

**The Washington Post Company, Employer-Petitioner and The Washington-Baltimore Newspaper Guild, Local 35, a/w The Newspaper Guild, AFL-CIO-CLC, Case 5-UC-90**

January 14, 1981

**DECISION AND ORDER**

BY CHAIRMAN FANNING AND MEMBERS  
PENELLO AND TRUESDALE

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Albert W. Palewicz.<sup>1</sup> Following the close of the hearing, and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director for Region 5 transferred this proceeding to the Board for decision. Thereafter, the Employer-Petitioner and the Union filed briefs, and subsequently filed answering briefs.

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 Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The parties stipulated that The Washington Post Company (the Employer), a Delaware corporation, is engaged at its Washington, D.C., location in the publication and distribution of a daily and Sunday newspaper distributed directly to the District of Columbia, Maryland, Virginia, and other States. They also stipulated that during the 12-month period immediately prior to the hearing in Case 5-RC-9593, a representative period,<sup>2</sup> the Employer received revenues in excess of \$500,000. The Employer is a member of and subscriber to various interstate news services and regularly carries in its publication advertisements of nationally sold products. Based on these facts, we find 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.

2. The parties stipulated that the Guild is a labor organization within the meaning of Section 2(5) of the Act.

3. The Post seeks by its unit clarification petition to exclude from the unit described below approximately 156 individuals as either supervisory, managerial, or confidential employees. The Guild contends that all 156 individuals are properly included in the certified unit which it presently represents. That unit is described as:

All employees employed by the Washington Post in its editorial, news, advertising, circulation, and business departments at its Washington, D.C. location, but excluding all other employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

The history of collective bargaining between the Post and the Guild extends back to 1936 when the Post voluntarily recognized the Guild. Contracts between the parties were successfully negotiated thereafter with the most recent contract extending from May 2, 1974, to March 31, 1976. Subsequently, in Case 5-RC-9593, the Washington Newspaper Union filed a timely petition for an election, seeking to represent certain employees at the Post who were represented by the Guild. The Guild intervened in that proceeding based on its contractual interest, and, after a hearing on the petition, an election was held in the unit described above. The results of that election showed that the Guild was selected by unit employees to represent them in collective bargaining.<sup>3</sup> The Post then filed the instant unit clarification petition.

**I. PROCEDURAL ISSUES**

Initially, the Guild moves to dismiss the instant petition. The Guild asserts that since the positions the Post seeks to exclude from the unit have long existed, and since the job duties of these positions have not been changed, there are no grounds upon which to clarify these positions out of the unit. The Guild further argues that, by virtue of a United States District Court order,<sup>4</sup> the 1974-76 agreement between the parties was still in effect at the time the Post filed the unit clarification petition, and thus the present petition is untimely. The Guild further contends that processing this petition would be destructive of the parties' collective-bargaining relationship which has existed for over 40 years.

We do not agree with the Guild's arguments. The Act provides specifically for the exclusion of

<sup>1</sup> This hearing extended over 91 hearing dates, encompassing more than 10,650 pages of transcript, and numerous exhibits.

<sup>2</sup> The parties stipulated that the record in Case 5-RC-9593 be included as part of the record in the instant case.

<sup>3</sup> This was the first time the Guild had been certified by the Board as the representative of employees of the Post.

<sup>4</sup> *Washington-Baltimore Newspaper Guild, Local 35 of the Newspaper Guild, AFL-CIO-CLC v. The Washington Post Company*, 442 F.Supp. 1060 (D.C.D.C. 1977).

"supervisors."<sup>5</sup> And, it is well settled that managerial and confidential employees similarly are to be excluded from bargaining units.<sup>6</sup> Thus, except in certain limited and well-defined factual situations, the Board, when presented with an appropriate petition or claim, is required to exclude positions from a bargaining unit where the inclusion of those positions would violate the principles of the Act.<sup>7</sup> While it may be that certain of the positions sought to be excluded by a unit clarification petition have long been included under previous contracts, and the job duties of those positions have remained unchanged, nonetheless, if it can be shown that the persons in such positions meet the test for establishing supervisory, managerial, or confidential status, we are compelled to exclude them. For example, in *Brotherhood of Locomotive Firemen and Engineers*,<sup>8</sup> the employees whom the employer sought to exclude had been represented for over 40 years in the unit, and their job duties had not changed significantly in that time. The union, maintaining that none of the job classifications should be removed from the unit, argued that the "bargaining history which has included all of the classifications should be persuasive."<sup>9</sup> In response, the Board stated that, although "in certain circumstances when determining the scope of the appropriate unit weight is given to bargaining history and to the prior agreements of the parties, such factors are not determinative of the status of disputed employee categories whose exclusion may be required because of the statute or for policy reasons."<sup>10</sup> The posture of the instant case is similar to that of *Brotherhood of Locomotive Firemen*, and we believe a similar result should obtain here.<sup>11</sup> Of course, a history of inclu-

sion in the bargaining unit for many years may be evidence that such a classification in fact is properly included in the unit. If there are no changed circumstances in terms of job duties, this, too, may constitute evidence on the status of the individuals sought to be excluded.<sup>12</sup>

With respect to the petition before us, we note that it was filed immediately following the election held in the unit described above, which specifically excludes all "confidential employees, managerial employees, guards and supervisors as defined in the Act." Thus, it is clear that the petition is timely under Board precedent.<sup>13</sup> Moreover, despite the Guild's assertion that the unit found appropriate by the Regional Director for Region 5 in the recent election in Case 5-RC-9593 was identical to the contractually recognized unit,<sup>14</sup> the fact remains that the Board-certified unit excludes supervisors, managerial, and confidential employees.<sup>15</sup> Furthermore, the Employer here, as discussed below, never indicated an intention to abandon its unit composition contentions introduced at the hearing in Case 5-RC-9593.<sup>16</sup> As we have discussed above, dismissal of the petition filed here is not warranted, because of the statutory issues involved,<sup>17</sup> and the timely filing of the petition.

visors; Board rejected union's argument that petition should be dismissed because unit was covered by an unexpired contract).

<sup>12</sup> See, e.g., *McAlester Hospital Foundation, Inc., d/b/a McAlester General Hospital*, 233 NLRB 589 (1977), where the Board concluded that the disputed employees were intended to be included in the unit, but, in so deciding, placed the burden on the employer, which wanted to exclude the employees, to demonstrate that they were statutory supervisors at the time of the stipulation or that circumstances had changed justifying their exclusion. The employer's prior agreement that the disputed employees were not statutory employees at the time of the stipulation, although not controlling, was found by the Board to be "considerable in assessing any conflict that may arise" out of contrasting testimony. *Id.* 233 NLRB 589, fn. 1. See also *Peerless Publications, Inc.*, 190 NLRB 658 (1971).

<sup>13</sup> Cases cited by the Union are inapposite on this issue. In *Arthur C. Logan Memorial Hospital*, 231 NLRB 778 (1977); *Northwest Publications, Inc., d/b/a San Jose Mercury and San Jose News*, 197 NLRB 213 (1972) and 200 NLRB 105 (1972); and *Wallace-Murray Corporation, Schwitzer Division*, 192 NLRB 1090 (1971), the Board, although stating it did not want to disturb the bargaining relationship between the parties, further noted that the petitions for clarification were untimely. Thus, in *Arthur C. Logan Memorial Hospital*, for example, the Board dismissed a clarification petition filed after a contract had been agreed to. The Board, noting that the filing of UC petitions has not been limited only to the open period, nevertheless found that to permit such a course soon after contract extension was "necessarily destructive of the bargaining relationship." (231 NLRB at 779.) Significantly, the Board dismissed the petition without prejudice to its being filed at an appropriate time.

<sup>14</sup> The Regional Director stated, at fn. 2 of his Decision and Direction of Election, that the units were the same.

<sup>15</sup> Cf. *McAlester General Hospital*, *supra*, 233 NLRB at 589, fn. 1.

<sup>16</sup> Cf. *WNYS-TV (WXT)*, 239 NLRB 170 (1978); *Arthur C. Logan Memorial Hospital*, *supra*.

<sup>17</sup> The Union's reliance on *Pacific Northwest Bell Telephone Company*, 211 NLRB 1021 (1974), is misplaced. In that case, the Board dismissed a UC petition because the employer sought by means of clarification to decide a work assignment dispute. While the Board noted in a "more-over" argument that to do as the employer requested would result in a "radical change" in a 30-year bargaining history between the ORTT and CWA bargaining units, a similar dispute is not presented in this case. Fi-

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<sup>5</sup> Sec. 2(3) of the Act.

<sup>6</sup> See *General Dynamics Corporation, Convair Aerospace Division, San Diego Operations*, 213 NLRB 851 (1974); *N.L.R.B. v. Bell Aerospace Company, Division of Textron, Inc.*, 416 U.S. 267 (1974).

<sup>7</sup> See *Peerless Publications, Inc.*, 190 NLRB 658, 659 (1971); compare *Northwest Publications, Inc., d/b/a San Jose Mercury and San Jose News*, 200 NLRB 105 (1972); *Wallace-Murray Corporation, Schwitzer Division*, 192 NLRB 1090 (1972).

<sup>8</sup> 145 NLRB 1521 (1964).

<sup>9</sup> *Id.* 145 NLRB at 1525.

<sup>10</sup> *Id.* 145 NLRB at 1525, fn. 10. Also in the *Brotherhood of Locomotive Firemen* case, the Board determined that, although an employer did not question the representative status of a union and no other union sought to represent the employees involved, the Board could decide the placement of employees whose status was in dispute through the clarification process, even though the unit had not been Board-certified. The employer in that case filed an RM petition, but the Board treated the petition "in effect" as a motion for clarification. The Board noted that if it "were to refuse to determine the unit placement of the contested employees, [it] would be exacerbating a dispute which reached [it] in the first place because the parties could not settle it themselves." 145 NLRB at 1524.

