

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 26**

**TEAMSTERS LOCAL 667**

Employer

and

**Case 26-RC-092292**

**UNITED STEELWORKERS INTERNATIONAL UNION<sup>1</sup>**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

The Employer, Teamsters Local 667, is a labor organization based in Memphis, Tennessee. The Employer engages in labor organizing and representing employees in collective bargaining with various employers. It employs two employees who perform clerical tasks at its office. The Petitioner, United Steelworkers International Union, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. Based on an amendment to the petition at the hearing, the Petitioner seeks to represent a unit of the two office clerical employees employed at the Employer's Memphis office. A hearing was conducted before a hearing officer of the Board and the Employer filed a post-hearing brief.

In its brief, the Employer takes the position that one of the two office clerical employees, Carrie Cross, is a confidential employee and should be excluded from the petitioned-for unit. The Employer also asserts that the petition should be dismissed because a one-person bargaining unit consisting of the other office

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<sup>1</sup> The Union's name is shown as amended at the hearing.

clerical employee, Marion Carson, is not appropriate. The Petitioner asserts that neither clerical employee is a confidential employee and that the petitioned-for unit, as amended, is appropriate.

At the hearing, the Petitioner called Cross and Carson to testify regarding their duties as clerical employees. The Employer called no witnesses. I have considered the evidence presented at the hearing, the Employer's brief, the relevant case law, and the positions of the parties. As discussed below, I find that Carrie Cross is not a confidential employee and the petitioned-for unit is appropriate. To provide a context for my decision and discussion of the issue, I will first present the facts of the case, set forth the applicable legal standards for determining whether an employee is a confidential employee, and then provide my legal analysis and conclusion.

### **I. FACTS**

Clerical employees Cross and Carson work with four other employees in the Employer's Memphis office. The parties stipulated to the exclusion of those four employees from the petitioned-for unit because they do not share a community of interest with the office clerical employees. Wayne Paimore is the local president, Ronnie Parkinson is the local secretary-treasurer, James Sproles is the recording secretary, and Michael McGowan is the business agent. Paimore, Parkinson, Sproles and McGowan participate in contract negotiations, process grievances and attend grievance hearings on behalf of the Employer. Cross and Carson do not participate in contract negotiations or discuss grievances with employers.

Cross is the Employer's bookkeeper, insurance and pension clerk, secretary and receptionist. Her responsibilities include answering the telephone, and managing the Employer's incoming and outgoing mail. She receives correspondence at the Employer's office which includes copies of discipline issued to individual employees. If employees meet with a business agent and the Employer decides to file a grievance, Cross forwards the completed grievance forms to employers within the required contractual time limits. Cross also responds to inquiries from individual employees regarding insurance and pension issues and contacts the insurance provider on behalf of the employee.

Cross' bookkeeping duties include preparing payroll checks for the Employer's employees and handling its accounts payable for items such as telephone and utility services. The bookkeeping system Cross uses requires a password for access which she does not share. At monthly meetings, Cross reviews the Employer's accounts with the Employer's executive board, which includes three trustees, the local vice-president, and Recording Secretary Sproles. Cross is not a member of the executive board, but prepares the documents that reflect the Employer's financial status for approval by the executive board. Cross attends executive board meetings in order to answer questions about specific items. Once the executive board approves the monthly financial report, Cross sends the records to the International Union.

Carson (the other office clerical) is the dues clerk and in that capacity generates the billing for membership dues and posts dues checks that come to the office. Carson also assists members with insurance and pension issues and

performs secretarial work such as typing letters and contract proposals. Carson does not perform bookkeeping work. Before Cross goes on vacation, she prints payroll checks and puts them in the safe. Carson does not have access to those checks.

Cross and Carson are hourly employees and work from 8:00 a.m. to 5:00 p.m., Monday through Friday. Their pay rate is modeled after the pay rates for clerical employees who are represented by the Teamsters Union, and outlined in contracts between the Teamsters Union and other employers. Pairmore, Parkinson, Sproles and McGowan are paid a salary and work flexible schedules. Cross keeps track of attendance for all six employees. She and Carson are allotted 12 sick days each year. The four salaried employees do not have a limit on their sick leave days. All six employees are provided with a separate office, as well as the same health insurance and pension benefits from the Employer. There are no assigned lunch times or break times and there is no employee handbook.

Cross is proficient with the Employer's computer and payroll systems, while the Employer's salaried employees are not proficient with either system. For that reason, Cross testified that if the Petitioner was certified as the bargaining representative of the clerical employees, and the parties entered into contract negotiations, either she or Carson would be assigned to type the Employer's contract proposals to the Petitioner. She also testified that those proposals would probably be prepared by Local President Pairmore. The Employer

provided no evidence which would describe the role Pairmore, or any other individual, plays in determining the Employer's labor relations policies.

