of the Employer's sales department, and directly under the manager of the order handling unit located at Pittsburg, Ohio, processes plumbing orders received from customers and sales offices in the western half of the United States. It places these orders with the Employer's plants, generally those located in the West, by allocating according to their capacities, facilities, and volume of work on hand. The Richmond manufacturing plant is organizationally under the manufacturing department of the Employer and a vice president of manufacturing located at the principal office in New York. Under these circumstances we find, in agreement with the parties, that the two groups of office employees may appropriately be placed in separate bargaining units.

Case No. 20-RC-3361

The Pacific Order Handling Unit office is in the charge of a supervisor who has as his assistant a chief clerk, and the parties stipulate that these two individuals are supervisors within the meaning of the Act. The office is divided into seven operations, namely: billing, order editing, service, scheduling, order control, correspondent, and stenographic pool. There are approximately 28 employees all located in 1 large office except for billing which, because of a lack of space, is in an adjoining room. The Employer urges that 5 individuals responsible for each of the first 5 named operations should be excluded from any appropriate unit as supervisory and managerial, and that the secretary to the supervisor should be excluded as confidential. The Petitioner opposes these exclusions.

A chief billing clerk is responsible for billing activities performed with six other employees. The special order editor is responsible for editing orders received from customers to conform with the company-established identification symbols and nomenclature and works with six employees in this activity. A senior record clerk "A" is responsible for service activities carried on by himself and six other employees, primarily involving the making of any changes in or additions to orders in process. A senior schedule clerk and an assistant schedule shipment of carload and truckload lots from plants in the area serviced. And an order editor, in order control, with part-time assistance

from one employee, ordinarily assigned to service, handles less-than-carload-lot shipment scheduling.

The Employer maintains that they are managerial because in certain phases of their work they may determine whether a customer may be ordering beyond its credit allowance, commit the Employer for freight charges and choose the carrier, obligate the Employer to manufacture and deliver merchandise, and determine which plant of the Employer shall perform the work on each order. However, the record indicates that all such determinations are made within the limitations of policy established at higher levels of management. The exercise of judgment within the limitations of established policy does not confer managerial status absent authority to influence the establishment of such policy.² In these circumstances we conclude that the duties of the chief billing clerk, the special order editor, the senior record clerk "A," the senior schedule clerk, and the order editor perform work primarily of a clerical nature³ and that none of the five are managerial employees.

There remains for consideration the question of whether these five individuals are supervisors within the meaning of the Act. Each works the full 8 hours at his particular phase of work, and none has authority to hire, fire, or affect the wages of employees assigned to work in his respective area of activity. However, whether they responsibly direct those employees or have authority to make effective recommendations concerning hire, tenure, or reprimand is disputed between the parties. The Employer contends that these five individuals tell employees assigned to the respective areas of activity "what to do, and how and when to do it," whereas the Petitioner contends that as the more experienced or capable employee each acts in the capacity of group leader similar to that of a craftsman.

The record indicates that the supervisor of the unit, within the limitations of authority permitted him by policy established by higher management, plots methods and procedures for the handling of problems within the operation involved herein and spends the remaining portion of his time in handling special or exceptionally difficult problems which may arise and in direct supervision of the unit. The chief clerk spends substantially all of his time supervising the entire operation. It is usually the chief clerk who distributes the work initially. Thereafter the work may be routed from one activity to another as the situation requires. The procedures and established policy are learned by each employee as his job function is affected thereby. The five individuals in dispute are the more experienced or have a greater comprehension than other employees within their respective fields of

² See *Eastern Corporation*, 116 NLRB 329, 332; also see *Puget Sound Power & Light Company*, 117 NLRB 1825, 1827; *Franklin's Stores Corporation of Daly City*, 117 NLRB 793, 795; *White Provision Company*, 116 NLRB 1552, 1555; *Peninsular Metal Products Corporation*, 116 NLRB 452, 454.

³ See *Heckett Engineering Co., Division of Harsco Corporation*, 117 NLRB 1395, 1398.

activity with respect to the methods, procedures, and policy of the Employer. If problems arise which do not readily fit into the established procedures, or the individual is not sure which procedure is applicable within the broader concept of policy, the problem may be taken by the employee either directly to the supervisor or the chief clerk, or, as is more commonly the case, to the 1 of the 5 individuals in whose area it falls. He, in turn, may find it necessary to present the issue to the supervisor for solution. Any of the five may make suggestions for changes in method or procedure derived from their experience, as may other employees, but have no authority to put such changes into effect. Leave records are kept by the supervisor's secretary and absence for medical purposes is automatically granted as a matter of policy. Therefore, employees may report to the individual responsible for the area of work to which they are assigned the necessity of a few hours' leave to keep a doctor or dental appointment, but any request for a more extensive period or for reasons other than medical are taken to the supervisor. The five individuals in question have no official knowledge of the rates of pay of employees assigned to their group and are not advised of any pay raises granted an individual employee. The only evidence indicative of any supervisory authority occurred 1 week before the hearing herein. One of these individuals was requested for the first time to interview an applicant for a prospective vacancy in his group after the applicant had been interviewed by the supervisor. He was advised that he would be expected to confer with the supervisor concerning the applicant. However, there was no indication that a recommendation was expected, or that if one were made it would be given weight. This incident alone cannot be regarded as establishing authority effectively to recommend.