<sup>11</sup> See also *A.D.T. Company, Inc.*, 177 NLRB 704 (1969) (30-year bargaining history; employer sought exclusion of 5 classifications occupied by 94 individuals from unit represented by union because they were alleged supervisors under Sec. 2(11) of the Act); *The Western Colorado Power Company*, 190 NLRB 564 (1971) (30-year bargaining history; employer requested clarification by specific exclusion of 133 employees in numerous job classifications, contending individuals involved were super-

Apart from the considerations discussed above, there are other reasons for processing the instant petition. The peculiar genesis of this case shows that the Employer attempted to exclude some of the classifications involved here in an earlier unit clarification petition in Case 5-UC-72 (1975). That petition was dismissed by the Regional Director for Region 5 as untimely because it was filed during the mid-term of a then existing collective-bargaining agreement.<sup>18</sup> The Board, by telegraphic order, denied the Employer's request for review of the Regional Director's action. Thereafter, in 1976, as noted above, the Washington Newspaper Union filed a petition in Case 5-RC-9593, seeking to represent certain employees at the Post. That petition encompassed virtually the identical unit then represented by the Guild. At the hearing on that petition, the Post, while agreeing that the scope of the petitioned-for unit generally was appropriate, announced that it intended to contest the inclusion of certain classifications during the hearing as either supervisory, managerial, and/or confidential. Indeed, the hearing there proceeded on this basis; i.e., the Post began presenting evidence on the status of the individuals whom it claimed should be excluded from any Board-certified unit. Both the Guild and the Washington Newspaper Union were given the opportunity to cross-examine Post witnesses, and the Guild indicated that it intended to contest each category which the Post wished to exclude. By the fifth day of the hearing, the Washington Newspaper Union requested that the hearing on unit placement issues be postponed so that the employees sought in its petition for election could exercise their right to vote on the selection or rejection of a bargaining representative. After deliberation, the Post agreed to a proposal of the Regional Director for Region 5, as proffered by the Hearing Officer, that an election be held at which the Post would not challenge those it claimed to be properly excluded from the unit but after which, if necessary, the Regional Director would entertain an appropriate unit clarification petition. The Guild, while not acceding to the stipulation to hold the election agreed upon by the Post and the Washington Newspaper Union, did not

nally, *Union Electric Company*, 217 NLRB 666 (1975), does not warrant a contrary result. In that case, the Board dismissed a UC petition filed by a union which sought to include employees who had historically been excluded from the unit. Moreover, the Board itself indicated at fn. 5 of that decision that a "possible" exception to its principle of refusing to clarify longstanding units would be a situation involving agreed inclusion of individuals who were not employees within the meaning of the Act, citing *Wallace-Murray* and *Peerless Publications*. And this exception is the one involved here.

<sup>18</sup> See, e.g., *Northwest Publications*, *supra*.

appeal or request review of the Regional Director's actions.<sup>19</sup>

In these circumstances, it is clear that, but for the Regional Director's proposals and the subsequent election, the earlier hearing in the RC proceeding would have continued and the Post would have been permitted to present its case on the unit placement issues. The instant UC petition is thus clearly an offshoot of the earlier RC hearing.<sup>20</sup> It cannot be seriously disputed that the Post's acquiescence in the Hearing Officer's proposal was proper at the time of the RC hearing. In light of the earlier representations made by the Regional Director, we are satisfied that the unit clarification process is now a proper vehicle for a resolution of the issues presented.<sup>21</sup> We thus proceed to a determination of those issues.<sup>22</sup>

<sup>19</sup> To summarize the agreement, we note the following colloquy at the hearing:

[The Hearing Officer] Pursuant to our discussions of a few moments ago, I placed a call to the Regional Director in Baltimore, and the Regional Director in that telephone conversation has authorized me to state that at this point he does not see any impediment to his entertaining the filing and processing of a UC petition after the issuance of a decision and direction of election and a subsequent certification after the election.

Also, he sees no impediment to the incorporation of the record so far developed in this RC case as part of the UC record as far as that record is pertinent. . . .

\* \* \* \* \*

HEARING OFFICER: The hearing will be in order.

As the parties are already aware from my off-the-record discussions with them, I have communicated with the Regional Director again, since the last recess.

He has told me to state that he stands on what he has already said, that is, the statement I read just a few minutes ago regarding his position about the entertaining of the filing and processing of a UC petition after the issuance of a decision and direction of election and subsequent certification following the election.

Mr. O'Brien [the Post's counsel], do you have a statement to make?

Mr. O'Brien: Yes, sir.

In view of all the foregoing, the Post accepts the Regional Director's proposals and representations made heretofore in this hearing, and in consideration therefore hereby foregoes the presentation of any further evidence at this time.

<sup>20</sup> Although it appears from the record that the parties have occasionally bargained over the status and placement of various classifications involved here, this factor does not bar the Post from filing its petition here. See fn. 11.

<sup>21</sup> As noted, the Guild asserts that a decision of the district court in *Washington-Baltimore Newspaper Guild v. Washington Post*, *supra*, fn. 4, renders the petition in this case untimely since the court ruled that the 1974-76 agreement between the parties was still in effect at the time of the filing of the petition. We do not read the case as standing for such a proposition. Rather, in agreement with the Employer, we believe the issue in that case, as found by the court, was "whether arbitration is mandated pursuant to the expired contract." (96 LRRM 3139, fn. 1.) (Emphasis supplied.) That terms of a contract may continue during negotiation for a new contract does not deprive the Board of jurisdiction of a dispute such as that involved here. The Union's suggestion in its brief that the issues here might possibly be decided through arbitration could not be seriously considered because the issue of statutory status is a matter for the Board to determine. See *Cincinnati Bell, Inc.*, 227 NLRB 1930 (1977); *William Transportation Company*, 233 NLRB 837 (1977).

<sup>22</sup> The Guild obtained a *subpoena duces tecum* in this case, seeking from the Post various items including, *inter alia*, certain wage rates, disci-

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## Background

Essentially, the Employer's petition seeks to clarify out of the certified unit employees who work in three major departments. These are the business and news departments, where the majority of the positions at issue are located, and the editorial department. The Company asserts that various positions are managerial,<sup>23</sup> supervisory,<sup>24</sup> or confidential<sup>25</sup> positions under the Act. We proceed first to the categories at issue in the business departments.<sup>26</sup> In doing so, we note the following departments under the business department umbrella which have categories in dispute here: advertising, circulation, promotion, administrative services, data processing, advance systems research, insurance, employee relations, and accounting.

plinary letters, and contracts with dealers. The Guild asserts that the Post has not complied fully with that subpoena or, alternatively, that the Board should ignore evidence presented by the Post covering facts sought by the subpoena. Over 200 exhibits were introduced into evidence in this case. It appears that the Guild's dispute essentially centers on wage data requested. The Guild points to an administrative law judge's decision wherein the Post was found to have violated Sec. 8(a)(5) of the Act by not providing such wage information during negotiations. See *The Washington Post Company*, 237 NLRB 1493 (1977).

In determining the supervisory, managerial, or confidential status of employees, the Board has long held that the important consideration in determining such status is the actual facts relating to job performance. For example, titles or job description do not confer status. *Golden West Broadcasters-KTLA*, 215 NLRB 760, 761 (1974); *Sol Henkind, an Individual d/b/a Greenpark Care Center, formerly known as Willoughby Health Related Facility*, 231 NLRB 753 (1977). While wage data may be somewhat probative of status, it is never conclusive or determinative. See *Fred Rogers Company*, 226 NLRB 1160, 1161 (1976). To the extent such data is exclusively relied on by the Post in support of its contentions, we would not find such evidence dispositive of the issue under consideration. We also note that the Guild was permitted to examine witnesses on their wages, and on the Post's wage structure generally. Moreover, review of the Post's arguments concerning the status of individuals reveals little, if any, reliance on disparity in wages.

The Guild further asserts that the Hearing Officer erred in rejecting several Guild exhibits as essentially untimely. We do not believe the Hearing Officer erred in this regard, but, even were we to consider the exhibits (which were placed in the record as "rejected exhibits") our conclusions on the unit placement issue discussed below would not differ. Finally, the Guild asserts that credibility resolutions are required here. However, the Board ordinarily does not make credibility resolutions in determining unit issues, and finds it unnecessary to do so here.

<sup>23</sup> "Managerial employees" have been defined as those who have authority to formulate, determine, or effectuate employer policies by expressing and making operative the decisions of their employer. See, e.g., *Eastern Camera and Photo Corp.*, 140 NLRB 569 (1963); *N.L.R.B. v. Bell Aerospace, supra*.

<sup>24</sup> Sec. 2(11) of the Act defines the term "supervisor" as:

The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

<sup>25</sup> "Confidential employees" are those employees who "assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." *The B. F. Goodrich Company*, 115 NLRB 722, 724 (1956); *Kleinberg, Kaplan, Wolff, Cohen & Burrows, P.C.*, 253 NLRB No. 54 (1980).

<sup>26</sup> We note preliminarily that in all instances wherein we decide that an employee should be excluded on one basis in this case, we find it unnecessary to consider alleged alternative bases for exclusion.

## II. THE BUSINESS DEPARTMENTS

### A. Advertising Department

The Employer maintains an advertising department which is responsible for the sale and production of all advertising in the Post. It has five subdivisions (also referred to as departments): retail, classified, general, administration, and customer relations. These five departments fall under the overall authority of the vice president for advertising, Robert McCormick. The Company asserts that various managers, directors, and "supervisors" in the advertising department are managerial, supervisory, or confidential employees under the Act who should be excluded from the unit.

1. *Retail Advertising*: Manager Joseph Arcaro and Assistant Manager John Bowen are in charge of the retail advertising department. They are excluded from the unit by agreement of the parties. There are also three zone sales managers, a chain and department store manager, and a commissioned sales manager within the retail advertising department. The Employer claims these five sales managers are either supervisory or managerial employees under the Act.

The positions of the three zone sales managers and the chain and department store manager were created in 1974.<sup>27</sup> The Employer and the Union agree that these managers perform similar functions in soliciting and processing advertisements from retail establishments in their respective zones. The three zone managers operate from Kensington, Maryland; Annandale, Virginia; and the Post Building in the District of Columbia, respectively. The chain and department store manager has an office in the District of Columbia. Working under each of these managers are approximately 5 to 15 sales representatives, and 2 to 3 secretaries or clerks. In addition, several artists work in the zone sales offices in Maryland and Virginia, and several telephone salespersons work in the District zone sales office.

The sales representatives in each zone are assigned to work in a particular geographic area. These geographic assignments initially were set up in 1974, upon the departments' reorganization, by the excluded retail advertising manager. Since then, the sales managers have been responsible for geographic assignments, although those placement decisions have also been discussed with the retail advertising manager prior to their implementation. While the sales managers do not involve themselves in the actual selling of advertising, which is the function of the sales representatives, it appears

<sup>27</sup> The commissioned sales manager position will be discussed below.

that up to one-quarter of a sales manager's working time is spent in dealing with advertisers regarding advertising placement or costs.