## **II. APPLICABLE LEGAL STANDARD FOR CONFIDENTIAL EMPLOYEES**

Confidential employees are not specifically defined in the Act, but are excluded from bargaining units pursuant to Board policy. Over 50 years ago, the Board designated confidential employees as those who "assist, and act in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations." *B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956). Later, the Board set forth an alternative analysis, finding confidential employees maintained access to confidential information about anticipated changes that might result from collective bargaining. *Pullman Standard Division of Pullman, Inc.*, 214 NLRB 762, 762-763 (1974) (access to labor rates). The Supreme Court approved both the initial "labor nexus test" and the alternative test in *NLRB v. Hendricks Country Electrical Membership Corp.*, 454 U.S. 170, 188-189 (1981). In order to determine whether an employee is confidential, the appropriate analysis considers whether the employee closely works with an individual who decides and effectuates an employer's labor policy or whether the employee would acquire confidential information about potential bargaining matters.

The burden of establishing that an employee is a confidential employee rests with the party asserting that status. *Intermountain Electric Association*, 277 NLRB 1 (1985); *Crest Mark Packing*, 283 NLRB 999 (1987). The standard is

construed narrowly and the relevant factors are applied in the conjunctive. *Weyerhaeuser Co.*, 173 NLRB 1170 (1969), *B.F. Goodrich Co.*, supra.

### III. ANALYSIS

There is insufficient evidence to find that Carrie Cross is a confidential employee. In order for Cross to be a confidential employee pursuant to the labor nexus test, she must assist individuals who “formulate, determine and effectuate management policies with respect to labor relations.” *Hendricks Country Electrical Membership Corp.*, 454 U.S. at 188-189. Cross performs clerical tasks for the Employer, but there is no evidence that she acts in a confidential capacity to any individual who creates or effectuates the Employer’s labor policies. In fact, the record fails to identify which Employer official is responsible for the Employer’s personnel matters or formulating the Employer’s bargaining proposals or management strategy in bargaining. Based on the lack of evidence that Cross assists the Employer’s decision-maker for labor relations, Cross is not a confidential employee pursuant to the labor nexus test. Cf. *C & L Transport Co.*, 327 NLRB 408, 409 (1998) (confidential employee worked for manager who engaged in contract negotiations and suggested contract changes).

Even if Cross assisted a manager who formulated the Employer’s labor policies, she does not handle the type of confidential material that would exclude her from the bargaining unit. Cross handles the Employer’s mail and accounts payable, prepares its payroll checks, and forwards completed grievance forms to employers. While this general financial and business material may be private, it is unrelated to the Employer’s labor policies and her access to this information is not

relevant to the determination of whether she is a confidential employee. *Bakersfield Californian*, 316 NLRB 1211 (1995) (no labor nexus where secretary processed payroll, disciplinary and grievance matters).

Under the alternative analysis, the record reflects that Cross manages confidential financial information for the Employer. Cross attends monthly executive board meetings, but she does so in a ministerial capacity, in order to provide data and respond to inquiries. Although the Employer's executive board may discuss policies at these meetings, there is no evidence that Cross has access to confidential information regarding the Employer's personnel strategies or information that would be used in contract negotiations. *KOWB Radio*, 222 NLRB 530, 530-531 (1976) (bookkeeper with access to pay rates not confidential). The fact that an employee administers confidential financial information for an employer, without more, does not establish that the employee has access to information regarding its negotiating positions. *Dinkler-St. Charles Hotel*, 124 NLRB 1302 (1959); *Washington Post Company*, 254 NLRB 168, 197-198 (1981) (senior budget analyst, operating statements clerk, both found not confidential).

Also, even though Cross anticipates being assigned to type contract proposals that the Employer will submit to the Union if the Union is certified to represent the clerical employees, this task would not render her a confidential employee. The Board will not exclude an employee from a bargaining unit based on speculation as to what tasks they will perform in the future. *Southwestern Bell Telephone*, 222 NLRB 407 (1976). Furthermore, employees who merely type

contract proposals will not be excluded from the bargaining unit as confidential.

*Bakersfield Californian*, supra.

In its post-hearing brief, the Employer relies on *Firestone Synthetic Latex Co.*, 201 NLRB 347 (1973) and *National Cash Register Co.*, 168 NLRB 910 (1967) to support its contention that Cross is a confidential employee. However, these cases are distinguishable from the instant matter and fail to compel such a finding. Collectively, the alleged confidential employees in those cases, among other things, had access to employer data in preparation for contract negotiations, maintained files containing labor relations information, and prepared notes from which the employer's contract proposals were made. The record in this case is void of any of these facts.

Based on the above, there is insufficient evidence to support a finding that Carrie Cross is a confidential employee. Therefore, she will not be excluded from the unit.

#### **IV. CONCLUSIONS AND FINDINGS**

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner claims to represent certain employees of the Employer.

4. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All office clerical employees employed by the Employer at its Memphis, Tennessee office located at 796 East Brooks Road.

**EXCLUDED:** All other employees, guards and supervisors as defined in the Act.

#### **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Steelworkers International Union. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

##### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who

have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure 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 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of

sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **December 5, 2012**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website [www.nlr.gov](http://www.nlr.gov),<sup>2</sup> by mail, by hand or courier delivery, or by facsimile transmission at 901-544-0008. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

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<sup>2</sup> To file the eligibility list electronically, go to the Board's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by 5 p.m. EDT **December 12, 2012**.

The request may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov),<sup>3</sup> but may not be filed by facsimile.

**DATED:** November 28, 2012



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<sup>3</sup> To file the request for review electronically, go to the Board's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.