The question of whether particular individuals in a given case are supervisors within the meaning of Section 2 (11) of the Act must be resolved upon examination of all the evidence in the case. Conclusionary statements such as the assertion that these five individuals tell employees in their field of activity "what to do, and when and how to do it" do not, without supporting evidence, establish supervisory authority.⁴ We note too that a finding that the 5 individuals in dispute were supervisors would result in a ratio of 1 supervisor for each 3 employees, in a small office where the work is highly routinized and is under the constant supervision of 2 admitted supervisors. A contrary holding would result in a ratio of 1 supervisor for 14 employees.⁵ In view of the above, and in the absence of evidence that any of these five individuals possess authority to direct other than routine work or have power to make recommendations which would be followed, we

⁴ See *United States Gypsum Company*, 118 NLRB 20.

⁵ See *United States Gypsum Company*, *supra*; also see *Toledo Board of Trade*, 117 NLRB 1504. Cf. *Brunswick Quick Freezer, Inc.*, 117 NLRB 662, 664.

find that the chief billing clerk, the special order editor, the senior record clerk "A," the senior schedule clerk, and the order editor are not supervisors within the meaning of the Act, and shall include them in the unit.⁶

There remains for consideration the issue of whether the secretary to the supervisor is a confidential employee of the type excluded by the Board from bargaining units. The Employer takes the position that she should be excluded because she will be the one to handle any communications concerning labor relations negotiations which the supervisor may be required to make with other officials of the Employer if the Petitioner is certified. The Petitioner argues that she is not presently performing any duties which would cause her to be excluded as confidential, and that if and when such circumstances arise the parties may reconsider her status with respect to the bargaining unit.

It is clear that the secretary to the supervisor does not now perform any duties which would cause her to be classified as confidential. Moreover, there is no evidence that the supervisor will necessarily be designated by the Employer as a negotiator in the event the Petitioner is chosen as the bargaining representative. The Employer's table of organization includes a vice president in charge of employee relations, and other officials of the Employer located in adjacent buildings are presently charged with the duty of negotiating for the Employer with six other unions representing other units of employees. In these circumstances, and in view of the fact that the secretary's duties as presently constituted do not now warrant her exclusion as a confidential employee, we find that she is appropriately a part of the unit.⁷

Accordingly, we find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All office clerical employees at the Employer's Pacific Order Handling Unit, Richmond, California, excluding confidential employees, managerial employees, professional employees, guards, and all supervisors as defined in the Act.

Case No. 20-RC-3391

The Richmond, California, manufacturing plant is under the supervision of the plant manager. Various departments under the manager, namely, accounting, purchasing, inventory control, and personnel administration are composed of office employees whom the Petitioner

⁶ See *Heckett Engineering Co.*, footnote 3, *supra*; *Montgomery Ward & Co., Incorporated*, 117 NLRB 1481; *Haleyville Textile Mills, Inc.*, 117 NLRB 973, 975.

⁷ See *Arden Farms, et al.*, 117 NLRB 318, 320; cf. *Heckett Engineering Co.*, footnote 3, *supra*, at 1396.

seeks to represent. The parties stipulated that the manager and the department heads including the plant comptroller, the buyer, the inventory control supervisor, and the personnel administrator are supervisors and should be excluded from any unit found appropriate. They further stipulated to exclude as confidential employees the executive secretary, the plant comptroller's secretary, and the inventory control supervisor's secretary, and as managerial the project auditor.

The Employer would also exclude, contrary to the contentions of the Petitioner, the following individuals for the reasons indicated: Personnel and welfare clerk, as confidential; personnel clerk, as guard, confidential, and supervisor; cashier—head timekeeper, as supervisor and managerial; three timekeeper clerks, as plant clericals; section heads in the accounting department—tabulating, operating, and systems supervisor, cost accounting supervisor, property accounting supervisor, and stores and receiving supervisor, all as supervisors and as managerial; and section heads of the inventory control department—production scheduling supervisor and brass inventory control supervisor, both as supervisors and as managerial.