The zone sales managers and the chain and department store manager do not hire or discharge employees in their zones. Applicants for the position of sales representative are interviewed by these managers but the retail advertising manager conducts a subsequent interview if the manager wants an applicant to be hired. With respect to grievances, the evidence indicates that the zone sales managers and chain and department store manager are the first individuals consulted by employees, and grievances may be resolved at this level. However, discipline is handled in conjunction with the manager's superiors, i.e., problems are brought to the attention of the retail manager and his assistant, and discipline is formulated by all managers. The four managers in question are responsible for authorizing overtime, scheduling vacations, preparing work schedules, and checking timecards. It also appears that they evaluate probationary employees and salesmen on a continuing basis; this is particularly true with respect to the Virginia and Maryland offices where, unlike the District and chain and department store sections, the respective offices are located outside the Company's main building. Further, these managers prepare and make recommendations with respect to budgets, and projected travel and other expenses. Each of the current managers has attended training courses to learn management skills, transactional analysis, accounting procedures, and interview techniques. They also attend weekly management meetings in the advertising department, and monthly staff meetings held by the vice president for advertising.

Based on the foregoing, we conclude in agreement with the Employer that the positions of the zone sales managers and the chain and department store manager are supervisory in nature and should be excluded from the unit. While it is clear, as urged by the Union, that these individuals spend part of their working time engaged in work related to the sale, placement, and cost of advertisements for their particular zones or departments, it is nonetheless clear that these individuals perform a number of supervisory functions. It is significant that these managers perform evaluations and are involved in the running, as first-line supervisors, of the various sales departments. The positions are therefore to be excluded from the unit.

The commissioned sales manager position was created in 1976. It appears that Mark Meagher, the Employer's president, was involved in conceiving the idea of a commissioned sales manager position when the newspaper was preparing to publish

weekly zone sections. At that time, Robert Moe was named as commissioned sales manager, a position he held at the time of the hearing, and was assigned to study the need for such a position and the concomitant need for commissioned salesmen to sell advertisements for the newspaper. Moe recommended the establishment of various territories from which commissioned sales agents would operate, and the hire of persons on a contract basis for a specified time to sell various kinds of advertising based on terms set out in the contract. Moe's report and his recommendations were discussed and revised by the vice president for advertising, McCormick, and the retail advertising manager, Arcaro, and ultimately implemented by the Company.

Prior to interviewing prospective sales agents, Moe discussed the standards to be used for such position with McCormick and Arcaro. Moe interviewed approximately 40 applicants for the position of commissioned sales agent. Although Arcaro participated in some of the early interviews, the final selection of the initial eight commissioned sales agents was made by Moe. It further appears that Moe was involved in promulgating the prototype contract which the commissioned sales agents sign upon accepting their position.

In addition to the responsibilities involved in hiring the agents, Moe assisted in devising a training program with the sales development and training manager to train the agents. Moe meets approximately once a week with the sales agents to assist them in their work, and also monitors their work during the remainder of the week. He assists the sales agents in locating accounts and in resolving conflicts or problem accounts. Further, he can approve credit. Moe can also transfer accounts if there are problems with a particular agent, but the contracts do prohibit reassignment of accounts without consent of the agent. Moe, however, can terminate a contract if an agent violates it.

The Post claims, and the Union does not argue to the contrary, that the commissioned sales agents are independent contractors and not employees of the Company. Thus, there is no argument that the commissioned sales manager is a supervisory employee. However, we agree with the Employer that the commissioned sales manager position should be excluded as a managerial position. The commissioned sales manager is the only person, according to this record, with whom the commissioned sales agents contract and deal. Although the record establishes that there are guidelines for the percentage of commission to be paid, the goals for advertising the agents receive, and the assignment of geographical sales territory, it is clear that the

commissioned sales manager was almost solely responsible for interviewing and hiring the initial complement of commissioned sales agents. Further, Moe works with the agents in approving credits, resolving problem accounts, training, and he has the authority to terminate the contract if an agent violates it. Under these circumstances, we conclude the commissioned sales manager is a representative of management in his relationship with the commissioned sales agents and therefore a managerial employee who should be excluded from the unit.

2. *Classified Advertising*: The classified advertising department is responsible for the sale and production of classified advertising for the newspaper. This department is headed by a classified advertising manager and an assistant advertising manager, who are excluded from the unit. There are three sections which form the classified advertising department: the phone room, classified sales, and real estate sales.<sup>28</sup>

(a) Phone room: The phone room manager heads this section. The Employer contends that the training manager, the phone room supervisors (the row supervisors), and the copy desk supervisor should also be excluded as supervisors or managerial employees.

The phone room consists of five rows of 20 desks. Situated at the head of each row are the row supervisors. In addition to the five full-time row supervisors, there are two part-time supervisors who work on weekends. There are 135 telephone solicitors working in the phone room, with approximately 11 to 12 working on any specific row during the day. Four rows handle specific types of classified advertising including, *inter alia*, help wanted, real estate, auto, boats, apartment rentals, merchandise, and business real estate. There is also a voluntary row which handles miscellaneous calls and obituaries. As a rule, new employees start on the voluntary row and progress to more specific rows. The telephone solicitors usually take copy for their particular row's subject classification. However, each telephone solicitor is responsible for taking any telephone call which may come in to the phone room. Moreover, several classified advertisers have "contract accounts" by which the advertiser has a specified telephone solicitor to handle that particular classified advertising account. In performing their functions, the telephone solicitors answer the telephone and type out the appropriate copy for the classified advertisement, which is then forwarded on a conveyor belt system

to the copy desk where the telephone solicitor's copy is processed as explained below.

Under the phone room manager, who is excluded by agreement from the unit, is the phone room training manager. It is undisputed that the phone room training manager interviews applicants for the telephone solicitor position, and makes the decision with respect to hiring. It also appears that telephone solicitor requests for vacation and sick leave, as well as leave without pay, are forwarded by the row supervisors to the phone room training manager for approval. Further, the phone room training manager is responsible for evaluating probationary employees as well as full-time employees. These evaluations are based, in part, on evaluation forms filled out by the row supervisors as discussed below. In addition to these duties, the training manager has the primary function of training all new telephone solicitors. The phone room training manager decides whether and when a particular telephone solicitor is ready to be placed on a row. When that determination is made, the phone room manager places the telephone solicitor on the voluntary row. The training manager may monitor the work of the new employee, and, if further training is deemed desirable, may recall a probationary employee from the row for further training.

Based on the foregoing, and especially the fact that the phone room training manager interviews and hires telephone solicitors, we conclude that the phone room training manager is a supervisor within the meaning of the Act and therefore should be excluded from the unit.

As noted, the phone room supervisors, also referred to as row supervisors, sit at the head of a particular row facing the telephone solicitors who work at the desks in that row. Each row supervisor has a monitoring capability which permits the row supervisor to listen in on any telephone solicitor's transaction with a potential classified advertising customer. The row supervisors may decide among themselves on the necessity for moving particular individuals within rows, although permanent relocations between rows require the approval of the phone room manager. Also, the row supervisors fill out evaluation forms for telephone solicitors on their rows and forward such forms to the phone room training manager, who makes the ultimate evaluation of the employee. The row supervisors may issue informal oral reprimands, e.g., they may tell a certain telephone solicitor that his or her work is not satisfactory on a particular call, but other more formal reprimands are made by the phone room manager and the classified advertising manager. In addition to the monitoring responsibility, the row supervisors also spend approximately

<sup>28</sup> The real estate sales manager is excluded from the unit by agreement of the parties. No positions in the real estate sales section are at issue here.

10 to 15 percent of their time on the telephones handling matters such as complaints. During particularly heavy traffic times, or during absences of telephone solicitors, the row supervisors may also perform telephone soliciting work.

Contrary to the Employer, we conclude that the row supervisors are not supervisors within the meaning of the Act. Thus, it would appear that their alleged supervisory functions are limited to, at best, informal reprimands and temporary relocations of personnel. It is undisputed that the row supervisors are not involved in hire, discharge, or more formal disciplinary actions. Further, their authority to relocate solicitors is limited and any personnel relocation requires the phone room manager's approval. Although the Employer asserts that if the row supervisors are not found to be supervisors the supervisor/employee ratio would be too low, we note the ratio is not so small as it seems because only 68 of the 135 telephone solicitors work full time, and only 11 or 12 work at any time on a particular row. In sum, it appears that the row supervisors are more akin to leadmen, who are responsible for insuring the quality and correctness of a product, than they are to statutory supervisors.

The Employer also seeks to exclude the copy desk supervisor, who reports to the phone room manager. Copy room employees are responsible for processing the telephone solicitor's copy. The copy desk supervisor and three full-time and three part-time clerks are responsible for performing this function. In the copy room area, three main desks are positioned around a conveyor belt which brings copy from the phone room. One clerk is responsible for separating the typed ads from the phone room and assembling the copies by date. At the other two desks, clerks prepare ads for daily and future copy and indicate which ads are to be killed, corrected, or otherwise changed for daily as well as future copy. The kills and corrections are sent to the video display terminal (VDT) department while the new ads are sent to the composing room for publication. All the full-time and part-time clerks perform the duties described above with their responsibilities being rotated on a regular basis. The copy desk is also responsible for tabulating and estimating daily advertising lineage; this information is sent to the makeup department. Two additional clerks, who are also a part of the copy room, work at a front counter located near the entrance to the Company's building and handle walk-in business. These clerks also receive ads as well as payments, cancellations, and other transactions involving the classified advertising department. The copy desk supervisor makes rounds to the front desk, where he can grant adjustments for advertis-

ing errors at the front desk and handle customer inquiries at that location.

The copy desk supervisor's relationship with the clerks in the copy room and at the front desk appears somewhat similar to that of the row supervisors to the telephone solicitors in the phone room. Thus, the record shows that the copy desk supervisor may make recommendations on promotions or transfers. However, the phone room manager's permission is required before phone room employees may transfer to the copy desk. Although the copy desk supervisor has issued a written reprimand on one occasion, it appears that, prior to the issuance of the reprimand, the copy desk supervisor consulted both the phone room manager and the assistant classified manager, both superiors, regarding the incident. In fact, the written reprimand was signed not by the copy desk supervisor but by the phone room manager. Copy desk employees do consult the copy desk supervisor regarding vacation and time off; however, the record shows that there have been no conflicts on vacations or time off dates, and thus the copy desk supervisor has not been required to resolve conflicts concerning such matters. Nor is there any indication that the copy desk supervisor does not follow the regular Post guidelines of permitting time off as necessary so long as the department can function. We find, therefore, that the record in this case does not establish that the copy desk supervisor is a supervisor within the meaning of the Act and thus we decline to exclude him from the unit.

(b) Classified sales: Classified sales is responsible for special promotions and projects as well as outside selling efforts. These latter endeavors concern such classified ads as automobile merchandise, boats, and real estate, among others. In addition to the classified sales manager, whom the Employer seeks to exclude, the section employs approximately 10 outside sales people, a clerk, several telephone salespersons, and three inside/outside salespersons. The inside/outside salespersons spend part of their time in the phone room (inside) and the remainder of their time on classified sales (outside).

