

Westinghouse Electric Corporation *and* International Union of Electrical, Radio and Machine Workers, Local 456, AFL-CIO, Petitioner. Case 22-UC-11

October 24, 1968

DECISION ON REVIEW

BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND JENKINS

On October 18, 1967, the Acting Regional Director for Region 22 issued a Decision and Order Clarifying Bargaining Unit in which he granted the Petitioner's request to include Systems and Procedures Analysts "A" and "B" in the existing unit of office, clerical and technical employees which the Petitioner represents pursuant to a 1956 Board certification.¹ Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review. The Board, by telegraphic Order dated January 3, 1968, granted review with respect to the Regional Director's inclusion of the aforementioned classifications in the bargaining unit by means of the clarification procedure.² Both parties filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has considered the entire record in this case including the briefs of the parties with respect to the issues under review and makes the following findings.

The Employer's principal argument on review is that the disputed classifications are but an outgrowth of a "staff assistant" position in existence at the time of the certification, which was specifically excluded from the collective-bargaining unit. The record, however, does not disclose the duties of the staff assistant classification. It does disclose that immediately prior to the Union's certification in 1956 for the unit of office, clerical and technical employees here involved the Employer hired a staff assistant for the special task of conducting a management study of the feasibility of converting the then existing clerical procedures to mechanized systems involving the use of IBM machines. As a result of this survey, the Employer adopted the new procedures and, in December 1957, formulated for the first time a job classification related to those procedures, designated as "programmer." The former staff assistant was then

made the first occupant of this position. Although these mechanized procedures were first applied in the area of inventory control, they have since been enlarged and expanded to convert the Employer's various other clerical fields to the use of modern data processing techniques. Concurrently such techniques have increased in level of complexity, as evidenced particularly by the Employer's use, beginning in 1961, of IBM computer equipment. Likewise the original job title of "programmer" has evolved, first into "Data Processing Methods and Systems Analyst," A and B, and then into the present "Systems and Procedures Analyst" A and B classifications with which we are here concerned.

It is evident from the foregoing that the Employer's present computerized procedures are but a substitute, albeit more sophisticated and complex, for the work originally performed by the Employer's clerical unit employees. As to the asserted relationship of the disputed classifications to the staff assistant classification, the record discloses no more than that the particular staff assistant to whom reference is made was hired to conduct a *study of the feasibility* of converting clerical procedures to systems involving the use of IBM machines. Although the original staff assistant's role in the development of the Employer's computer system would appear to suggest that his exclusion was warranted either on professional or managerial grounds, it does not follow that this unit should exclude those subsequently hired to implement the system developed through his effort. The function of the disputed classifications here is the *initiation of actual procedures* utilizing the IBM equipment. It is thus apparent, and we find from the entire record, that the Systems and Procedures Analyst positions are not an outgrowth of the original staff assistant position but are classifications deriving from the use of the new data processing techniques and are, as the Acting Regional Director found, job classifications which came into existence subsequent to the 1956 certification.

The Employer further argues on review, as it did to the Acting Regional Director, that whatever the origin of the disputed classifications, Petitioner by its inaction over a lengthy period has waived its right now to seek their inclusion in the certified unit through the clarification procedure. We also reject this contention. The disputed classifications did not reach a job content approaching their present form until 1961 and, in fact, the present description of their duties and the designation of their job classifications were not arrived at until 1965. Further, the Employer did not on a timely basis reply to the Petitioner's request, made in the summer of 1965, for

¹ No request for review has been filed with respect to the Regional Director's denial of that part of Petitioner's request which also sought to include in its certified unit the Traffic Analysts "A" and "B"

² The Board denied review of the Employer's contention that the Regional Director erred in finding the employees in the disputed classifications to be technical, rather than professional or managerial.

information concerning the unit placement of these jobs. When it finally did respond, the Employer merely asserted its position that these employees were professional employees, who are excluded from the certified unit, and did not provide Petitioner with facts enabling an assessment of the validity of the Employer's position. In all these circumstances, including the fact that 4 of the 7 occupants of the disputed classifications were formerly employed on unit positions, we agree with the Acting Regional Director that Petitioner's failure to claim these classifications at an earlier date was not fatal to its

right now to invoke the Board's unit clarification procedure.

Accordingly, and in view of the fact that the employees in disputed classifications are technical employees having a close community of interest with other technical employees of the Employer, all of whom are represented by the Petitioner in the existing office, clerical and technical unit, we affirm the Acting Regional Director's finding that the Systems and Procedure Analysts "A" and "B" are an accretion to that certified unit and that unit as clarified includes the aforesaid two classifications.