

Southern Maryland Electric Cooperative, Inc. and International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. Case 5-UC-49

September 30, 1975

DECISION ON REVIEW AND ORDER

BY CHAIRMAN MURPHY AND MEMBERS FANNING
AND PENELLO

On May 29, 1974, the Regional Director for Region 5 issued a Decision and Clarification of Bargaining Unit in the above-entitled proceeding in which he clarified the existing office clerical unit at the Employer's facilities in Hughesville, Hollywood, White Plains, and Prince Frederick, Maryland, to include five department secretaries. 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 that he departed from officially reported Board precedent and made findings of fact which are clearly erroneous on the record.

By telegraphic order dated July 8, 1974, as corrected July 19, 1974, the request for review was granted in certain respects, as indicated below. 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 case with respect to the issues under review, including the briefs on review filed by the parties, and makes the following findings:

The Employer is engaged in the business of distributing electric power in the southern Maryland area. In 1969 in Case 5-RC-7081, the Petitioner was certified as the exclusive bargaining representative of the employees in the following unit:

All office clerical employees, including engineer assistant, janitor, head machine operator, and chief accounting clerk employed by the Employer at its Hughesville, Hollywood, White Plains, and Prince Frederick, Maryland, facilities; excluding all confidential employees, professional employees, guards, watchmen, and supervisors as defined in the Act, as amended.

In November 1973 the Employer established the new classification of department secretary. Thereafter, five unit employees assumed this classification.

At the hearing, the Employer contended that these employees were supervisory, managerial, and/or confidential and should therefore be excluded from the unit. The Petitioner contended that these employees continued to perform essentially the same functions that they had previously performed as stenographer-clerks and therefore they, along with the new job classification, should be included in the certified unit. The Regional Director found merit in the Petitioner's contention and concluded that the department secretaries were not supervisory, managerial, or confidential personnel. He, therefore, included them in the unit. The grant of review was limited to the issue of whether or not the department secretaries were supervisors or confidential employees.

On review, the Petitioner asserts that the duties of the five employees have not substantially changed and that unit members perform some or all of the duties which have been outlined as the duties of the department secretaries. The Employer, however, asserts that four of the department secretaries, Rollins, Joy, Davis, and Burroughs, are supervisors since they have the authority to hire employees, to reassign employees and to make effective recommendations regarding employee status. The Employer also contends that all five, including the remaining department secretary, Mattingly, should be excluded from the unit because they perform confidential clerical and secretarial functions for department heads who engage in the formulation, determination, and effectuation of management policies in the field of labor relations. For reasons set forth below, we agree with the Employer that these five individuals should be excluded.

As set forth in the Regional Director's decision, the Employer has designated five individuals as department secretaries.¹ They include Joan Rollins and Beulah Joy, secretaries to the district superintendents of the Charles and St. Mary's County districts respectively; Liza Davis, secretary to the chief engineer; Patricia Burroughs, secretary to the director of office services; and Elaine Mattingly, secretary to the director of public and personnel relations. Prior to assuming the job of department secretary, these individuals were classified as stenographer-clerks and were included in the unit.

The record reveals that the Employer decided to establish the new classification to aid the department heads who were becoming heavily burdened with administrative duties and paperwork, involving personnel and labor relations matters of a confidential nature, which it felt could not be entrusted to unit

¹ A sixth department secretary for the district superintendent at the Calvert County office had not been named at the time of the hearing.

members.² At the time that the incumbents were interviewed they were told that they would be handling matters concerning the Union, labor negotiations, employee appraisals, and salaried personnel. They were also told that they would be responsible for supervising and directing the work of the clerk-typists that would be assigned to assist them, and for making recommendations for salary increases and job reclassifications. Upon assuming the positions, they became salaried employees and they are paid approximately \$900 per year more in wages than they received as stenographer-clerks. They were also told that they would be out of the bargaining unit.

The record reveals that, in addition to performing essentially the same functions that they performed as stenographer-clerks, the department secretaries, with the exception of Mattingly, have been endowed with, and have exercised, supervisory functions.

Thus, Rollins testified that she now attends supervisors' meetings and independently assigns and reviews the work of the unit employee under her. This unit employee was assigned to Rollins after Rollins agreed that the employee was qualified to help her. Rollins also stated that the unit employee reports directly to her for time off and that she makes adjustments for the employee's sick time. Rollins testified that on one occasions she permitted the employee to leave work 25 minutes early.

Joy testified that she has one clerk-typist assigned to assist her in her duties. She stated that she assigns work to this employee and is responsible for approving her leave and overtime. Joy also testified that she has let this employee go home early without consulting anyone.