Each of the outside salespeople is responsible for particular territories. These assignments may be changed by the classified sales manager when he deems it necessary. The classified sales manager is also involved in resolving disputes related to territorial problems. During their sales trips, the outside sales personnel are sometimes accompanied by the classified sales manager, who makes such trips approximately five times a week. The classified sales manager also assists the outside sales personnel in adjustments for errors in classified advertisement. The classified sales manager has interviewed and



recommended the transfer of personnel to sales positions. However, it appears that the classified advertising manager has ultimate responsibility for hiring outside salespersons. The classified sales manager is responsible for evaluating all probationary employees. The classified sales manager must obtain the approval of the classified advertising manager to discipline or reprimand an employee.

The record shows, and the Union does not dispute, that the classified sales manager assigns and directs the approximately 16 employees in the classified sales section. Unlike the row supervisors and the copy desk supervisor, it appears that the classified sales manager exercises independent judgment and utilizes management discretion in dealing with the outside and inside/outside salesmen and we conclude that this position should be excluded as a supervisory position under the Act.

3. *General Advertising*: The general advertising department is responsible for production and sale of general or national advertising, which involves a particular brand or manufacturer rather than a specific retailer. The general advertising department is headed by a manager and assistant manager and is divided into a sales staff and a production unit. The position of principal clerk in the production unit is at issue here. The Employer claims this position is a supervisory one.

The production unit of the general advertising department processes the national advertising orders. In addition to the principal clerk, there are three senior clerks who work on the production end of the national advertising unit. The clerks are responsible for writing up orders, logging them, and forwarding the orders to production for printing. The three senior clerks have particular jurisdictions; one clerk is responsible for daily copy, another for Sunday and magazine copy, and the third for in-house copy. June Hardy, the current principal clerk, checks all of the clerks' copy.

Both the principal clerk and the three senior clerks at the time of the hearing had been in the department for many years. Hardy prepares schedules and assigns work to the three clerks, although as noted each clerk is responsible for a specific type of copy and assignments are made accordingly. Indeed, there has been little need to change the manner of scheduling, or even processing the copy, because of the longevity and competency of the clerks in the section. Further, the clerks tell Hardy when they intend to take vacations or time off, and if there are any conflicts in dates wanted by employees, Hardy will resolve the problem. However, the record indicates that rarely has there been reason to resolve any conflicts.

Hardy assists in processing copy on an as-needed basis. She also organizes files of advertisers, insures that proofs are forwarded from the production unit to the printers, maintains records, and keeps track of the lineage of national advertising.

With respect to the hiring of clerks, the principal clerk has interviewed and recommended hiring certain applicants, but the final decision on hiring is made by the manager for general advertising. Thus, the other three clerks currently working in the production unit, who were hired between 1953 and 1965, were interviewed by Hardy and management officials.<sup>29</sup> The record also indicates that the principal clerk was once involved in a decision to discharge certain stenographers. However, as with the decision to hire the three clerks in the department, this instance of discharge occurred many years (in this instance, more than 7 years) prior to the hearing in this case, and at a time when the national advertising department was organized on a different basis and the principal clerk assumed more responsibility than she currently exercises. Thus, at one time, the principal clerk also shared in responsibility over the sales staff but has since worked only in the production unit.

Considering the above, and based on the record as a whole, we do not find the principal clerk to be a supervisory employee as urged by the Employer. We note that the principal clerk appears to be a more experienced employee who uses expertise in the area to coordinate the production of the national advertising. The incidents of alleged supervisory authority which the Employer asserts mandate the removal of the principal clerk from the unit occurred for the most part prior to a departmental reorganization which curtailed the authority of the principal clerk.<sup>30</sup> We also note that the general advertising department appears to be a relatively small department with only 13 sales staff personnel and the 3 senior clerks, and 1 principal clerk in the production unit. There are both a general advertising manager and an assistant advertising manager who head this department. And, while the general advertising manager testified that he spends no more than 5 to 10 minutes a day in the production

<sup>29</sup> At the time of the hearing, the general advertising department was waiting for budgetary approval for a fifth clerk position for production work. There was record testimony that Hardy would participate in the selection of the new hire, if the position were available, but it appears that the same process as described above would be used; i.e., Hardy and the general advertising manager would review the applicant. The general advertising manager would have the final decision on hiring.

<sup>30</sup> The record shows one recent instance of a recommendation by the principal clerk of a merit increase for a senior clerk. However, the record also establishes that the general manager not only reviewed this recommendation, but added his own reasoning into the recommendation for the merit increase; the general manager noted that he was also in a position to evaluate that employee's work. A decision on this recommendation had not been made at the time of the hearing.



unit of which the principal clerk is a part, he explained that he spent so little time there because the department operated on a set identifiable system.

4. *Advertising Administration:* Within this subheading, the Employer seeks to exclude a number of categories whose job duties are detailed below.

The position of advertising agency representative, which the Employer claims is both supervisory and managerial, was created in September 1974 and comes under the advertising manager's jurisdiction.<sup>31</sup> The advertising agency representative, James Leonard, is the liaison for the Company with advertising agencies which place ads in the newspaper for retail clients. Leonard speaks to these advertising agencies about rates and rate changes, the production of advertisements in the newspaper, and the creation of special advertising sections for their clients. Approximately 60 percent of the advertising agency representative's working time consists of visiting agencies in an area including: the District of Columbia; Richmond, Virginia; Baltimore, Maryland; and Philadelphia, Pennsylvania. The balance of his time is spent in the office where he is occupied with telephone conversations with these same agencies. He also prepares proposals for the department. For example, he has proposed a letter reminding agencies about the Company's rules on advertising length. The vice president for advertising testified that such policy recommendations would receive the normal weight given to such proposals; i.e., the vice president and other superiors would make the final decision on whether to implement the proposal. The advertising agency representative makes use of approximately a \$4,000 annual budget for expenditures for travel, stationery supplies, trade publications, and other items necessary for performing his job. He assists in drawing up the plans for this budget in the first instance. Finally, the advertising agency representative shares the use of a secretary with the sales development and training manager. The advertising agency representative may give work to the secretary or ask her to perform overtime work, and, on at least one occasion, he has recommended to the advertising manager that a reprimand be issued because of his dissatisfaction with a secretary's work. This reprimand followed complaints that had been voiced by both the advertising agency representative and the sales development and training manager.

Contrary to the Employer, we do not believe that these facts indicate that the advertising agency representative is either a supervisory or managerial

employee. We first reject the Employer's assertion that the advertising agency representative's relationship with the secretary proves him to be a supervisor. The record reflects that the advertising agency representative's authority over this secretary is shared with another employee and at most is limited to discussions with that other employee and the advertising manager concerning the secretary's performance. Such shared and limited responsibility over a clerical employee does not establish supervisory authority within the meaning of the Act.<sup>32</sup> Nor are we persuaded that the visits of the advertising agency representative to the agencies at their locations or the daily telephone contact he maintains with these agencies establishes the advertising agency representative as a managerial employee. While these conversations do concern rates, production, and special advertising sections, the record does not show that the advertising agency representative helped determine rates of advertising, or that he was aware of other such confidential matters. These factors were compelling reasons for finding the inside salesmen to be managerial employees in *CF&I Steel Corporation*,<sup>33</sup> a case relied on by the Employer here. In sum, it appears that the advertising agency representative is involved in various business contacts on behalf of the Company, but he is not involved in the setting of management policy and is not a managerial employee.

The sales development and training manager position, which the Employer claims is supervisory and managerial, was created in August 1974. As the title suggests, this manager is responsible for developing new sales programs as well as training the Company's sales representatives. The sales development and training manager spends approximately one-third of his working time on the training aspect of his job. The training program is two-pronged. First, it involves the training of new outside sales personnel. The sales development and training manager, along with approximately three other managers, interviews potential trainees and makes recommendations concerning hiring. This manager then trains the new personnel, subsequently evaluates the people in the training course program, and makes recommendations concerning the assignment of the trainee to an area in the advertising department. It appears that the sales development and training manager has never negatively evaluated a trainee, and that all assignments are ultimately made by the vice president for advertising. In addition to training new sales personnel, the

<sup>31</sup> At one time, the advertising agency representative reported directly to the vice president of advertising.

<sup>32</sup> See, e.g., *Suburban Newspaper Publications, Inc.*, 226 NLRB at 157.

<sup>33</sup> 196 NLRB 470 (1972).

sales development and training manager also maintains training programs for current sales personnel. He spends time researching and putting together such programs, including bringing in outside experts to assist in the presentation of the program. The sales development and training manager runs the training programs without the assistance of any other employees.

The remaining two-thirds of this manager's working time consists of developing sales programs for the advertising department. In contemplation of this task, the sales development and training manager determines deficiencies in the Employer's sales program. He analyzes sales problems, monitors competing media, and talks with line sales managers, who have primary responsibility for sales, concerning these problems. The sales development programs developed by this manager involve tactics, strategies, and promotions to be used by the sales personnel for selling advertising for the Company. The sales development and training manager develops incentives and other bonus programs for which sales personnel are eligible. These incentive programs existed before the creation of the sales development and training manager position; however, the current manager has been given complete charge of further developing these programs.

The foregoing establishes that the sales development and training manager is a managerial employee and should be excluded from the unit. The manager's planning and effectuation of incentive award programs and the development of tactics, strategies, and promotions involved with these incentive awards creates an actual or potential conflict of interest which the Board has held to be a factor to consider in determining whether an employee is a managerial employee.<sup>34</sup> While these programs may have existed prior to the creation of the sales development and training manager position, it is nonetheless conceded by the Union that the sales development and training manager spends "much of his time" with the sales contest designed to provide incentive for sales personnel. Therefore, we find that this employee should be excluded from the unit.

The special promotions manager, whom the Employer contends is a managerial employee, originally worked under the retail advertising category and generated retail sales for special promotions in that department. However, in October 1976, the responsibilities of the special promotions manager were expanded to include classified and general advertising as well as retail advertising. The special promotions manager works with managers in these other

areas to develop ideas for special promotions to sell advertising. The special promotions manager, in contemplation of placing ads in these special promotions sections, makes sales presentations to prospective advertisers, and also reports problems to the Company and to the advertisers regarding special promotion ideas. Once a promotion has been worked out, the special promotions manager provides leads for salesmen so that the advertising may be sold. An example of work which the special promotions manager performs is the "swing zone" shopping center promotion in which the special promotions manager proposed the idea of partial, instead of full, newspaper distribution of shopping center ads. In this way shopping centers which were located in Virginia, for example, would not have their advertisements published in Maryland where they might be less effective. The special promotions manager's proposals are presented to his superiors in the advertising departments, who are already excluded from the unit. For example, the "swing zone" shopping center promotion was first proposed to the retail advertising manager. It was then sent to the advertising director and to the vice president of sales, who considered it and approved the continued development of the promotion. In developing ads, the special promotions manager also shares two clerks with the supplements manager, although it appears that the latter, and not the special promotions manager, has authority over those clerks.

