

Aeronca, Inc. and District Lodge 13 of the International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 9-RC-10769

November 4, 1975

DECISION ON REVIEW

BY CHAIRMAN MURPHY AND MEMBERS
FANNING AND JENKINS

On January 23, 1975, the Regional Director for Region 9 issued a Decision and Direction of Election in the above-entitled proceeding in which he directed an election in the Petitioner's requested unit of office clerical and technical employees, rejecting the Employer's contentions that certain classifications should be excluded on the grounds that they are supervisory, managerial, professional, or confidential. 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 grounds, *inter alia*, that in resolving various unit placement issues he made erroneous findings as to substantial factual issues and departed from officially reported precedent.

The National Labor Relations Board, by telegraphic order dated March 5, 1975, granted the request for review and stayed the election pending decision 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 and makes the following findings:

The Employer, an Ohio corporation, is engaged in the manufacture of component parts for various types of aircraft at its facilities located at Middletown, Ohio, where it employs approximately 80 employees in the unit found appropriate. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

The parties agreed that a unit of all office clerical and technical employees employed by the Employer is appropriate for the purposes of collective bargaining. We granted review of the Regional Director's determinations with regard to the managerial, supervisory, confidential, and/or professional status of the following categories of employees:

Senior Systems Analyst

The Employer disputes the Regional Director's finding that the senior systems analyst is not a professional, managerial, and/or confidential employee.

Pitzer, the sole employee in this classification, works in the systems and programming department under the supervision of the director of information services. He earns approximately \$1,500 per month and shares a secretary with his supervisor. Pitzer has had some college education. More significantly, he has also taken all of the courses offered by IBM and has extensive on-the-job training in computerization. The courses he has taken cover virtually every aspect of data processing systems and programming. He holds a professional certificate in the Association for Systems Managers which requires 2 years of college and 5 years in the data processing field to qualify for membership. In his work Pitzer exercises full discretion in the design of computer systems for the solution of complicated problems. As he is engaged in work predominantly intellectual and varied in character involving the exercise of discretion and judgment and requiring knowledge of an advanced type, we conclude that he is a professional employee as defined in the Act. Accordingly, we shall exclude the senior systems analyst from the agreed unit.¹

Accountants

The Regional Director rejected the Employer's contentions that its budget accountants-senior, cost accountant-senior, general accountant-senior, and cost analyst are professional and/or managerial employees.

As found by the Regional Director, Senior Budget Accountants Pearce and Schafer and Senior Cost Accountant Dowling work in the accounting office under the manager of cost accounting. Senior General Accountant Wimmers works in the same office and is directly responsible to the manager of general accounting. All four of these accountants have at least a degree in accounting. As noted by the Regional Director, they are not certified public accountants (CPA's) and do not prepare the Employer's income tax returns. The budget accountants perform budget and audit functions, prepare profit-and-loss statements, and make projections of cash flow. The cost accountant prepares analytical data which define the cost of parts and products manufactured by the Employer; he makes cost computations and provides cost data and information to other departments; he also works with the budget accountants in the preparation of the various budgets. The

¹ In view of this finding we do not reach the issues raised as to his status

as a managerial and/or confidential employee.

general accountant is responsible for maintaining the Employer's books and ledgers and makes all accounting entries which reflect its financial standing at the end of each accounting period; he also audits travel expenses incurred by employees. All four of these disputed accountants apply established accounting principles in the performance of their duties. There is no indication in the record that in the performance of their accounting responsibilities they have frequent access to outside accounting firms.

We conclude that these accountants exercise a degree of independent judgment in carrying out their accounting responsibilities which warrants a finding that they are professional employees within the meaning of Section 2(12) of the Act. Contrary to the Regional Director's suggestion, their status as professional employees turns not on whether they are CPA's or prepare tax returns, but rather on the degree of judgment required of them in their work in applying their knowledge of accounting principles acquired through prolonged course of study at specialized schools of accounting. We are satisfied on the record before us that the accountants here involved meet the latter test.² For this reason, they are excluded from the unit.³

The record supports the Regional Director's findings as to Cost Analyst Bell. He works in the general office area and reports to the manager of cost control. Although the Employer requires a college degree for the position, the degree need not be in any particular specialization. Bell prepares shop budgets and projects tool and labor costs utilizing data and information furnished by production control and other sources. The budgets he prepares are utilized by manufacturing and the cost department in projecting labor costs; and his cost projections are relied on by estimators in formulating their estimates of total costs of jobs on which the Employer plans to bid. We affirm the Regional Director's conclusion that Bell is neither a professional nor a managerial employee and that he is included in the unit.

