

Springhill Bank and Trust Company and Office and Professional Employees International Union, AFL-CIO, Petitioner. Case 15-UC-72

September 15, 1978

DECISION ON REVIEW AND ORDER

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

On December 29, 1977, the Acting Regional Director for Region 15 of the National Labor Relations Board issued a Decision and Order in the above-entitled proceeding in which he found that an assistant secretary employed at the Employer's Springhill, Louisiana, office was a confidential employee and was accordingly excluded from the existing office clerical unit. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Petitioner, Office and Professional Employees International Union, AFL-CIO, filed a timely request for review of the Acting Regional Director's decision on the ground, *inter alia*, that, in finding the assistant secretary to be a confidential employee who would be excluded from the existing unit, the Acting Regional Director departed from Board precedent.

By telegraphic order dated February 16, 1978, the Board granted the request for 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 is a Louisiana corporation engaged in the banking business with its main offices located in Springhill and Cullen, Louisiana. In 1970, in Case 15-RC-4428, the Petitioner was certified as the exclusive bargaining representative of the employees in the following unit:

All office clerical employees including tellers, head bookkeepers, bookkeepers, receptionist, proof operators, and secretaries at all of the Employer's locations in Springhill and Cullen, Louisiana, excluding confidential employees, professional employees, guards and/or watchmen and supervisors as defined in the Act.

At the time of this certification, the parties stipulated that Ellen Johnson, the secretary to the bank president, was a confidential employee. Thereafter, the Employer and Petitioner entered into three successive 2-year collective-bargaining agreements. The current agreement expires in November 1978.

On or about June 1, 1977, the Employer created the position of assistant secretary to the bank president and hired Patsy Nations, a former part-time receptionist and bookkeeper within the bargaining unit, for that position. In her job as assistant secretary, Nations is primarily responsible for assisting secretary Johnson, the confidential employee, in the performance of her daily duties. Upon the creation of this new position, Petitioner sought a clarification of the existing unit to include the assistant secretary on the ground that she performs unit work and does not act in a confidential capacity. The Employer, on the other hand, contended that the duties of the assistant secretary, like that of the secretary, require Nations to act in a confidential capacity to the bank president, a person involved in formulating, determining, and effectuating the Employer's labor relations policies.¹ The Acting Regional Director agreed with the Employer and excluded Nations from the unit as a confidential employee. On review, Petitioner reiterates its assertion that the assistant secretary does not act in a confidential capacity in matters related to the field of labor relations. For the reasons set forth below, we find merit in Petitioner's contention and reverse the Acting Regional Director.²

The record herein indicates that over the past several years the Employer's business has rapidly increased and, in response to this increase, the Employer hired Nations to assist Johnson with her heavy workload. Johnson's workload primarily involves a wide range of clerical duties such as the handling of invoices, helping customers with access to safety deposit boxes, handling oil and gas collections, preparing mortgages, typing minutes of stockholders' meetings, and maintaining private audit records. In addition to these nonlabor-related duties, the record establishes that, when the occasion arises, Johnson is responsible for typing responses to union grievances, typing letters and placing phone calls for the president involving union matters, typing minutes of board of directors' meetings, and typing discipline reports and employee evaluations. During contract negotiations, Johnson is responsible for typing collective-bargaining notes, proposals, and agreements. In conjunction with these responsibilities, Johnson has access to the Employer's personnel files. However, while these labor-relations duties arise in the regular course of Johnson's job, it is clear that they occupy only a small portion of her time. In fact, during certain periods of time there have been no contract nego-

¹ Petitioner does not dispute and the record supports the Employer's contention that the bank president plays a significant role in formulating and effectuating the Employer's labor relations policy.

² Aside from a receptionist who is included in the unit, Nations and Johnson are the only secretaries employed at the Springhill office. There are no secretaries at the Cullen depository.

tiations, no outstanding grievances, and no instances of disciplinary action pending against any employees, and the amount of time spent on labor relations has been nearly nonexistent.³ Given this state of affairs, it appears that, while Johnson may have needed assistance in her ordinary clerical duties, she was not overburdened and needed no assistance in matters relating to labor relations.

Despite the foregoing, the Employer contends that Nations was hired to assist Johnson in the performance of all of the duties noted above, including those related to the field of labor relations. However, the record reveals that, since commencing employment as assistant secretary, Nations has only handled such clerical duties as collections, accounts payable, oil and gas lease accounts, mortgages, insurance policies, profit-and-loss statements, and other similar nonlabor related activity. Indeed, the Employer concedes that no labor relations matters, i.e., grievances, evaluations, employee discipline, or contract negotiations, have arisen during the past year. The Employer's insistence that Nations will, in the future, assist Johnson in the performance of her labor relations duties does not alter the fact that Nations has not, as yet,

³ In this regard, the bank's president, Gene Waters, admitted that the amount of work to be done in the field of labor relations "is a seasonal thing." The Acting Regional Director found the time Johnson spent on labor relations matters to average 1 hour per day, although she did not work on such matters *each* day.

assumed any labor relations responsibilities.⁴ Thus, in view of the fact that Johnson herself spends a small amount of her time on matters related to labor relations, and there has been no showing that she needs to be or is assisted in this area, we are constrained to find that Nations' future participation in the Employer's labor relations activities is wholly speculative.⁵ Accordingly, it has not been shown that Nations is a confidential employee within the meaning of the Act as defined by the Board, and we will include her in the existing unit of official clerical employees.⁶

ORDER

It is hereby ordered that the certification in Case 15-RC-4428 heretofore issued to Office and Professional Employees International Union, AFL-CIO, be, and it hereby is, clarified by specifically including therein the category of assistant secretary.

⁴ While the Employer notes that Nations has access to the Employer's financial and personnel records, it is well established that mere access to personnel files is an insufficient basis for excluding an employee from the unit as a confidential employee. See, e.g., *John Sexton & Co., Division of Beatrice Foods Co.*, 224 NLRB 1341 (1976).

⁵ See, e.g., *Columbia Music & Electronics, Inc.*, 196 NLRB 388 (1972).

⁶ The Employer's reliance on our recent decision in *Prince Gardner, Division of Swank, Inc.*, 231 NLRB 96 (1977), is misplaced, as there we found that a personnel department receptionist who was an assistant to the personnel department secretary had, in fact, performed work of a confidential nature related to the field of labor relations. Thus, her involvement in labor relations matters was by no means speculative as is the case here.