

Wurster, Bernardi & Emmons, Inc.¹ and Organization of Architectural Employees, Petitioner. Case 20-RC-9756

August 26, 1971

DECISION AND DIRECTION OF ELECTION

MEMBERS FANNING, JENKINS, AND KENNEDY

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Joseph R. Wirts. After the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 20, this proceeding was transferred to the Board for decision. Thereafter, the employer and the Petitioner filed briefs in support of their respective positions.

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 ruling made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding,² the Board finds:

1. The Petitioner seeks to represent certain architectural employees of the Employer, a California corporation which provides architectural services to corporations and individuals. The parties have stipulated that during the preceding calendar or fiscal year the Employer's sales and services exceeded \$500,000 and that it provided services valued in excess of \$50,000 to customers located outside the State of California and services valued in excess of \$50,000 to firms which in turn made sales of \$50,000 or more to customers outside the State of California.

The Employer in effect concedes that legal jurisdiction is present. It argues, however, that the Board should exercise its discretion to decline jurisdiction. To this end, the Employer asserts that the practice of architecture is essentially local in character, citing the close state regulation of the profession, the local nature of the Employer's practice as illustrated by the fact that 95 percent of its work is located in the San Francisco Bay area, and a purported confidential architect-client relationship. With respect to this latter point, the Employer fails to explain what adverse impact the assumption of Board jurisdiction

would have on this confidential relationship; we perceive none.

The Employer contends that, because of state licensing requirements and other factors, there is little job mobility among architects. That may be correct. However, we are not concerned here with commerce in architects but rather with the effect labor disputes involving architects may have upon interstate commerce. Similarly, the Employer's equating of its business with the horseracing industry, said to effect more elements of interstate commerce, and the activities of real estate brokers, where the Board has declined to exercise its jurisdiction,³ is incorrect. Our concern is not with the number of elements of interstate commerce involved but with their impact on interstate commerce as a whole and the probability of labor disputes significantly affecting such commerce.

The record shows that while the Employer works principally in California it is nonetheless engaged in projects as far away as Massachusetts. Further, the Employer performs work for corporations engaged in interstate commerce on projects which in themselves significantly affect interstate commerce; including the design and construction administration of a 52-story office building in San Francisco for the Bank of America. Architecture plays an irreplaceable role in the construction industry, a major factor in interstate commerce, and it is apparent that disputes involving architects could have serious and far-reaching effects upon that industry.

In view of the foregoing, and since the Employer meets the standards for a nonretail business, we find that it is an employer engaged in commerce or an industry affecting commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction in this proceeding.

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 Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The Petitioner seeks an election in a professional unit of architectural employees, excluding associates, principals, model makers, inspectors, office boys, librarians, bookkeepers, controllers, secretaries and other office clerical personnel, guards, and supervisors as defined in the Act. The parties have agreed that the principals; the chief architect; Mrs. Verburgt, an administrative assistant; the controller; the switchboard operator; the secre-

of the parties.

³ *Walter A. Kelley*, 139 NLRB 744; *Seattle Real Estate Board*, 130 NLRB 608.

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

² The Employer's request for oral argument is denied, since, in our opinion, the transcript, exhibits, and briefs adequately present the positions

taries; and the office boys who are not architectural students should be excluded from the unit.

As noted above, the Employer is a California corporation engaged in providing architectural services to both corporate and individual clients. There are five principals who own shares in the firm and serve on its board of directors. A principal is in charge of every project. The firm employs a chief architect who is head of the production division and runs the drafting room, schedules production, and hires and fires employees. The parties have stipulated that he is a supervisor within the meaning of the Act, and should, along with the principals, be excluded from the unit. In addition to the principals and the chief architect, the firm employs approximately 24 other architects, who may be divided into two groups, associates and nonassociates. On specific projects, depending upon their size, a project architect, a project designer, and a job captain are designated to work with and under one of the principals, in addition to the draftsmen and designers who may be working on the project. The firm also employs a modelmaker, a job inspector, an interior designer, and a fifth-year architectural student currently working in the architectural specification library whose status is in dispute, in addition to various clerical and administrative employees whom neither of the parties would include in the unit.

Virtually all of the employees whom either the Employer or the Petitioner would include in the unit are graduates of recognized schools of architecture. Not all, however, have yet become licensed architects, a process which in California entails passing an examination that requires approximately 3 years of work experience to complete successfully. The average architect in California does not become licensed (or registered) until he has been out of school for 5 or 6 years; frequently a considerably longer period of time may elapse. A graduate architect may not hold himself out as an architect until the examination has been successfully completed, but may work for a firm in any capacity he is capable of and may on his own (in California) design houses and certain other buildings so long as the client understands that he is not a registered architect. The Employer, apparently, does not distinguish between licensed and unlicensed "architects" (we use the term broadly, although recognizing that an unlicensed architectural graduate may not technically be an architect) in work assignments and neither the Employer nor the Petitioner considers this distinction relevant in determining the status of architectural employees as professionals within the meaning of the Act. We agree, and shall draw no further distinctions between these groups for the purposes of this Decision, noting

only that our conclusion is, of course, limited to the context of the Act.