Planners

The Regional Director included project planners and planners as technical employees, finding no merit in the Employer's contentions they should be excluded as managerial and/or supervisory employees. There are at present six project planners and three planners. All have basically the same duties but the planners are less experienced and perform fewer functions than the project planners.

After the Employer receives an order it is the responsibility of the project planners to establish the manufacturing plans. They do this on the basis of the engineering drawings and specifications and, of course, their familiarity with the Employer's manufacturing procedures. Generally speaking, after a project planner writes up his manufacturing sequence, his work is not reviewed by anyone. However, if there are problems in the execution of the plan on the manufacturing floor itself, any controversy that might arise has to be solved by conceded managerial personnel. Such would be the case, for instance, if a line or assembly supervisor refused to produce a part in accord with the plan prepared by a project planner. The project planner makes him aware of the potential hazards of his not following the plan. If the project planner does not get acceptable results, he will normally report the matter to the supervisor of all the line supervisors. Occasionally, divergent views are resolved by appeal to the vice president of manufacturing.

Also, as part of their duties, project planners constantly monitor the different sequences they have assigned. In the day-to-day operations there are always engineering changes, project changes, and manufacturing changes in which the project planners are involved. There are also daily cost production meetings. Project planners also attend meetings at which decisions regarding different projects are taken. It is not clear from the record who the participants in the meetings are or who makes the day-to-day minor decisions with respect to a project, but, as stated above, conflicts are resolved by the vice president of manufacturing.

Many make-or-buy decisions are initiated by the project planning department. The recommendations of the planners are based on their knowledge of the Employer's existing manufacturing capabilities. However, the chairman of the make-or-buy committee makes the final decision as to these matters.

There are no formal higher educational requirements for the positions of project planner and planner. Although the individuals involved have acquired a great deal of knowledge of manufacturing techniques as a result of their experience, they have not undergone training at the college or university level.

Clearly, any directions they give are channeled through line or assembly supervisors. And in our view, the judgments they make in the formulation of manufacturing plans or make-or-buy recommendations do not involve exercise of the degree of

managerial employees.

Member Fanning would include these accountants in the unit. See *General Dynamics Corp.*, 213 NLRB 851, fn. 29 (1974).

² See *CF & I Steel Corporation*, 196 NLRB 470 (1972). Cases cited by the Regional Director as support for his contrary conclusion are, in our opinion, factually distinguishable.

³ We need not, and do not, therefore, decide whether or not they are

discretion on behalf of the Employer which would support a finding of managerial status. Accordingly, we affirm the Regional Director's determinations that they are neither supervisory nor managerial employees, and we include them in the unit.⁴

Estimators

The Regional Director rejected the Employer's contentions that the estimators are confidential, managerial, and/or supervisory employees. Estimators prepare projections of the cost of performing contracts on which the Employer intends to bid, including the expected profit. The Employer utilizes these estimates in quoting prices to potential customers. Estimators have periodic contact with the director of industrial relations in order to compare notes on anticipated wage increases which will affect the cost of Employer's products. When the estimators go to the director of industrial relations to get his best projection of the labor rate in future years, the estimator is given the figure that the Company expects to negotiate with a union, including the projected cost-of-living allowance and the labor rate for an appropriate period of time. Estimators also assist in negotiating new contracts or add-on contracts with customers. The estimator participates as a member of a contracts team which also includes personnel from contracts, finance, and the director of pricing and estimating. The person assigned from the contracts department heads the team, and the team has authority to close a contract between Employer and the customer.

As the estimators are instrumental in setting prices and assist in negotiating contracts with customers, we find them to be managerial employees.⁵ We shall therefore exclude them from the unit.

Engineers

The Regional Director found Project Tool Liaison Engineers McNamee and Morris, Project Tool Engineer Martin, and Plant Layout Engineer Wright to be technical employees, rejecting the Employer's contentions that they are professional, managerial, and/or supervisory employees.

The disputed tool engineers are assigned to major projects and must work closely with project planners in determining what type of tools will be needed to produce a particular line. They also help determine whether the necessary tooling to finish a product can

be manufactured by the Employer or must be purchased from the outside. When a tool engineer feels that a defective tool can create a problem on the production line he sends it back to the toolroom where a toolmaker, under his supervision, will make the corrections to the tool. Tool engineers often supervise more than one toolmaker. In carrying out their corrections tool engineers review tool drawings with a toolmaker and explain what corrections have to be made, and even how to make them in some instances. Toolmakers give tool engineers daily reports on the progress of the corrections. In case the correction has to be accomplished swiftly the tool engineer can assign overtime. Toolmakers are assigned to tool engineers for varying periods of time and there have been cases where a toolmaker has been assigned to a tool engineer for approximately 5 months.

