

Westinghouse Electric Corporation and Chicago Westinghouse Employees Association, affiliated with the Federation of Westinghouse Independent Salaried Unions, Petitioner. Case 13-RC-12805

September 6, 1973

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MILLER AND MEMBERS KENNEDY
AND PENELLO

On November 24, 1972, the Regional Director for Region 13 issued a Decision and Direction of Election in the above-entitled proceeding, wherein he directed a self-determination election in a voting group composed of product line administrators (PLA's) and a consulting engineer at the Employer's Chicago, Illinois, facility to determine whether these employees desire inclusion in the clerical and technical unit represented by the Petitioner. 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 of the Regional Director's Decision on the ground, *inter alia*, that the Regional Director departed from officially reported Board precedent in finding that the PLA's and the consulting engineer are not professional, supervisory, or managerial employees. The Petitioner filed an opposition thereto.

By telegraphic order dated January 31, 1973, the National Labor Relations Board granted the Employer's request for review and stayed the election pending decision on review. Thereafter, the Employer and the Petitioner filed briefs on review.

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

The Board has considered the entire record in this proceeding with respect to the issues under review, including the briefs on review, and makes the following findings:

As indicated above, the Regional Director, in accord with Petitioner's primary request, directed a self-determination election among the PLA's and the consulting engineer at the Employer's Chicago facility, finding them not to be professional, supervisory, or managerial employees. The Employer contends on review that the petition herein should be dismissed because the PLA's and the consulting engineer are professional, supervisory, and/or managerial employees.

The Employer is engaged in the manufacture of low voltage industrial equipment, primarily motor control

centers, and other electrical equipment at its Chicago facility. In April 1967, pursuant to a reorganization of the Chicago facility, the positions of PLA and consulting engineer were created.

The PLA's function begins with the negotiation of an order. Generally, requests for bids and bid information consisting of customer requirements, including specifications and occasionally diagrams, come to the PLA by mail from the district sales office, which makes initial customer contacts. The PLA reviews the information, analyzing the customer requirements and interpreting such in terms of the Employer's equipment. Occasionally, the PLA requests further information from the district office. The PLA prices the job after completing this interpretive phase. In so doing, the PLA refers to a published price list for the basic equipment found in all motor control centers and for the extras. By this process the PLA reaches a total list price, which, however, is not the usual price quoted to the customer. The PLA applies to the total list price a "multiplier" in order to set the price to be quoted to the customer. The range of multipliers is from a low of .35 to a high of approximately .75. On the high side of this range is a published book multiplier, which is normally used in noncompetitive situations, in particular, on match and lineup equipment going into the customer's existing Westinghouse equipment or additions to the customer's Westinghouse equipment. Most PLA's seldom use the book multiplier, perhaps quoting it in one out of every 30 or 40 negotiations. On the other end of the range is a floor multiplier below which a PLA may not quote without discussion with his supervisor. The floor multiplier has changed only two or three times over the past several years.

Which multiplier the PLA chooses to apply to the list price depends on a variety of factors, including competition, market conditions, plant loading (amount of business in the plant at the given time), complexity of the job, and consideration as to any future business with the particular customer. Within the specified range, the PLA is free to apply the multiplier which in his discretion is in the best interests of the Employer, except that on orders over \$100,000 volume the PLA must get advance approval from his supervisor. On occasion, without consulting his supervisor, the PLA has applied a multiplier which does not permit the Employer to make a profit on the job, usually in areas in which the Employer has not competed previously or on jobs involving experimental products. After the price has been thus set, the district sales office submits the quote to the customer. On occasion the district sales office disagrees with the chosen multiplier and contacts the PLA to try to persuade him to use a lower multiplier. If the district sales

representative is unsuccessful, he may appeal to the PLA's supervisor or the product line manager, both of whom have authority to change the multiplier. During any period of time the PLA, on average, may be involved in 5 to 10 price negotiations per week and have numerous open negotiations waiting to be closed. Each PLA submits two types of reports; one is a weekly negotiation report and the other is a monthly commercial report. The weekly report sets forth the value of the jobs and the chosen multipliers. At times the PLA's supervisor, after examining the weekly report, may discuss with the particular PLA his choice of multipliers. The monthly commercial operations report sets forth significant negotiations conducted by the PLA during the past month, significant orders received, significant orders lost, and why such orders were lost, including relevant market information.

During the negotiation process the PLA may draw schematics, which are basic diagrams of the components of a motor control center, on the basis of which order technicians later draft the formal drawings.