At the outset, it is noted that the ratio of admitted supervisors to employees in the unit is 1 to every 6, whereas the ratio of alleged supervisors to employees would be 1 for every 1½ employees, a highly improbable situation.⁸

The personnel and welfare clerk, alleged to be confidential, handles insurance and other welfare programs of the Employer, processing claims and informing employees of benefits available. He also prepares personnel statistical reports for the Employers' home office and for various governmental agencies, and age and cost data, number of employees, rates and classifications, and other statistical information for use by the Employer during negotiations. On occasion, he has been called upon by the personnel administrator, who is one of the Employer's negotiators, to type reports of negotiations and on one occasion to type the formal contract after agreement had been reached.

It is the Board's customary practice to exclude from bargaining units employees who act in a confidential capacity to officials who formulate or effectuate general labor relations policies, or who, in the course of their duties, regularly have access to information concerning anticipated changes which may result from collective-bargaining negotiations.⁹ However, the Board's classification of confidential does not apply to individuals having access to personnel or statistical information upon which such policy is based,¹⁰ or to employees who may

⁸ See footnote 5, *supra*.

⁹ See *Heckett Engineering Company*, footnote 3, *supra*, at p. 1396; *Potomac Electric Power Company*, 111 NLRB 553, 562.

¹⁰ See *Arden Farms, et al.*, footnote 7, *supra*.

type documents relating to negotiations or grievances after the information contained therein is known by the union or the employee involved.¹¹ The personnel and welfare clerk has no way of determining from the statistical data prepared by him what labor policy proposals may result and the reports concerning negotiations and the contract were all typed after the information contained therein was an accomplished fact. In all the circumstances we find that he is not a confidential employee and shall include him in the unit.

The three timekeepers work in separate departments of the plant sharing offices with the foreman of the department to which they are assigned. Their function is two-fold: that of timekeeping, and keeping account of production in accordance with a production schedule issued to the foreman of the department to which they are assigned. As they are located in the plant where they keep plant records and are in constant and direct contact with production and maintenance workers, we find that the timekeepers are plant clericals whom, because of the Employer's objections to their inclusion, we shall, in accordance with Board policy, exclude from the office clerical unit.¹²

The personnel clerk, alleged to be confidential, a guard, and a supervisor, is located in a small office at the Employer's main plant entrance. His duties include that of receptionist for persons other than employees. He also handles a number of personnel matters for employees such as accepting changes in withholding tax designations, name, telephone, and address changes, locates employees for the personnel administrator, and performs other routine personnel functions for employees as they arrive or leave the plant so that they will not have to go to the personnel office. In addition, he signs the guards' timeslips, checks the watchmen's dials, advises the maintenance department of repairs requested by the guards, and, when a guard fails to report for duty, he will call for a replacement if it does not involve overtime. Otherwise he is required to turn the matter over to the personnel administrator. He maintains the guards' vacation schedule but the schedule itself is worked out by the guards on the basis of seniority and agreement. The personnel clerk was excluded from the guard unit by agreement of the parties because of the clerical nature of his duties.

We find that the personnel clerk is neither confidential¹³ nor a guard¹⁴ as alleged by the Employer. Nor do we regard the recording duties relating to operations of the guards anything more than routine clerical functions performed for the personnel administrator. Ac-

¹¹ *Potomac Electric Power Company*, footnote 9, *supra*, at 563.

¹² See *Fairbanks, Morse & Company*, 117 NLRB 1449, 1450.

¹³ See cases cited in footnotes 9, 10, and 11, *supra*.

¹⁴ See *Livonia Plant of Automatic Transmission Division, Ford Motor Company*, 116 NLRB 1995.

cordingly, we find that the personnel clerk is not a supervisor within the meaning of the Act.

The cashier-head timekeeper job, formerly two positions, is temporarily combined while the former head timekeeper is detailed to a short-term managerial function. As cashier, he prepares checks for payment of all bills certified by the appropriate departments in accordance with company regulations. Such checks must be cosigned by the comptroller and by the supervisor of cost accounting. He is under the direct supervision of the comptroller. For approximately a year there has been no one assisting him in his function as cashier. Testimony that he was able in the past to make a recommendation if the work of one assistant was unsatisfactory, without any evidence concerning the effectiveness of any recommendation or any indication when he may again have an assistant, is insufficient to find that he is a supervisor.

With respect to the head timekeeper aspect of his duties, the allegation is that he supervises the three timekeepers. However, when and how this supervision takes place is not presented. On the other hand, the record indicates that when a timekeeper needs instructions with respect to the function of his job he is supervised directly by the comptroller and the day-to-day function of his work is performed for the foreman of the department to which he is assigned. Such evidence is insufficient upon which to base a finding that the cashier supervises timekeepers.¹⁵ Nor do we find that the work performed by the cashier is managerial in nature but is rather a clerical function.¹⁶

The following section heads are grouped together for consideration as the testimony bearing upon their alleged supervisory authority is substantially identical. The tabulating, operating, and systems supervisor, the cost accounting supervisor, the property accounting supervisor, and the stores and receiving supervisor are section heads in the accounting department under the supervision of the plant comptroller. The production scheduling supervisor and the brass inventory control supervisor are heads of two sections of the inventory control department under the supervision of the inventory control supervisor.¹⁷

The tabulating, operating, and systems section handles the IBM operation which includes computations and records of payrolls, inventory, and labor distribution. There are five employees in this section in addition to the section head. The cost accounting section figures manufacturing costs and profits. There are three employees besides

¹⁵ See footnote 4, *supra*.

