

**Gibbs & Cox, Inc. and Marine Technicians' Guild,
Gibbs & Cox, Inc., Petitioner.** Case 2-UC-10

November 15, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND BROWN

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before Herzl S. Eisenstadt, Hearing Officer of the National Labor Relations Board. Thereafter, the Employer and the Union filed briefs.

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.

The Hearing Officer's rulings made at the hearing are free from prejudicial error and they 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 and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

3. This proceeding involves the Employer's New York, New York, office, where it is engaged in furnishing naval architectural and marine engineering services to private concerns and to the Government. Since 1946 the Petitioner has been the certified bargaining representative of the following unit:

All drafting employees (excluding engineers, assistant engineers, scientific assistants, supervisors and assistant supervisors), technical employees (excluding supervisors, engineers, assistant engineers and material man A) and model makers (excluding foreman) of the Employer, New York, New York, excluding executive, managerial, and supervisory employees

On March 13, 1967, the Petitioner filed a petition

seeking clarification of the above unit to include therein specialists, and associate, assistant, and junior engineers, as well as some full engineers. Petitioner contends that the work of these employees differs only in degree from work currently being performed by unit employees and that 14 unit employees who were elevated to positions in such categories without the bargaining unit should be returned to the unit.

The existing unit was certified in 1946 and contains both employees who perform routine tasks requiring only rudimentary knowledge and others who possess professional degrees, and who engage in complex drafting and scientific work. Following the Board's certification of this unit containing professional and nonprofessional employees, the parties negotiated a contract on January 1, 1947. Over the intervening 20-year period, the unit definition and appendices of included job classifications were repeatedly amended to reflect newly established job titles. The Petitioner has never represented the engineering category employees in issue under their present titles and they have not been involved in collective bargaining.

As for the categories which Petitioner seeks to include in the unit herein, the present record is inadequate for determining whether all are professionally constituted, but it is apparent that many of the employees are in fact professional employees under the Act. While the existing unit of professional and nonprofessional employees was established without a separate ballot among the professionals, that was before passage of Section 9(b)(1) of the Act in 1947.¹ Were we to grant Petitioner's request, however, we would now be adding other professional employees without a separate election as required by Section 9(b)(1). As the Act precludes granting this relief, we shall dismiss the petition for clarification.²

ORDER

It is hereby ordered that the petition to amend and clarify certification be, and it hereby is, dismissed.

¹ Sec 9(b)(1) provides ". . . That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit"

² See *Lockheed Aircraft Corporation*, 155 NLRB 702, 713, cf *A O Smith Corporation*, 166 NLRB 845