Davis testified that she, along with her department head, interviewed several employees who were being considered to fill the position of clerk-typist under her. Consistent with Davis' recommendation, an employee was placed in this position. However, at the time of the hearing, this employee had not yet assumed her new duties. Davis testified that she would be responsible for scheduling this employee's work, overtime, and time off. She also stated that she would have the authority to permit this employee to leave work early. The record also reveals that Joy effectively recommended that a certain employee, out of a number of applicants, be upgraded to the job of engineering clerk.

Burroughs testified that she selected and arranged

for several applicants to interview for a position under her. She stated that with the consultation of her department head, who interviewed the applicants, the choice was narrowed to two applicants. She thereafter selected one of the applicants who was hired as a probationary employee. Subsequently, Burroughs made an appraisal of this employee and effectively recommended that she be put on a permanent status before the end of the normal probationary period. In March 1974 another employee was assigned to work under Burroughs' supervision. Burroughs stated that she has the authority to assign work and grant time off. In one instance she denied a request for time off by one of the employees under her because "the workload was heavy."³ She also stated that she independently authorizes overtime and makes recommendations with respect to sick leave in situations where the employee has exhausted her sick leave under the collective-bargaining agreement. Burroughs testified that, while she has criticized the two employees, she has never disciplined them. She stated that if she thought disciplinary action was necessary she would discuss the matter with her department head and make a recommendation to him.

Upon review of the entire record we find that Rollins, Joy, Davis, and Burroughs have the authority effectively to recommend the hire of employees, and to assign and oversee their work. We conclude they have the authority to act as, and have actually exercised the authority of, supervisors. Accordingly, we shall exclude them from the unit.⁴

Mattingly is a department secretary for Robert E. Mitchell, the director of public and personnel relations.⁵ This new department was created in December 1973. The Employer contends that she is a confidential employee because she serves in a confidential capacity to Mitchell.

Mitchell testified that, *inter alia*, he deals in the "areas of personnel . . . job related problems, union related problems . . . [and] problems that exist in management categories . . . dealing with . . . other superintendents and the union and personnel-related problems, counseling with them . . ." Thus, Mitchell has discussed grievances with district superintendents and has advised them on what positions to take in response to grievances. He has taken part in discussions with the Employer's general manager and the board of directors' labor committee concerning

² The Employer admits in its brief on review that unit personnel were "occasionally" relied on for typing and filing "labor relations-sensitive material." The Employer states, however, that the classification of department secretary was created, in part, to alleviate this system which "required the department head or district superintendent personally to communicate or record the confidential information, or else rely on the judgment, discretion and divided loyalty of an employee within the bargaining unit."

³ Following this incident, Burroughs stated that she informed both employees that in the future she would require a prior notice of 2 days in the case of annual leave and that if such notice were not given the request could be denied depending on the workload and the circumstances at the time.

⁴ In view of our decision herein, we find it unnecessary to decide whether or not these individuals are confidential employees.

⁵ She also works for the job training and safety instructor and for the member home services advisor who are both supervised by Mitchell.

contract negotiations. During these discussions, alternative positions of the Company and the Union were discussed. He was also involved in the discussions which led to the creation of the classification of department secretary. He has been involved in discussions with company officials on the grievance procedure resulting from alleged violations of certain terms of the contract relating to promotions and vacancies. He has also discussed with department heads and other management officials certain grievances which arose prior to the time he became the director of the department.

While Mattingly's current duties are basically the same as they were before, she has, since becoming a department secretary, been present and taken notes at "all discussions . . . which [dealt with] union related problems, grievances, the contract, etc.," including a discussion of the issues involved in this proceeding.⁶ She also has access to all files in the personnel office and the personnel files in the general manager's office.

Mattingly testified that her duties include opening the mail, writing correspondence, answering the phones, and taking dictation. She further testified, consistent with Mitchell's testimony, that she has sat

in on discussions relating to personnel and union matters, as well as discussions of the minutes of supervisors' monthly meetings.⁷ She was also told that her duties will include typing Mitchell's recommendations and proposals with respect to future collective-bargaining negotiations, grievances, and problems related to the Union.

Upon the basis of the entire record we find that Mattingly is a confidential secretary to Mitchell, who, the record shows, formulates, determines, and effectuates management policies in the field of labor relations.⁸ Therefore, we find that she is a confidential employee and we shall exclude her from the unit.

From the foregoing we conclude that the department secretary classification cannot properly be included in the bargaining unit. Accordingly, we shall clarify the unit to exclude the classification of department secretary.

ORDER

It is hereby ordered that the currently recognized bargaining unit be, and it hereby is, clarified to exclude the classification of department secretary.

⁷ The record reveals that, while these minutes were at one time available to some unit employees, they are not now available to unit employees.

⁸ *Moore-McCormack Lines, Incorporated*, 181 NLRB 510, 512-513 (1970), and cases cited in fn. 8 therein.

⁶ Employees who occupy jobs within the bargaining unit do not attend these meetings.