¹⁶ See footnotes 2 and 3, *supra*.

¹⁷ Two other sections of this department, namely, warehouse and shipping, and raw material unloading do not have office employees, and are represented in a separate warehouse unit.

the section head. The property accounting section is made up of one individual, the cost accountant, otherwise referred to as the section head. His duty is to keep a record of the assets such as property, machinery, and buildings. The stores and receiving section keeps records of materials for the maintenance and production operations and disburses such material pursuant to requisition. The section is composed of two employees, the section head and an assistant. The production scheduling section in the inventory control department consists of one man, the section head, who makes up production schedules for the various production departments and shipping in accord with a schedule received by the inventory control department from the inventory planning department located in New York. In addition to preparing production schedules, this section head also certifies freight bills, determines the type of traffic movement by poundage as less-than-carload or carload, and the particular route by which finished material is to be shipped. Occasionally someone is assigned to perform clerical or typing work for him in preparing and distributing the schedules but this is generally done by the secretary to the inventory control supervisor or by an order handling clerk-typist.¹⁸ The brass inventory control section is composed of the section head and two bookkeepers—clerk typists. The work consists of keeping records of brass by transcribing from a recapitulation of daily business onto a Kardex, and using such records to make up monthly reports of brass inventory.¹⁹

The heads of each of these sections are responsible for the performance of the work of their respective sections. The plant comptroller, who is the supervisor of the accounting department, indicated that any recommendation concerning promotion or discharge of employees in the four sections made by their section heads would be given "weight," and that the section head of the IBM operation may request additional help. The inventory control department supervisor indicated that the 2 section heads under consideration in his department could make recommendations to him regarding the discharge, promotion, or wages of employees—in production scheduling concerning the 2 shipping clerks and in brass inventory control concerning the 2 bookkeepers—and that he would give "weight" to such recommendations. However, he admitted that he could make no determinations on such recommendations but could only in turn make his recommenda-

¹⁸ The inventory control department supervisor testified that the work of a shipping clerk and an assistant shipping clerk is determined by the contents of schedule prepared by the production scheduling section head who thereby directs the work of the shipping clerks and shares their supervision with the department supervisor.

¹⁹ The department supervisor indicated that six employees in shipping, marking, stenciling, and parcel post activities in the warehouse are under the brass inventory section supervisor but did not indicate in what manner or to what degree any supervision takes place, or how their work relates, if at all, to the work of the brass inventory control section.

tions to higher management. Further, the section heads have not been told that recommendations are expected, nor did the department supervisor know of any regulation vesting such authority in the section heads. There is no evidence that any recommendations have been made, nor is there any indication that the degree of "weight" which would be given any such recommendation would be sufficient to qualify as effective. The one instance of a merit raise presented in testimony became effective before the section head had any knowledge of the action taken. The matter was discussed with the section head by the department supervisor in advance but the section head was not asked for a recommendation.

Any matter arising, other than routine, is brought to the department supervisors for instruction or handling. Any request for additional help is directed to the department heads who in turn investigate the current utilization of present employees and then determine whether to make a request to higher management for additional employees. Grievances are taken to the department supervisors who, if they cannot settle the problem, refer the matter to the personnel department. Section heads have no authority to settle grievances. At least one section has no employees other than the section head and there is no indication whether or when this situation may be changed.

Under all the circumstances, including the supervisor to employee ratio in the unit requested, we find that the section heads neither responsibly direct employees in their respective sections, i. e., in matters other than routine, nor do they have authority effectively to recommend changes in employee status. Accordingly, we find that section heads in the accounting and inventory control departments here in dispute are not supervisors within the meaning of the Act.²⁰

Nor do we find anything in the duties of the section heads to warrant a finding that they are managerial employees, as their work is of a clerical nature rather than one of policymaking,²¹ and does not require the exercise of more than routine discretion and judgment.

We find that the following employees constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All office clerical employees, including personnel clerks, employed by the Employer at its Richmond, California, manufacturing plant, but excluding production and maintenance employees, the plant nurse, the laboratory technician, timekeepers, managerial employees, professional employees, guards, and all supervisors as defined in the Act.

[Text of Direction of Elections omitted from publication.]

²⁰ See cases cited in footnotes 4, 5, and 6, *supra*.

²¹ See cases cited in footnotes 2 and 3, *supra*.