When the order comes in, the PLA checks the order to insure that anything contained in the specifications is included in the order. Thereafter the PLA schedules the manufacture of the product to meet a shipping date. To aid the PLA in scheduling, the Employer has a prepared manual of lead times for processing and assembling the various components. These lead times are guide lines only; the customer's request is the prime criterion in determining when the jobs will be shipped. If no customer request as to shipping date is specified, the PLA schedules the job by lead times. In exercising this scheduling function, the PLA does not have any authority or responsibility to decide the order in which products will be manufactured; he does not have authority over any foreman or workman to require work on one job in preference to another. If the PLA requires a particular order of performance, he can have such done through his supervisor.

Thereafter the PLA directs order technicians in his group to perform the necessary drafting portions of the order. The PLA himself does no drafting. When the order technician finishes his drawings, he gives them to the PLA for the latter's approval and signature, without which the drawings may not go to production. If the PLA is not satisfied with the drawings, he gives them back to the order technician to redo.

The PLA, or the order technician at the PLA's direction, prepares an advance material list, which is a written list of those component materials not stocked in the Chicago plant, or needed in unusual quantities over and above the normally stocked materials. This list is submitted to the purchasing department to gain a lead time in ordering required materials. The purchasing department, which has no authority to change

the PLA's material orders, prepares a written purchase order to be sent to the supplier. The authority of the PLA in preparing the advance material list extends only to making a factual determination of materials required for the particular job; in general the PLA has no authority to order extra materials.

The PLA does not have any responsibility to follow the production in the shop except to ascertain its status if the customer inquires. When the order is ready to be shipped, the PLA checks the billing, which requires him to compare the price he has established against the general order price to insure that there are no additional moneys involved.

Once the order is shipped, it is generally out of the PLA's hands. On occasion, prior to shipment, a customer may request changes in the order. The PLA has the right to accept the change or to reject it. However, the PLA generally follows the policy of accepting all change orders, assuming the customer is willing to pay for the change, as long as it is reasonably possible to do so, which will depend upon how far along in the manufacturing process the apparatus has passed and how complex the change. The PLA also has authority to give credit on returned materials up to \$500, which limit delineates minor and major customer adjustments.

As noted earlier, simultaneously with the creation of the PLA position, the Employer created the position of consulting engineer, which is currently filled by one employee. The consulting engineer provides engineering expertise on very complex types of orders and orders requiring engineering effort over an extended period of time. The consulting engineer spends approximately 90 percent of his time performing duties very similar to PLA duties, except that he handles larger orders, over \$200,000, and orders expected to extend over a long period of time. As with PLA's, this consulting engineer has a group of order technicians working with him. The consulting engineer also handles overflow negotiations when the PLA's are busy and substitutes for PLA's who are on vacation or ill.

At times, PLA's may be required to do traveling for an engineering meeting with a customer or a visit to the customer's plant or for a product presentation. The latter is a program put on for a customer or the sales office to outline the features or benefits of the Employer's product compared to that of a competitor; it is essentially a "sales pitch." PLA's also attend and conduct classes for marketing seminars at Buffalo headquarters several times per year. Order technicians do no traveling nor do they attend or participate in the seminars. When traveling, PLA's are on the Employer's expense account similar to management personnel, including entertainment of customers. PLA's also attend marketing meetings in Buffalo and

staff meetings at the Chicago facility, not attended by order technicians. At staff meetings, the plant manager and managers responsible to him and the PLA's immediate supervisor are in attendance. At such meetings, billings, profits, and business projections are discussed.

It is clear from this evidence that the PLA's and the consulting engineer exercise wide discretion in determining the price of products. While the supervisor of the PLA's and the consulting engineer review their price determinations on a weekly basis, this review does not affect those prices but serves only to assist them in setting prices in the future. We find, therefore, that the PLA's and the consulting engineer are managerial employees and, as such, may not be added to the Petitioner's existing unit of clerical and technical employees.¹ Although the Petitioner indicated, in the

alternative, a desire to represent PLA's in a separate unit, the record, in our opinion, is inadequate to enable us to determine whether the PLA's and the consulting engineer as managerial employees may constitute a separate appropriate unit, apart from other unrepresented employees.²

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

² Although not critical to our decision to dismiss the petition herein, we find no basis for reversing the Regional Director's other findings under review. In *Westinghouse Electric Corporation*, 144 NLRB 1296, we found employees in similar classifications not to be professionals. We therefore affirm the Regional Director's findings that they are not professional employees as defined in the Act. As our review of the record satisfies us that the disputed employees do not exercise independent judgment in making assignments of work to order technicians, we also affirm the Regional Director's finding that they are not supervisors as defined in the Act.

¹ See *CF & I Steel Corporation*, 196 NLRB 683