In addition to directing the work of toolmakers the tool engineer has authority to make effective recommendations to the regular supervisor of the toolmaker. Tool engineers make recommendations as to which men they would like to have work on certain projects and as to which men should be reassigned from one project to another because of faulty performance.

The plant layout engineer is involved primarily in plant rearrangements ranging from minor to complex. The industrial engineering department initiates the changes and the plant layout engineer is responsible for working out the details. The plant layout engineer is given a project and certain parameters to work within and it is up to him to come up with an effective plan.

This engineer schedules the work of the people who are physically implementing his plans. He provides them with direction and guidance. He sets up a time schedule so that the personnel involved know what to expect at any given time, and tells the different crafts where to go, how to go about doing a certain piece of work, and when to go to work. He stays with the workmen on a given project to see that it is carried out satisfactorily. In directing employees, the plant layout engineer has to use independent judgment as to what might or might not work at a particular time.

Contrary to the Regional Director, we conclude that the tool engineers have authority in the interest of the Employer to effectively recommend the transfer and assignment of employees and that they and the plant layout engineer responsibly direct

⁴ See *Flintkote Company*, 217 NLRB No. 85 (1975), where project engineers, who made capital expenditure studies and recommended decisions based on return on investment determinations, were found not to be managerial because they did not formulate or effectuate management policies and because their recommendations had to be approved by management officials. See also *Lockheed-California Company, a Division of Lockheed Aircraft Corporation*, 217 NLRB No. 93 (1975).

⁵ See *General Dynamics Corporation, Convair Aerospace Division, San Diego Operations*, 213 NLRB 851 (1974). In view of this finding, we need not, and do not, reach the issues raised as to whether or not they are confidential or supervisory employees.

Member Fanning would include these estimators in the unit. See *General Dynamics Corp.*, *supra* at fn. 31

employees in their work. Accordingly, we find these engineers to be supervisors as defined in the Act and we shall exclude them from the unit.⁶

Quality Control Engineer and Method Planners

The Regional Director found no merit in the Employer's contentions that Quality Control Engineer Wise is a professional and/or managerial employee and that Quality Control Method Planner-Senior Miller and Quality Control Method Planner Cobb are professional, managerial, and/or supervisory employees; and he included them in the unit as technical employees.

At the time a job is estimated by the Employer, the quality control engineer represents quality control in estimating the method of inspection anticipated on new programs, the type of equipment necessary, and the amount of time quality control procedures will take. After the Employer receives a contract, Quality Control Engineer Wise works with all departments in implementing inspection procedures. He analyzes various components and determines the quality needed for proper functioning. He works with customer representatives located at the plant to assure that quality control meets with their approval. Wise has only 2 years of college and has gained experience mainly on the job. He also has experience in sheetmetal, brazing, and tooling. As a special project, he is involved in research and development aspects of brazing.

Quality control method planners interpret specifications to determine quality criteria the Employer should establish to achieve satisfactory contract performance and at what point in the manufacturing process the various inspections should take place. They work closely with supervisors in the tooling department and other production areas to see that quality control inspections are carried out. They also work with representatives of customers located at the plant, and they define quality requirements for parts manufactured for the Employer by outside firms. They do not have any college training and their skills have been primarily developed by on-the-job experience. Both have an inspection background and are familiar with the various quality control procedures.

After a project planner lays out an operation and a production flow sequence, the quality control meth-

od planner superimposes on that plan inspection points. It is, however, a production supervisor who supervises production employees to ensure that the work is performed in accordance with the plan. The quality control method planners do not have any employees reporting to them.

On the basis of our review of the record, we affirm the Regional Director's findings as to the above quality control personnel.⁷ Accordingly, they are included in the unit.

Industrial Nurse

The Regional Director included Industrial Nurse Clifton in the unit, rejecting the Employer's contentions that she is a professional, managerial, and/or confidential employee and that her interests conflict with those of unit employees.

