

General Dynamics, Electronics Division, San Diego Operations and Engineers and Architects Association, San Diego Chapter, Petitioner. Case 21-UC-22

February 24, 1969

**DECISION AND ORDER DENYING
PETITION TO CLARIFY
CERTIFICATION**

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

Upon a petition of Engineers and Architects Association, San Diego Chapter, for clarification of unit duly filed on November 17, 1967, and First Amended petition filed on November 30, 1967, under Section 9(b) of the National Labor Relations Act, as amended, a hearing¹ was held on January 17, 18, and 19, 1968, before Hearing Officer, Claude R. Marston. On February 28, 1968, the Regional Director for Region 21 issued an Order transferring the case to the Board. Thereafter, briefs were timely filed by Employer and Petitioner.

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

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

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

1. 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. Petitioner and Intervenor are both labor organizations within the meaning of the Act, and both claim to represent certain employees of Employer.

3. Employer is engaged in the production of electronic equipment in San Diego, California. Petitioner was certified as the bargaining representative of a unit of hourly technical and office employees of Employer, following an election on June 21, 1963.² Employer's professional employees voted against representation by Petitioner in the same election. Petitioner and Employer currently are parties to an agreement for the period from November 15, 1965, to December 9, 1970. The agreement recognizes Petitioner in accordance with the certification dated July 1, 1963, as the exclusive

representative for technical and office employees who are paid on an hourly basis.

In this proceeding, Petitioner is seeking clarification of its certification to include all employees who perform work that is described in job descriptions represented by Petitioner. Specifically, this group would include the following classifications: Design Engineer, Engineering Writer, Engineering Illustrator, Engineering Drawings Checker, Manufacturing Engineer, Manufacturing Analyst, and Tool Planning Analyst. Petitioner's request, if granted, would result in the addition of approximately 75 employees to the 100 employees it currently represents. Petitioner contends that whether by intention or neglect on the part of Employer, all-real distinction that may have existed between the aforementioned classifications and the corresponding technical classifications represented by Petitioner has been obliterated.³ Employer contends that Petitioner seeks to coningle professional and nonprofessional employees contrary to the prohibition of the Act, that Petitioner has failed to show that hourly work is being done by salaried people on a regular and consistent basis, and that the relief sought cannot be granted in a clarification proceeding.⁴ The Board finds merit in Employer's argument.

It is clear that all classifications in issue were in existence and populated prior to the election and certification in 1963. The classifications of Manufacturing Analyst and Manufacturing Engineer have never been included in either the mixed unit of professional and nonprofessional employees certified in 1961, or in the separate groups of professional and nonprofessional employees who voted in the 1963 election. The classifications of Design Engineer, Engineering Writer, Engineering Illustrator, and Engineering Drawings Checker were included in the separate professional group that voted in 1963 against continued representation by Petitioner.

Petitioner's contention that the Design Engineers spend substantial proportions of their time performing tasks that are normally performed by the represented Designer classification finds little

¹Case 21-RM-927 (Not published in NLRB volumes.)

²Petitioner contended at the hearing that had its subpoena duces tecum been honored and all of the material outlined therein brought to the hearing, such material would show that those persons occupying the classifications claimed in the petition perform unit work more than 50 percent of the time in their present occupations. The Hearing Officer granted Employer's motion for revocation of Petitioner's subpoena concerning various documents in Employer's possession, on the grounds that the record was sufficiently clear and testimony concerning the material sought in the subpoena was adequately covered at the hearing.

³Early in the hearing, Employer moved under Section 102.65 of Board's Rules and Regulations, Series 8, as amended, to dismiss the petition on the grounds that the petition was concerned with job disputes, the petition seeks to question the propriety of assignments within the classifications, and that the classifications sought were in existence in 1963, and in 1965, when the parties bargained for the current agreement. The motion was directed to the Hearing Officer, who referred it to the Regional Director. The Regional Director found that there were factual issues that ought to be determined in a hearing, and therefore, he denied the motion to dismiss.

⁴International Association of Machinists and Aerospace Workers, Aeronautical Machinists Lodge 1125, Silvergate District Lodge 50, was allowed to intervene at the hearing on the basis of Petitioner's claim, in its first amended petition, to represent a job classified as planner, currently represented by Intervenor. The Hearing Officer granted Machinists' request to be excused from the remainder of the hearing, after Petitioner amended its petition to exclude the job classification represented by Intervenor.

support in the record. Although there was evidence that Design Engineers performed drafting and layout tasks encompassed by the represented Designer classification, there was no evidence that all Design Engineers performed these tasks on a regular basis or to the exclusion of their own job responsibilities. The record indicates that the Design Engineers performed drafting tasks sporadically for undetermined periods and on a minimal basis.