In agreement with the Union, we find that the special promotions manager is not a managerial employee. The mere fact that the special promotions manager primarily develops ideas does not "inherently" invest that position with managerial authority. While the special promotions manager is indeed concerned with selling advertising for the Company, this goal is well within the scope and objectives of the Employer's business objectives. In this regard, it would appear that, like a salesman, the special promotions manager is responsible for generating advertising by supplements or other promotions to be placed in the newspaper. Moreover, the special promotions manager's alleged "policy implementations" are subject to complete review by managerial employees. We thus find that the special promotions manager does not meet the Board's definition of a managerial employee and should not be excluded from the unit.

The co-op advertising manager, whom the Company contends is a supervisory and managerial employee, is responsible for locating and bringing to the attention of sales persons "co-op money." (Co-op money is defined in the record as funds allocated by a manufacturer or distributor for advertising

<sup>34</sup> See, e.g., *General Dynamics Corporation, Convair Aerospace Division, San Diego Operations*, 213 NLRB 851, 863 (1974).

cooperatively with local retailers. For example, a national manufacturer of men's clothing, makes money available to be used in conjunction with a local clothing store for joint advertising.) The co-op advertising manager position was created in 1974. One-half of the working time of the co-op manager consists of locating such co-op money. The co-op manager talks to manufacturing representatives, reads trade publications, and consults copies of co-op contracts which are on file with the Newspaper Co-op Network, of which the co-op manager is a member. Upon locating the co-op money, the co-op manager informs the sales personnel or the sales manager so that they may attempt to secure the account for the Employer. The co-op manager also may design advertising packages to make the prospect of co-op advertising in the Post more attractive for the co-op advertisers. While not actually involved in setting advertising rates, the co-op manager makes adjustments of such advertising rates when necessary. The co-op manager also makes studies as needed on matters such as commissions to be paid to agencies that assist in locating co-op money for advertising. The co-op manager also makes reports on need for increased co-op staffing. The reports and studies are sent first to the advertising department manager and then, on occasion, to higher Post executives. The co-op manager uses a clerk-steno in performing these tasks. The co-op manager and the sales training and development manager share this clerk-steno. The clerk-steno performs work such as checking out reports and contracts. Although he shares the clerk, Leonard has been told that he can hire and discharge the clerk-steno, but has never done so.

Based on the foregoing, we conclude that the co-op manager is neither a managerial nor supervisory employee. The co-op manager does not set management or advertising policy. Nor is this manager's relationship with the clerk-steno sufficient to demonstrate supervisory status.<sup>35</sup> We thus decline to exclude this position from the unit.

The art department operates within the advertising administration and is responsible for producing ads for the salesmen and their clients which are to appear in the newspaper. This department is headed by the advertising art director, already excluded from the unit, who reports to the advertising manager. Also within the advertising art department are two assistant advertising art directors, whom the Employer seeks to exclude as supervisors, approximately 15-19 artists, 4 clerks, 1 copywriter, and 1 photcamera person.

<sup>35</sup> See discussion *supra*, concerning the advertising agency representative.

When a salesperson wants an advertisement created, the salesperson sends a work order to the advertising art department. Although sometimes these work orders go directly to a particular artist, they are placed for the most part at the desks of the two assistant advertising art directors, who subsequently distribute the work orders. Both assistant advertising art directors assign work. They distribute the work orders primarily on the basis of the individual artists' workload, and the skills required for the particular type of ad that is needed. It appears that the assistant advertising art directors spend less than half their working time making such assignments and reviewing the subsequent work product. An overtime chart is maintained by one of the assistant advertising art directors to insure even distribution of overtime work; however, overtime is mandated only after consultation between the assistant advertising art directors and the advertising art director. The record does not reveal that the assistant advertising art directors schedule the artists and other employees in the art department. The assistant advertising art directors do not grant vacation or time off, these functions being performed by the advertising art director.

Applicants for artist positions in the advertising art department initially are interviewed and their applications reviewed by the advertising art director. During this first screening, the advertising art director examines the portfolio which the applicant brings to the interview and makes a decision about the applicant's qualifications. If the advertising art director decides that the applicant is worth further consideration, the portfolio may be sent to the assistant advertising art directors, who review the work in the portfolio and make an oral assessment of the work. The record shows that each assistant art director reviews and assesses applicants on no more than four to six occasions a year, and that the advertising art director, in addition to the first screening, makes the final determination on hiring a particular artist. On occasion, the advertising art director sends a prospect to be interviewed and shown the art department by the assistant advertising art directors. It also appears that on occasion staff artists have also reviewed portfolios.

The assistant advertising art directors play no part in the discharge of employees from the art department. With respect to transfers, it appears that the Employer maintains approximately three artists in the Virginia sales office and three in the Maryland sales office, and that the opinion of the assistant advertising art directors concerning which artists should be sent to those locations is solicited by the advertising art director. However, the assistant advertising art directors have no contact with or

control over those suburban artists. It also appears that on occasion the need to reprimand an artist is discussed by the advertising art director with the assistant advertising art directors, but it is the advertising art director who issues such reprimands. The assistant advertising art directors, upon reviewing work, may instruct an artist to change or remake a particular piece of work, but they do not otherwise reprimand artists. Finally, it appears that at least one-half of the assistant advertising art directors' worktime is spent doing layouts and other art work that is also done by the artists in the department.

These facts do not establish that the assistant advertising art directors are supervisors. The Employer's reliance on the assistant advertising art directors' review of portfolios and interviews of prospective hires to support their supervisory status is misplaced. Thus, it is clear that the advertising art director makes both the preliminary and final selection of artists and he merely solicits the opinion of the assistant advertising art directors, whose assessments are not always followed. Hence, it appears that, at best, the advertising art director relies on the technical review by the assistant advertising art directors of an applicant's work and not on their general opinion or appraisal of the applicant.<sup>36</sup> In any event, however, it is clear that the advertising art director reviews the applicant and portfolio in all instances. Further, it appears that the "assignment" of art work is routine. It is undisputed that the primary factor in determining assignments is workload and that, although the assistant advertising art directors may make assignments based on an artist's skills, such assignments appear to be no more than what would be expected when a more experienced person decides there is a more efficient way for a particular process to be completed.<sup>37</sup> It is worth noting that the assistant advertising art directors themselves are involved at least one-half of their worktime in producing ads similar to those produced by the other artists in the department. We thus conclude that the record does not establish that the assistant advertising art directors are supervisors within the meaning of the Act.

Advertising services was formed in January 1977 by the merger of the publications department and the advertising control center. It produces the display advertising for the general, retail real estate, and classified advertising departments. The department is headed by a manager, Allan Kohan. The Employer asserts that the assistant manager, Albert Dixon, is a supervisor who should be excluded

from the unit. There are 47 other employees, full-time and part-time clerks and messengers, working in advertising services, which operates on a three-shift, 24-hour basis. Each shift is headed by a supervisor, whose placement is not in dispute here.

Dixon was appointed assistant manager in January 1977.<sup>38</sup> From that time until mid-April 1977, he also served as acting manager of the department.<sup>39</sup> When Kohan assumed the position of manager, an announcement was posted stating that Dixon, as assistant manager, would be responsible for the workflow and the processing of the advertising materials. The memo also stated that Dixon would oversee the activities on all three shifts and would be responsible for "all issues of personnel administration." Dixon testified that it was understood between him and Kohan that Dixon would handle most of the personnel administration aspects of the department while Kohan would be responsible for implementing the new system introduced by the combination of the old department into the advertising services department. It was Dixon's testimony that he would be responsible for approximately 95 percent of the department's personnel matters.<sup>40</sup>

Both during his period as acting manager and as assistant manager, Dixon has been involved in directing the department and making personnel decisions. As assistant manager, Dixon works on the 3-11 p.m. shift, and generally manages his staff of 20-30 employees. As noted above, he also has general responsibility for all shifts. The assistant manager reviews and checks the work of clerks, tracks lost ads, authorizes overtime, schedules work assignments, and approves overtime. Dixon also holds weekly meetings with employees to discuss problems in the department. Further, Dixon, with Kohan's approval, has moved people from one shift to another to facilitate the copy flow for which Dixon is primarily responsible. Also, Dixon issued several reprimands between January and June 1977, both as acting manager and as assistant manager. These reprimands were signed by Dixon and two of them were not reviewed by superiors prior to issuance. Dixon was also involved in the discharge of two employees. In one instance, Dixon fired an employee for abuse of sick leave and improper han-

<sup>38</sup> Dixon formerly was advertising control manager.

<sup>39</sup> During that time, Dixon reported to Twombly, then an administrative assistant to the vice president of advertising.

<sup>40</sup> An earlier memo from Twombly to the advertising director stated that Dixon's tasks would include work records administration, job performance measurement, and the solving of daily problems. The memo also stated that, together with Kohan, Dixon would make recommendations on salary, and participate in discipline, schedule, and shift assignment matters. That memo stated that Kohan would be in charge of hiring and firing and the overall running and development of the new department.

<sup>36</sup> See *Great Western Broadcasting Corp. d/b/a KXTV*, 192 NLRB 1203, 1205 (1971).

<sup>37</sup> Cf. *National Broadcasting Company, Inc.*, 160 NLRB 1440 (1966).

ding of copy. Dixon subsequently discussed the issue with both Kohan and Twombly, who told Dixon he could make the decision. Dixon went to personnel, picked up severance pay for the employee, and gave him his termination notice.

We agree with the Employer that Dixon is a supervisor within the meaning of the Act and should be excluded from the unit. The record reveals that in his capacity as assistant manager, he responsibly directs the work in the advertising services department. Also, unlike evidence relating to other alleged supervisors in the advertising department, the record here affirmatively reflects the effective recommendation and actual effectuation of discharge and discipline by the assistant manager. Based on these factors, we conclude that the Employer has demonstrated that Dixon is a supervisor who must be excluded from the unit.

4. *Customer Relations*: The customer relations department once operated within the communications division but now is part of the advertising department. Included within this department are the customer relations manager and the customer relations supervisor, both of whom the Employer seeks to exclude as supervisory and managerial employees. There are also six senior clerks and one secretary in the department.