Industrial Nurse Clifton administers first aid, dispenses nonprescription medication, and can grant employees medical excuses to leave work in case of illness. She is neither a registered nurse nor a licensed practical nurse. The only training she has received in the medical area is a number of Red Cross courses. She does not make diagnoses or perform other than routine medical services. Clifton also maintains medical records of employees; handles the paperwork involved in the processing of workmen's compensation claims; administers the Employer's medical insurance program; and maintains records required by the Occupational Safety and Health Act. In the performance of her duties she is responsible to the personnel manager. Where in her opinion an employee is malingering or a claim filed by an employee is not valid she so advises the appropriate persons.

Upon the foregoing and the entire record, we affirm the Regional Director's above findings with respect to Clifton. Clearly, she is not a professional employee, and her relationship to the personnel manager is not such as to warrant her exclusion from the unit as a confidential employee.⁸ Nor does she exercise the degree of discretion on behalf of the Employer in processing various employee claims to support a finding that she is either managerial or otherwise so closely allied with the Employer's management as to require her exclusion from the unit.⁹

method planners to have more of a community of interest with those who formulate, determine, and implement the Employer's policies than with other unit employees and would accordingly exclude them as managerial. See *United States Postal Service*, 210 NLRB 477, fn. 4, second par. (1974) where similar classifications of employees were excluded by the Board on that ground.

⁸ See *Ladish Co.*, 178 NLRB 90 (1969).

⁹ See *Swift & Company*, 129 NLRB 1391, 1393 (1961).

⁶ We therefore need not, and do not, resolve the issues raised regarding their status as managerial and/or professional employees

⁷ We are satisfied that the case of *General Dynamics, supra*, insofar as the classification of the senior quality assurance specialists there involved was found managerial, is clearly distinguishable on its facts. There, unlike the instant case, the disputed employees, in conjunction with their quality control responsibilities, made managerial decisions as to levels of manpower required for a project.

Chairman Murphy would find these quality assurance engineers and

Other Alleged Confidential Employees

The Regional Director found, contrary to the Employer, that the following employees are not confidential employees: Wilson, *secretary to the vice president of engineering*; Bailey, *secretary to the director of contracts*; the *secretary to the director of information services (office management clerk)*; ¹⁰ Hess, *PBX operator*; and Sample, *communications and mail clerk*.

As the record evidence is, in our opinion, insufficient to enable us to determine the issues raised as to the confidential employee status of secretaries Wilson and Bailey, we shall make no disposition of their unit placement at this time and permit them to vote in the election subject to challenge. We likewise make no ruling on the position of secretary to the director of information services, inasmuch as it was vacant on the hearing date. However, should it be filled at the time of the election, the incumbent shall be allowed to vote under challenge.

PBX Operator Hess and Communications and Mail Clerk Sample interchange duties. The duties of the PBX operator involve the placing of long distance and conference calls for management personnel in the course of which labor relations matters may be discussed; and the operation of the telex and TWX for the transmission of financial data and reports, sensitive information concerning customer bids and bidding procedures, purchasing and sales matters, financial status reports, and various labor relations matters. The communications and mail clerk also receives and sorts mail, and she makes certain that persons receiving classified materials have security clearances. She and the personnel manager are the only persons authorized to maintain classified materials files. The Employer states that in the event either of the communications employees is included in the unit and it were to bargain with the unit, the personnel manager would assign to some-

one outside the unit the duties of transmitting sensitive information. Such duties of filing and transmitting classified information do not render an employee confidential under our definition of the term.¹¹ We therefore affirm the Regional Director's findings as to Hess and Sample, and we include them in the unit.

Consistent with the foregoing, the description of the appropriate unit is modified as follows:

All office clerical and technical employees employed by the Employer at its facilities located at Middletown, Ohio, including the programmer-operator, the senior tabulator-machine operator, the numerical control (NC) programmer, the cost analyst, project planners, planners, the quality control method planner-senior, the quality control method planner, the quality control engineer, the loftsmen, the industrial nurse, the PBX operator, and the communications and mail clerk, but excluding all production and maintenance employees, the estimator, and all other managerial employees, the marketing coordinator, the industrial relations senior clerk typist, and all other confidential employees, the senior systems analyst, senior budget accountants, the senior cost accountant, the senior general accountant and all other professional employees, guards, project tool liaison engineers, project tool engineers, the plant lay-out engineer, and all other supervisors as defined in the Act.

Accordingly, the case is hereby remanded to the Regional Director 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 issuance of this decision. [*Excelsior* footnote omitted from publication.]

¹⁰ At the time of the hearing this position was vacant.

¹¹ *The B. F. Goodrich Company*, 115 NLRB 722 (1956).