

West Chemical Products, Inc. and Office & Professional Employees International Union Local No. 8, AFL-CIO, Petitioner. Case 19-RC-7550

October 30, 1975

DECISION ON REVIEW

BY CHAIRMAN MURPHY AND MEMBERS
FANNING AND JENKINS

On June 17, 1975, the Regional Director for Region 19 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate a unit of office clerical employees at the Employer's northwest branch office in Seattle, Washington. 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, in failing to exclude the branch manager's secretary as a confidential employee, he departed from officially reported Board precedent. The Petitioner filed opposition thereto.

By telegraphic order dated July 17, 1975, the request for review was granted.

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 reviewed the entire record in this case with respect to the issue under review and makes the following findings:

The Employer seeks to exclude from the appropriate unit Roberta Walker on the basis that she performs work of a confidential nature for Branch Manager Ernest Mynar. The Regional Director concluded that although Mynar is engaged in the formulation, determination, and effectuation of management policies in the field of labor relations, his personal secretary is not a confidential employee as only a fraction of her duties involves work which is related to labor relations matters. The Employer asserts that the Regional Director's reliance on the quantum of confidential work performed is erroneous and creates a test of confidentiality which contravenes the Board's established policy. We find merit in the Employer's contention.

The Employer is engaged in the manufacture and sale of industrial and chemical products throughout the country and maintains its corporate headquarters

in New York City, New York. Mynar, as manager of the Employer's northwest branch, is in charge of all operations at the Seattle facility here involved. As found by the Regional Director, Mynar has the authority to determine wage rates, hours of work, and break periods for all unrepresented employees, and to grant an employee additional vacation or sick leave in excess of that which is prescribed by the Employer's companywide policy. Mynar is also responsible for reviewing and evaluating contract demands presented by the unions which currently represent the Employer's organized employees¹ and for submitting his recommendations by mail or telephone to Maurice Sterman, the Employer's labor relations director in New York. While Sterman alone has authority to bind the Employer, Mynar assists him in the periodic negotiations for the established bargaining units at the plant and would presumably do the same in the event the Petitioner is certified for the office clerical unit here sought.

Walker performs a wide range of clerical duties in her capacity as Mynar's personal secretary, including typing various sales reports, filing, answering telephones, opening mail, and serving as a receptionist. Unlike the other office clerical employees who are supervised by Jack Crow, the operations manager, Walker reports directly to Mynar. While much of her work involves matters other than labor relations, the record establishes that she bears the title of confidential secretary and has on several occasions typed memoranda which were directly related to Mynar's responsibilities with regard to labor relations matters. For example, she has typed Mynar's correspondence to Sterman² and the Employer's counsel concerning the petition involved in the instant case. In addition, Walker types notes taken by Mynar during his frequent telephone conversations with Sterman concerning labor relations matters. On those occasions when Sterman visits the northwest branch to conduct negotiations, Walker is available for typing any documents prepared by him for use in negotiations. Finally, there is evidence that Walker has typed termination letters sent to salesmen and that she was present on at least one occasion when management discussed the desirability of terminating a particular salesman.

Upon the foregoing, we conclude that Walker acts in a confidential capacity to persons involved in formulating, determining, and effectuating the Em-

¹ There are at present three bargaining units, one, of warehouse employees, another, of service employees at the Seattle location; and a third, also of service employees assigned to the Employer's Portland office which is administratively part of the northwest branch.

² The record indicates that correspondence concerning contract demands, which has on occasion been typed by Walker, may also be typed by Crow who maintains the file containing the Employer's collective-bargaining agreements and related materials.

ployer's labor relations policies, and that she is a confidential employee as defined by the Board.³ We view as not controlling the fact that the amount of time she devotes to her duties as a confidential employee may comprise but a small percentage of her total worktime. It is sufficient to constitute her as a confidential employee that she is expected to—and in fact does—act in that capacity in the normal course of her duties.⁴ Accordingly, as we have

concluded that Walker is a confidential employee, she is excluded from the unit found appropriate.

The case is hereby remanded to the Regional Director for Region 19 for the purpose of conducting an election pursuant to his Decision and Direction of Election, as modified herein, except that the payroll period for determining eligibility shall be that immediately preceding the date of this Decision on Review. [*Excelsior* footnote omitted from publication.]

³ *The B. F. Goodrich Company*, 115 NLRB 722 (1956).

⁴ *Bechtel Incorporated*, 215 NLRB No. 126 (1975).