The customer relations department handles complaints from customers regarding advertisements which appear in the newspaper. These complaints may arise due to errors in printing or omissions from printing, or they may be more general or aesthetic complaints regarding the advertisements. The customer relations department also handles general complaints about the newspaper and forwards such complaints to the appropriate department. The customer relations department solves some customer complaints by allowing adjustments, credits, or reruns as dictated by the particular situation and the error. Allowance guidelines for mistakes in printing of advertisements have been promulgated and are followed by the six senior clerks, as well as by the customer relations supervisor, and the customer relations manager. The senior clerks are responsible for handling adjustments whose value is less than \$100, and may grant adjustments without clearance up to \$25. Adjustments between \$25 and \$100 are cleared with the customer relations supervisor. The customer relations supervisor handles adjustments between \$100 and \$2,000, although the customer relations manager may handle some of these complaints. The customer relations manager is responsible for adjustments with a value greater than \$2,000 up to \$5,000. The customer relations supervisor, in addition to handling the adjustments between \$100 and

\$2,000, also reviews the adjustments done by the clerks in the department. The department handles approximately 3,000 such adjustments a month and the record indicates that the customer relations supervisor spends no more than 1 hour a day reviewing the clerks' work. The amount of allowances handled by the department in 1976 totaled \$1,300,000.

As indicated above, the customer relations manager involves himself with large scale problems regarding adjustments. In addition to this work, it appears that the customer relations manager interviews and makes recommendations regarding the hiring of clerks. The customer relations manager also has been involved in disciplinary matters. In one instance, he overruled the recommendation for reprimand made by the customer relations supervisor. It further appears from the record that the customer relations manager was involved in the promotion of the customer relations supervisor to that employee's present position.

The customer relations supervisor,<sup>41</sup> in addition to handling adjustments falling between \$100 and \$2,000, makes various assignments to the senior clerks. However, the senior clerks usually work on display and classified adjustments in a specific alphabetic area; i.e., the adjustments are divided among the clerks alphabetically so that the customer relations supervisor's discretion in making assignments is limited. The customer relations supervisor also coordinates vacations and breaks for the clerks, although this latter responsibility was discussed with the customer relations manager prior to the supervisor's taking it on. As noted above, the customer relations supervisor has been involved in recommending reprimands; however, testimony on one such instance revealed that the reprimand was subsequently evaluated and signed by the customer relations manager. Finally, the record reveals that the customer relations supervisor collated material into a pamphlet setting forth the allowance guidelines to be followed within the department. It is these guidelines which are followed by all employees within the customer relations department when allowing adjustments, credits, or reruns on particular items.

In agreement with the Employer, we find the customer relations manager to be a statutory super-

<sup>41</sup> The Union asserts that the customer relations supervisor actually performs the duties of a principal clerk and thus is not a supervisor or managerial employee. It asserts that the customer relations supervisor at the time of the hearing had been promoted from the position of senior clerk to administrative clerk and then to the present position. However, as noted earlier at fn. 22, it is the job function and not the title of the particular position under consideration which controls the determination of supervisory/managerial status, and, thus, we place no undue reliance on the title here or elsewhere on this proceeding.

visor under the Act; however, we do not agree with the Employer that the customer relations supervisor is a supervisory or managerial employee. It appears that the customer relations manager is primarily involved in hiring decisions in the department, as well as with discipline, merit increases, and promotions. The customer relations manager's authority in such areas is of such a nature as to require the exclusion of the customer relations manager as a supervisor. However, we cannot agree with the Employer that the same conclusion is true with respect to the customer relations supervisor. While the Employer argues that the customer relations manager is concerned with "large scale" problems only, and that other supervisory functions are left to the customer relations supervisor, the record establishes, and the Employer concedes, that the customer relations manager is involved in the daily functioning of the department. Further, it appears that the customer relations supervisor has responsibility in highly routine matters only; in this regard, we note that both the customer relations supervisor and the customer relations manager are employees with extensive backgrounds in the customer relations aspect of the Employer's operations. Further, the fact that the customer relations supervisor can authorize adjustments up to \$2,000 does not of itself dictate a conclusion that this position is managerial. It is clear that such decisions are made within prescribed guidelines promulgated by the Employer, which are to be followed in all instances. It is significant that the customer relations manager maintains supervision and responsibility for all adjustments in an amount greater than \$2,000 and that even clerks can "pledge the Employer's credit" up to \$25 without prior approval.

#### *B. Circulation Department*

The circulation department is responsible for the sale, distribution, and delivery of the newspaper through newsstand and street sales, home delivery, and out-of-town mail delivery. The department is headed by the vice president of circulation, the circulation manager, and the assistant circulation manager. Under these categories are five division managers, one each for city home delivery, suburban and country, newsstand and street sales, night circulation, and the service department. The parties agree that all of the above positions are managerial and are excluded from the bargaining unit. The Employer, however, contends that the various managers in charge of the actual distribution and delivery of the newspapers on a daily basis are supervisory and/or managerial employees who should also be excluded from the unit. These include the home delivery managers, the assistant

home delivery managers, the suburban traveling representatives, the assistant news and street sales managers, the assistant night circulation manager, and the service desk managers.

There are four home delivery managers under the city home delivery manager. They are assigned to one of four specific geographical areas—the District of Columbia, Prince Georges County, Montgomery County, and Virginia. These managers are responsible for the home delivery of newspapers through the use of independent contract distributors.<sup>42</sup> The distributors, who utilize carriers to deliver the newspapers, are independent contractors and not employees of the Post. There are approximately 38 to 58 distributors in each geographic area. At a level between the 4 home delivery managers and the independent distributors are 15 assistant home delivery managers who work within a specific part of the wider geographic areas.

The home delivery managers are responsible for the delivery of the newspaper in their assigned geographic areas. In performing their duties, they travel in company automobiles. In overseeing the delivery of the newspaper and collection of the money due for receipt of the paper, the home delivery managers are involved in locating and contracting with independent distributors. It is undisputed that the home delivery managers make recommendations on hiring and termination of the independent contractors, but that the final determination and signing of the contract is carried out by superiors, sometimes by the vice president of circulation, but most often by the division manager of city home delivery. Another key function of the home delivery manager involves setting rates the distributors receive for delivering the newspaper. Each contract rate varies according to the particular circumstances of the distributors' route. These rates are determined in the first instance by home delivery managers and assistant home delivery managers, and appear to be based on guidelines promulgated by the Employer. Although the home delivery manager may be the employee who contacts the prospective distributor, higher managerial personnel are responsible for approving and signing the contract for any individual distributor. Moreover, while a home delivery manager may make recommendations regarding rate changes because of cost and other factors, it is clear that these changes require clearance from the city home delivery manager or other higher authority. Finally,

<sup>42</sup> These distributors were also referred to in the record as dealers and agents. Although a distributor, a dealer, and an agent perform somewhat different functions, the parties are in agreement that for purposes of this case their specific functions are not relevant to the determination of the status of the positions involved here.

the home delivery managers are active in determining credits for distributors when necessary. However, it appears that these adjustments are based on established company guidelines.

The home delivery managers approve vacation and time off for the assistant home delivery managers and may change an assistant home delivery manager's territory under emergency circumstances. It also appears that the home delivery managers make recommendations for the hire of assistant home delivery managers, but that they do not make such determinations themselves.

The assistant home delivery managers, suburban traveling representatives, and assistant newsstand and street sales managers also work in the field to distribute the newspaper. Both parties are in substantial agreement that the assistant home delivery managers, the suburban and country representatives, and the assistant newsstand and street sales managers perform virtually identical tasks. Accordingly, we will discuss them as a group, noting the differences in job functions where relevant.

There are a total of 15 assistant home delivery managers who, as noted above, work under a particular home delivery manager in a particular geographic territory. Each assistant home delivery manager deals with between 6 and 15 distributors. It appears that the assistant home delivery managers are salaried, set their own hours, and have the use of a company vehicle when covering their particular geographic work area. In fact, they spend most of their time working in the field. The assistant home delivery managers, like the home delivery managers, recruit prospective distributors and make recommendations to the home delivery managers for approval. The assistant home delivery managers negotiate contracts with the distributors and compute contract rates; these contracts are sent to the city home delivery manager and are eventually signed by the vice president of circulation. The assistant home delivery managers take responsibility for training the distributors. They also maintain records on newspaper stops and starts, as well as on complaints. When goals are set for particular geographic areas, the assistant home delivery managers set the specific quota for individual distributors within their area. Finally, the assistant home delivery managers are involved in making adjustments which give distributors credit for lost or damaged newspapers.

There are six suburban and country traveling representatives who report to their division manager. They are responsible for home delivery in far suburban areas and operate similarly to the assistant home delivery managers. Indeed, except for the difference in geographic areas, the record shows,

and the parties agree, that their duties are identical to that of the assistant home delivery managers.

Finally, there are three assistant newsstand and street sales managers who report to their division manager. They are responsible for the sale of the papers through distributors who place newspapers in coin operated newsstands, in stores, and with street vendors. One of the three assistant newsstand and street sales managers spends most of his working time at the loading dock distributing newspapers through dealers. In this capacity, he may adjust the number of newspapers for a particular distributor, as necessary. There are also nine part-time workers who deliver newspapers to all night stores in the Washington metropolitan area. The record indicates that these part-time employees are hired directly by an assistant newsstand and street sales manager without discussion with the manager of the division. The two remaining assistant managers divide in half the distribution area geographically, and are responsible for insuring the delivery of the newspaper by the distributors in their particular area. These assistant managers spend approximately half their time outside the office performing this function and the other half in the office checking returns, and making weekly reports on sales and revenues. It also appears that these assistant managers are involved in the training of the 20 distributors under each of their respective jurisdictions.

We conclude based on the foregoing that the home delivery managers are supervisors within the meaning of the Act. It appears that they make effective recommendations with respect to the hiring and termination of assistant home delivery managers and that they have overall responsibility for their large geographic areas. While we take cognizance of the Union's argument that much of the home delivery managers' worktime is spent in a fashion similar to that of the assistant home delivery manager, we cannot ignore the probative evidence which supports our determination here. We therefore conclude that the home delivery managers are supervisors who should be excluded from the unit.