The parties agree that graduates of schools of architecture performing architectural work for the Employer are professionals within the meaning of the Act. We so find. The record amply demonstrates that the work of employees in this category is intellectual and varied, involving discretion and judgment, is not susceptible to standardization of output over a given period of time, and requires advanced knowledge acquired by a prolonged course of specialized intellectual instruction at an institution of higher learning. Thus the average architectural graduate working for the Employer has completed a course of specialized instruction requiring 5 years to complete and, *inter alia*, may be involved in consultations with clients, preparation of preliminary designs—relating the basic type, size, functional needs, appearance, and budgetary limitations—and construction documents upon which construction bids will be based, selection of a site, selection of contractors, inspection of the project, and certification of progress payments.

In addition to the architectural graduates, the Employer also employs a graduate interior designer. The Employer urges that he be included in any professional unit. The Petitioner, although not taking a specific position in this instance, argues for the inclusion of any architectural employee whether or not an architectural graduate. The record establishes that the interior designer frequently performs the duties of a project architect, designs the exteriors as well as the interiors of buildings, and is currently taking an examination for an architect's license which he has qualified for on the basis of work experience. We find that he is a professional employee within the meaning of the Act and should be included in the unit.

As noted above, the architectural employees are divided into two main groups, associates and nonassociates. The Employer would include the associates, and the Petitioner would exclude them on the ground that they lack a sufficient community of interest. Both work in the same room and perform basically the same functions. About one-third of the architectural employees are associates. The main distinctions between the two groups are that the lowest paid associate receives approximately 30 percent more pay than the highest paid nonassociate, associates are listed in the firm's brochure, receive an annual salary as opposed to an hourly wage, share in a special fund set aside from the profits, and are privileged to attend quarterly meetings with the principals to discuss the general status of the firm; but associates, as such, do not participate in corporate decisionmaking. Both associates and non

associates perform the functions of project architect, job captain, etc., and an associate may work under direction of a nonassociate on a particular project. Benefits under the Employer's medical and dental programs are identical, both participate in the same profit-sharing plan, and are equally eligible for merit bonuses, receive Christmas bonuses on the same basis, receive the same paid holidays, and have the same vacation benefits. We conclude that they share a sufficient community of interest to be included in the same unit.

Work on a project is organized on a team basis with one of the principals being personally responsible for each project. Each project also has a project architect who represents the firm with the client and has overall administrative responsibility. Depending upon the size of the project there may also be a project designer and job captain working under the direction of the project architect, as well as other architectural employees. On a small project all of these functions may be performed by the same person. The project designer is responsible for all design aspects of the project and may have one or more designers working under his direction; selection as a project designer is based mainly on design ability. The job captain directs the drafting of working drawings and the position requires work experience as opposed to sheer architectural talent. The designation of a project architect, project designer, or job captain is for the purposes of that project and is not a general classification as such. Thus it is possible for an architect to perform all of these functions, including routine drafting, either serially or simultaneously on different projects and the rate of pay remains constant regardless of the function being performed. Apparently less than a quarter of the Employer's architectural graduates have not performed duties as project architect, job captain, or designer at some time. The Employer suggests, without asserting, that these employees may be supervisors but urges that they be treated consistently without including some and excluding others; the Petitioner would include them in the unit. The record indicates that these employees have no authority to hire or fire and their recommendations receive the same attention as those from other employees. Although they responsibly direct other employees, it is in a professional sense and related only to a particular project. We conclude that they are not supervisors within the meaning of the Act and shall include them in the unit.

The Employer currently has a job inspector on its payroll in connection with construction work on a large office building. Usually a job inspector is retained by the client for a particular project, frequently on the recommendation of the architect;

whether he is retained by the client or the firm, the inspector's salary is normally paid by the client. No particular education is required to qualify as a job inspector and a job inspector is normally hired on the basis of his construction experience. His duties are performed at the jobsite and he has little contact with the firm's other employees. We conclude that he is not a professional employee and that he lacks a sufficient community of interest to be included in the unit.

The Employer has a modelmaker who constructs architectural-study models of cardboard, clay, or styrofoam to assist in study of the design. He performs some drafting in connection with modelmaking and has also performed cabinet work for the Employer's office. He is located on a separate floor. Although the current modelmaker has a degree in business administration and has taken some architectural courses, they are apparently unrelated to his work and there is no educational requirement for the position. We find that he is not a professional employee and that he lacks a sufficient community of interest to be included in the unit.

From time to time the Employer enters into joint ventures with other architectural firms, and employees from both firms may work together in a separate office or in the office of one of the employers in the joint venture. At the present time, the Employer has one employee of another employer working in its office on a joint venture. Since this employee is not an employee of the Employer here, he is excluded from the unit. The Employer currently has no employees of its own working elsewhere in a joint venture and therefore the issue of the unit placement of such employees is not before us.

The record indicates that the Employer at times may hire architectural students as office boys who, in addition to their other duties, may do drafting of the same level of difficulty as recent graduates. At the present time the Employer has no one in this category. It does, however, have a fifth-year architectural student working on a regular part-time basis cataloging its architectural specifications library and performing certain unrelated services for one of the principals of the firm. The record indicates that before working in the library he spent approximately 50 percent of his time drafting and that he would be returning to that work within about a month of the hearing. The Employer would include him in the unit and the Petitioner would exclude him. We shall permit him to vote subject to challenge.

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

All professional architectural employees of the Employer, excluding principals, the chief architect, the model maker, administrative assistants, the controller, switchboard operators, secretaries,

office clerical employees, office boys who are not architectural students, guards and supervisors as defined in the Act.

[Direction of Election⁴ omitted from publication.]

⁴ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236; *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed

by the Employer with the Regional Director for Region 20 within 7 days of the date of this Decision and Direction of Election. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.