As to the Engineering Drawings Checker classification, Petitioner contends that the functions of this classification are already encompassed in the represented Designer classification. The duties of the Engineering Drawings Checker classification include the checking for the correctness of drawings, and the clearing of completed drawings. There are currently 4 employees in this classification; 3 are salaried and 1 is hourly paid. Although some Designers have done some checking work, these Designers and the 1 hourly employee presently doing checking work, have never had the authority to sign-off drawings for release. Here also, the record indicates only sporadic checking on the part of represented employees, and such checking has never been at a level of responsibility comparable to that of the Engineering Drawings Checker classification.

Petitioner contends that the Engineering Writer classification performs tasks that were previously performed by the represented Technical Writer classification, a position that is not presently filled. An Engineering Writer researches specifications, obtains raw data, and writes various technical documents. Although Petitioner contends that the Engineering Writer now performs the tasks that were formerly within the classification of Technical Writer, the record indicates that only on occasion do the Engineering Writers perform tasks that are within the job description of Technical Writer. Moreover, it is also clear from the record that the duties performed by the Engineering Writers have become increasingly more complex in the past 5 years.

It is Petitioner's view that the Engineering Illustrator classification now performs substantially those tasks encompassed by the represented Technical Illustrator classification. The record indicates that the Engineering Illustrator does perform functions set forth in the job description of Technical Illustrator, but only on occasion. However, there was no evidence that the Engineering Illustrators, who normally perform more complex tasks than Technical Illustrators, have consistently performed tasks that were within unit job descriptions.

Petitioner contends that non-represented persons in the classification of Manufacturing Engineer perform tasks that are similar to or are covered by the represented Tool and Operations Planner classification. Petitioner attempted to show that the Manufacturing Engineers perform planning tasks that belong to the represented employees. However,

other than testimony that a certain Manufacturing Engineer had performed some electrical assembly planning, there was no evidence of the frequency or the extent of such planning. Moreover, there was no evidence that there has been a substantial change in the work of the Manufacturing Engineers since the time of their exclusion from the represented unit in 1961.

As to the classification of Manufacturing Analyst that Petitioner seeks herein, an employee, who is presently a Manufacturing Analyst, testified that he had knowledge that some Manufacturing Analysts had performed planning tasks as late as November 1967, but not thereafter. This same individual stated that he presently serves in an administrative capacity, and that at the time of the hearing no salaried employees were performing planning functions that belong in the unit.

Finally, Petitioner seeks to include the classification of Tool Planning Analyst. This classification was included in the unit found appropriate for salaried professional employees in the 1963 election, and the employees voted against representation by Petitioner. The only discussion of this classification at the hearing was by Employer's Manager of Industrial Relations. He testified that this classification was in existence and populated at the time of the election in 1963. However, he testified further that such classification has not been populated since the election.

As noted above, all of the classifications Petitioner seeks herein have been in existence since before the latest election and certification in 1963. At that time, all of the classifications sought herein, with the exception of the excluded Manufacturing Analyst and Manufacturing Engineer classifications, were included in a separate group of professional employees who voted against representation by Petitioner. It is clear that these professional employees cannot be included in the unit without the direction of an election as required by Section 9(b)(1) of the Act.⁵ Nor has Petitioner presented evidence sufficient to show that the work performed by the classifications in issue has significantly changed since the 1963 certification so that their interests now are more clearly aligned with the represented employees than with the professional group that they preferred at the time of the election.

Petitioner's contention that the classifications in issue have performed unit work to the extent that the bargaining unit has been eroded, is similarly lacking in merit. The record evidence indicates only an infrequent overlap of duties by nonrepresented employees into that of represented classifications. Such overlap was sporadic, at times unavoidable, and occurred during periods of shortages of employees in certain represented classifications.

As to the Manufacturing Analyst and the Manufacturing Engineer, the record contains no

⁵*Gibbs & Cox, Inc.*, 168 NLRB No 42

evidence that would warrant a conclusion that these classifications should now be included in the unit, notwithstanding the fact that they have been excluded from all units since 1961. It is clear that all of the classifications sought herein are salaried employees, whereas the represented employees are hourly paid. In view of the entire record, including the prior exclusion of the classifications in issue because of their professional standing or their close community of interest with other professional employees of Employer, the mode of payment of the classifications sought, and the paucity of evidence

with respect to the type of unit work they performed and the duration of such work, we find that the salaried employees herein cannot, by means of a unit clarification proceeding, be included in Petitioner's unit of hourly technical and office employees. Accordingly, we shall therefore dismiss Petitioner's petition.

ORDER

It is hereby ordered that Petitioner's petition for unit clarification be, and it hereby is, dismissed.