However, we conclude, contrary to the Employer, that assistant home delivery managers, the suburban and country traveling representatives, and the assistant newsstand and street sales managers are not managerial employees within the meaning of the Act. The record in this case does not establish that the assistant managers sufficiently make use of independent judgment or exercise their own discretion with respect to significant management policy in performing their duties. Thus, as the Employer concedes, the assistant managers do not set



the rates to be received, but merely compute them under a formula prescribed by the Employer. Moreover, the Employer concedes that the assistant managers do not independently enter into or cancel contracts, nor do they commit the Employer "to the number of such persons used and to the compensation they receive."<sup>43</sup> Thus, unlike the situation in the recently decided *Eugene Register Guard* case, it cannot be said that the duties of the assistant managers involved here require much more than filling in contracts, or that their work does not depend on clearance from higher management. That they may make adjustments of credits for lost or damaged newspaper does not convert them from employee status to managerial status, because such determinations are made within guidelines and are reviewed by higher management. For these reasons, we do not find these employees to be managerial employees who should be excluded from the unit.<sup>44</sup>

The Employer also claims that the assistant newsstand and street sales managers are supervisors because they have authority to hire "part-time" employees. These part-time employees deliver papers to night stores and work 2 hours a night, 6 nights a week. The Employer's claim regarding the hiring function of assistant newsstand and street sales managers with respect to these employees is not borne out by the record. Thus, at the hearing, the newsstand and street sales manager did not tes-

tify that all assistant newsstand and street sales managers hire part-timers, but rather that one designated assistant manager handles such hiring at any particular time. Thus assistant newsstand and street sales manager, Land, at one time handled this task, but then was replaced by assistant newsstand and street manager, Terrell. According to the testimony of the newsstand and street sales manager, at the time of the hearing, only Terrell would handle the hiring. The record also indicates that names of potential deliverers are posted on a sheet of paper on a bulletin board in the newsstand and street sales office, and that names are taken from that list for replacements as positions become available. Moreover, at the hearing, there was a dispute as to whether these part-time "employees" were employees within the meaning of the Act or, indeed, whether they were employees who came under the contract in effect between the Employer and Union between 1974 and 1976. In the record, these part-timers were described as "noncontinuity part-time employees" and it appears that they do not go through the normal hiring procedure used by the Post; i.e., these part-timers are not hired through the personnel department of the Post but are processed exclusively through the newsstand and street sales department.

In *The Suburban Newspaper Group—Moorestown News, Inc.*, 195 NLRB 438 (1972), the Board confronted a similar situation. There, the employer claimed that district managers were supervisors over carriers. The Board found, however, that the "record not only fails to demonstrate that the hiring and replacement of carriers and the determinations of whether they will receive bonuses require the exercise of discretion or independent judgment, or that the district managers responsibly direct the carriers, but, more fundamentally, also fails to establish that carriers are employees and not independent contractors as the Employer holds out to the public." Here, where the status of the part-time deliverers has not been clarified either in the record or in the parties' briefs, we do not believe that a finding of supervisory status based on the hiring and control of nine part-timers who work 2 hours a night, 6 nights a week establishes conclusively that the assistant newsstand and street sales managers are supervisors. At best, as noted above, only one assistant manager could be found to be a supervisor because the record testimony indicates that only one such assistant manager is in charge of the hiring of these part-timers.<sup>45</sup> We also

<sup>43</sup> See *Guard Publishing Company, d/b/a Eugene Register Guard*, 237 NLRB 205, 206 (1978).

<sup>44</sup> The Employer's reliance on, *inter alia*, *Aeronca Inc.*, 221 NLRB 326 (1975), and *Garden Island Publishing Co., Ltd.*, 154 NLRB 697 (1965), is misplaced. In *Aeronca* the estimators whom the employer sought to exclude as managerial not only prepared projections of the cost of performance contracts on which the employer intended to bid (including expected profits), but were "instrumental in setting prices" as well as assisting in the negotiation of contracts with customers. Moreover, the estimators in that case had occasion to contact the director of industrial relations to obtain projections of labor rates in future years including figures the company expected to negotiate with the union. Thus, these estimators differ from the assistant managers here, who use a formula promulgated by the Employer in determining the projected rates, which rates are subsequently approved by higher management. Further, in *Garden Island Publishing*, the Board found the manager of the circulation department a managerial employee because, *inter alia*, she billed all the circulation accounts, directed the work of the newspaper carriers, including collecting money from them, and hired and fired; i.e., supervised the carriers. The Board noted there that the manager was, in fact, the head of the circulation department and thus clearly an agent of management. This position would seem more similar to the home delivery manager or the city home delivery manager whom we have excluded here, and not the assistant managers whose authority is much more circumscribed than that set forth in *Garden Island Publishing*.

The Employer also asserts that those whose exclusion it seeks in the circulation department should be excluded because of the "special labor relations history of that department." The Employer notes that it converted many of its district managers to independent contractors between 1953 and 1954, and claims that the circulation managers involved here were included in the Guild contract only to preserve pension and welfare funds. However, it is clear that the circulation managers are employees of the Company, have been included in the unit in the past, and are specifically included by reference in the Board-certified unit.

<sup>45</sup> In this regard, we note that at the hearing the Union apparently asserted that only employees who worked 16 hours or more were part-time employees under the contract and employees within the meaning of the Act. We need not pass on this contention here.

note that in *Suburban Newspaper Group*, the Board did not find the district supervisors possessed supervisory status, even though they allegedly had authority with respect to part-timers who performed various tasks, such as delivering papers and riding as helpers on trucks. It is clear that the control and supervision of the part-timers here is routine and does not require the use of independent judgment. The record does not show that the assistant managers use discretion or independent judgment in the hiring of the nine part-timers. In such circumstances, we cannot conclude that the assistant manager involved with these part-timers is a supervisor who should be excluded from the unit.

The night circulation department ensures that the newspapers scheduled for delivery are loaded on the distributors' trucks. The night circulation manager, who usually works Tuesday through Saturday nights, is in charge of the department. Under him are two assistant night circulation managers, at issue here as alleged supervisory and managerial employees, who split the remainder of the weekly shifts between them. They are responsible for running the dock area at the Company's building where the papers are loaded on to the trucks. The assistant night circulation managers determine the order in which the trucks should receive their papers so that the process is completed in a timely manner and the papers delivered promptly. The majority of their working time is spent making sure that these trucks are "moving" to their destinations. During the process of loading the trucks, the assistant night circulation managers may also order extra papers to be run if necessary in order to expedite or otherwise improve the process on a particular day. In addition to overseeing the loading of the papers for the distributors, the assistant night circulation managers have responsibility for seeing that single mail copies are sent to the appropriate destination. These are sent via the post office, as well as to the major bus terminals, the train station, and the airport, for further delivery. There are four full-time and nine part-time drivers who comprise the "bus and baggage" staff who make these latter deliveries. The assistant night circulation managers' duties also include office work such as taking inventories and reviewing orders. The assistant managers are responsible for the maintenance of the company's trucks, and in this connection they keep records and send the trucks for basic maintenance. The assistant managers also file reports regarding the workday in the night circulation department.

We cannot agree with the Employer that the assistant night circulation managers are managerial or supervisory employees. Determining the order in which trucks are loaded does not, in our opinion,

constitute managerial discretion under Board precedent. To the contrary, this responsibility appears to be more in the nature of a routine decision designed to effectuate the Employer's need to have papers delivered to the proper location for ultimate delivery to the customer. So, too, the assistant night circulation managers' decision to order extra papers run, although obviously committing the Employer to expend more capital for its business, is not the exercise of true managerial discretion.<sup>46</sup> Nor can we agree that the assistant night circulation managers' involvement in hiring bus and baggage employees shows that the assistant night circulation managers are supervisors. The record indicates that one of the assistant night circulation managers hired four part-time drivers during the vacation absence of the night circulation manager. However, it appears that the assistant night circulation manager had discussed this hiring prospect with the night circulation manager beforehand, and that the latter had told the assistant night circulation manager that temporaries who had worked during a prior strike were to be hired if openings occurred. It appears that it is these employees who were hired by the assistant night circulation manager to fill the part-time positions. The record does show that the night circulation manager usually interviews an employee after the applicant speaks to an assistant night circulation manager. The foregoing does not show that the assistant night circulation manager exercises independent discretion or judgment in hiring employees. To the contrary, it shows that the assistant night circulation manager merely carried out the directives of the night circulation manager; this sporadic exercise of authority cannot support a supervisory finding here.<sup>47</sup>

Also included within the circulation department is the service desk, headed by the service department manager. There are also 3 service desk assistant managers, whose status is at issue here, and 9 full-time and approximately 50 part-time clerks and routers. This department receives telephone calls from customers regarding circulation. These calls include complaints about nondelivery or late delivery of the newspaper, requests for new subscrip-

<sup>46</sup> *Moore-McCormack Lines, Incorporated*, 181 NLRB 510 (1970), does not support the Employer's contention that the assistant night circulation managers are managerial employees. The Board noted there that cargo supervisors perform work "of managerial nature" because their duties involved planning and execution of plans for cargo loading. The Board further found, however, that "it does not appear [the cargo supervisors] perform any functions similar to those of the employees in the unit" and thus did not have sufficient community of interest with the clerical employees sought to warrant inclusion in the unit. These facts obviously are different from those presented before us here, since the instant managers' decisions are routine, and their work functions are similar to those of other unit employees.

<sup>47</sup> See, e.g., *Directors Guild of America, Inc. (Association of Motion Picture & Television Producers, Inc.)*, 198 NLRB 707 (1972).

tions, or for suspension during vacation of current subscriptions, address changes, and the like. Employees also receive calls for distributors during the morning delivery time. The department operates 7 days a week, 5 a.m. to 4 p.m. daily, and 5 a.m. to 2 p.m. Sunday. The service desk assistant managers<sup>48</sup> sit in front of the service rows facing the clerks and routers. Each service desk assistant manager has a switchboard for monitoring employee conduct during telephone calls. The assistant managers may also take calls in emergencies and handle complaints, especially from persistent callers. When the service department opens for business at 5 a.m., there are two employees and one assistant manager who work from opening until 7 a.m. By 7 a.m., 20 to 25 more employees, as well as one more of the assistant managers, arrive for work. By 10 a.m., the third assistant manager arrives. There usually are between 20 and 25 employees on duty throughout the remainder of the day.

The service department manager handles scheduling, vacations, and time off, and makes final determinations on hiring and discharge. The record indicates that service desk assistant managers interview applicants and make recommendations for hiring on some occasions. Sometimes, these are the only interviews conducted by the service department, but the qualification of the applicant is independently reviewed by the department manager or vice president of circulation. The service desk assistant managers have been involved in verbal and written disciplinary matters. It appears that, especially with respect to written reprimands, the problem is first discussed by the assistant manager with the service department manager, who signs the reprimand. Service desk assistant managers have made recommendations for promotions, but again, as with hiring, the service department manager or higher personnel make the final determination. The service desk assistant managers are also involved in calling in on-call clerks and routers when necessary. This is done from a list which is maintained in the department.

Based on the foregoing, we do not agree with the Employer that the service desk managers are supervisory employees. All the assistant managers perform a quality control function to insure proper work by the clerks and routers. The record indicates that in almost all instances problems are referred to the service department manager. We do not deem it controlling that service desk assistant managers are present in the department when the service department manager is not. It is clear that

the assistant managers' jobs follow clear, routine patterns, and do not afford a basis for finding effective supervisory substitution.

### *C. Promotions, Research, and Public Relations*

The Employer maintains separate departments for promotions, research, and public relations, respectively, which fall under the jurisdiction of the vice president for communications. These departments are responsible for promoting the use of the newspaper as an advertising media, for handling the Employer's advertising needs, and for maintaining and improving community relations. The Employer seeks to exclude the promotions manager,<sup>49</sup> the art director, the assistant market research manager, and the assistant public relations manager from these departments.

The promotions department is headed by the promotions manager and also includes an art director, three copywriters, three clerks, a secretary, and an artist. This department operates as an in-house ad agency, producing media advertisements, promulgating advertising sales material, creating audiovisual presentations, and assisting in advertising and circulation promotions. The art director is responsible for seeing that the promotion department's art requirements are met. In so doing, she does a variety of work, including layouts, pasteups, planning, and creative thinking. In performing these functions, the art director works with the one full-time artist in the department and free lance artists, we contract to perform specific jobs. The art

<sup>49</sup> Testimony by the Employer's vice president for labor relations indicates that the promotions department originally was divided into a creative services division and a research division, with separate managers for each. Both of these reported to the director of promotions. However, testimony indicates that the director of promotions resigned just prior to the completion of the hearing in this case, and that the position of creative services manager was abolished along with that of director of promotions. The Employer asserts that the division of research became a separate department and that Tortorello, the former head of creative services became promotions manager. The Union claims that there is "no evidence in the record indicating that these contentions are true or if true what duties are encompassed by" the new position of promotions manager. The Union thus asserts that the creative services manager should be included in the unit, but does not discuss, and thus takes no position on, the status of the promotions manager. On the other hand, the Employer maintains that the creative services manager historically has been excluded from the unit, and thus the elevation of Tortorello from creative services manager to promotions manager likewise requires her exclusion from the unit here. Contrary to the Union's argument, the Company did submit a revised organization chart for the communications department which shows the existence of the promotions manager, and the labor relations manager testified that such a position existed. However, no further evidence was presented on the promotions manager position, although Tortorello testified earlier in the proceeding about the creative services manager position. From the above, we conclude it is unnecessary to decide the status of the Tortorello position, since the Employer asserts that the creative services manager position no longer exists, and the Union does not argue the status of the promotions manager position. In these circumstances, we find a discussion of the creative services manager position would be moot, and an analysis of the promotions manager position unwarranted.

<sup>48</sup> The Company refers to these employees as service desk assistant managers; the Union, referring to the same employees, calls them circulation department supervisors.

director determines whether a promotions project can be done in-house or must be contracted out to free lance artists for illustrations or mechanical or design work. The art director has a \$30,000 budget to use for free lance work. Free lance assignments are made approximately two times a week. It appears that in the past the director of promotions has final authority over the use of free lance artists. With respect to the artist, the art director makes assignments of art projects for the artist to perform and review the art work on an artistic basis similar to that used with the free lancers. However, the work assignments are based on certain considerations such as style or type of skill needed to perform the project.

The Employer asserts that the art director supervises the artist in the promotions department. We cannot agree with this assertion. We note that, despite the apparent reorganization within the promotions department, the record indicates that both the former director of promotions and the current promotions manager are in charge of the department and are involved in insuring that the art work is completed. Moreover, it appears that the assignment of work made by the art director to the artist does not involve that sort of discretion or independent judgment which warrants a supervisory finding. Further, we cannot agree with the Employer's assertion that the art director's authority to use free lance artists makes him a managerial employee. While the record does indicate that the art director contacts artists whom the art director desires<sup>50</sup> such contracting is within the prescribed budget that the Employer maintains for this aspect of the promotions department. Nor do we agree that because the art director is responsible for determining when promotions department art work must be performed by free lancers as opposed to the promotions department artists, a potential conflict exists because the art director must decide whether to use a unit employee or a free lancer. In this regard, the record indicates that free lancers are used because of such factors as techniques or complexity, or the availability of in-house artists. Thus, there appears to be little possibility of conflict of interest.

The Employer's research department supplies market research and media information to the sales staff of the promotion department and other Post departments to assist in selling the newspaper as an advertising media. Employees of this department gather material for brochures and other advertising materials to accomplish these goals. The market research department was formerly part of the promo-

tions department, but now comes under the direction of the communications vice president. The department is directed by a manager, whom the parties agree is excluded. Also included in the unit are an assistant manager, three market analysts, and a secretary.

The assistant market research manager position was created in 1976, and the Employer now alleges that it is a supervisory and managerial position. The assistant manager hired in 1976, Carla Koeffler, had expertise in multimedia analysis and was hired specifically for her knowledge of television broadcast and research methods. Like the manager, the assistant market research manager works with the three market analysts in gathering and supplying research and other information to the Company. In line with the department's emphasis on multimedia analysis, the assistant market research manager formulates and effectuates new programs designed to aid in market research strategies. For example, the assistant manager implemented a monthly analysis of Arbitron rating books to obtain a "television perspective" so that employees trying to sell the Post advertising could understand the nature of television advertising, and the difference between that media and the newspaper media. The assistant market research manager has also created a slide chart to assist in the presentation of the market survey information. In performing these tasks, the assistant manager makes use of the three market analysts and has helped train them to use the new sources of information that the assistant manager brought to the attention of the department. The record indicates also that the market analysts have specific areas of expertise and that they have been performing various projects for many years.

Based on the foregoing, we conclude that the assistant market research manager is neither a supervisory nor a managerial employee. The use that the assistant market research manager makes of the market analysts is not supervisory in nature, but rather the assistant market research manager and the analysts work as a team involved in the common goal of securing necessary information for the department. The record indicates that these market analysts have their own research projects and that the assistant manager was brought in for expertise in helping to enlarge the research scope of the department. Such technical direction does not imbue the assistant market research manager with supervisory authority.<sup>51</sup> Nor do we find this

<sup>50</sup> But as noted above, the art director's superiors have indicated in the past whether they approve or disapprove the use of certain free lancers.

<sup>51</sup> The Employer asserted that the assistant market research manager hired and trained three temporary typists. We note first that it does not appear that these temporary typists were employees within the meaning

*Continued*

position to be managerial. In our view, the mere gathering and study of information designed to increase the Employer's advertising market does not show that the employee here has the authority to formulate, determine, or effectuate employer policy, or otherwise is so closely related to management as to require her exclusion.

The Employer's public relations department was established in 1972 as an independent division. Its duties include handling the Post's community relations and publicity needs, and to some extent its internal communications. The department includes a public relations manager, who is excluded from the unit, as well as an assistant manager, who is at issue here, three part-time tour guides, two writers, a clerk, and a secretary. The position of assistant public relations manager was created in 1976. At that time, it was filled by the then public relations supervisor, who also had served as secretary and representative in the public relations department. It appears that the responsibilities of the individual who filled the assistant manager position have remained relatively constant, except that apparently the assistant manager now substitutes for the public relations manager when the latter is not present in the office.

The assistant public relations manager responds to mail, writes and distributes publicity releases, takes responsibility for the Company's newsletter, and is in charge of the Employer's tour program. The newsletter is an in-house publication for employees of the Company. One of the two writers in the department performs the day-to-day work involved in producing that newsletter. It appears that the assistant manager suggests stories and reviews the work upon completion. The assistant manager has also made recommendations to the public relations manager regarding the hiring of the individual to fill the newsletter writing position. Another aspect of the assistant public relations manager's job involves publicity and entertainment events for the Company. These include such matters as company circuses, book luncheons, and the like. The one clerk in the department is also involved in arranging the events, including reserving rooms, securing speakers, and distributing tickets. Finally, the assistant public relations manager has primary responsibility for the three part-time tour guides who lead tours of the Company and who work 2 days a week, 7 hours a day. Thus, the record indicates that the assistant manager hires the tour guides, trains them, and schedules their hours. The

of the Act. Secondly, even if they are, it appears that the manager of the department was also involved in these hires, which involved the personnel department sending three typists, one after the other, to perform a particular task which two typists found they could not perform.

assistant manager may also lead such tours for special visitors or when a substitute tour guide is needed.

Based on the undisputed fact that the assistant public relations manager has the primary duty of hiring the part-time tour guides for the public relations department, we conclude that the assistant public relations manager is a supervisor within the meaning of the Act. While we do not believe that the other functions and duties of the assistant public relations manager indicate supervisory authority, we find that the exercise of discretion in hiring and selecting the tour guides warrants this finding.

#### *D. Administrative Services Department*

This department provides support services for the Company and consists of sections for printing, telephone centrex, building services, mail, purchasing, and travel. The administrative service manager and his assistant are in charge of this department. They are excluded from the unit by agreement. The assistant manager for administrative services is responsible for the duplicating (printing) services and telephone operations.

The printing services section of the department produces in-house printing of materials used inside the Company as well as those used on the outside for promotions. The section is headed by the printing services supervisor<sup>52</sup> at issue here, who is subordinate to the assistant manager for administrative services. The section also employs four full-time and three part-time employees. One full-time employee is designated a "coordinator" and is involved in computing costs of jobs for accounting purposes and handling travel directories, as well as ordering materials as discussed below. The three remaining full-time employees and three part-time employees operate three large presses and concomitant auxiliary equipment. The section is fully equipped to produce, *inter alia*, forms, letters, and promotional pieces. The department operates on one shift, all full-time employees working similar hours; the part-timers work as needed on an on-call basis. The printing service supervisor determines the necessity for increased manpower and calls in the part-timers on this basis.

As printing work comes into the section, it is assigned by the printing services supervisor to the appropriate machine for completion. Employees in the department work on all machines on a rotating basis. The printing services supervisor, who has made recommendations with respect to which machines the Employer should purchase, is charged

<sup>52</sup> This position at one time was called the duplicating supervisor.

with training the clerks who run the machines. The printing services supervisor also spends somewhat less than half of his workday running machines. The remainder of the printing services supervisor's workday is spent on paper work, including determining the need for repairs and supplies. In this regard, the printing services supervisor has authority to order supplies such as paper and inks within a limited amount, and likewise, in certain circumstances, may send machines out for repair, or call a repairman as needed; if a large expenditure of over \$800 is involved, clearance by the assistant manager is required. The "employee coordinator" also is involved in this process in that he may carry out the orders of the printing services supervisor or may effectuate repairs or orders of supplies when the printing services supervisor is not present in the department.

With respect to hiring, reprimand, and discharge, the record indicates that the printing services supervisor is consulted by higher management, but that final determinations are made by superiors. The printing supervisor has informed the administrative services manager of an outstanding performance by an employee. However, the manager made the decision to grant the employee a merit increase. Further, although vacations are scheduled by the printing services supervisor, such vacations are accorded only when the manning requirements of the department can be met. Further, overtime may be required of the machine operators by the printing services supervisor, but such overtime is subject to an allowance which must be controlled; if overtime is to exceed a certain amount, it must be cleared by superiors.

Based on these facts, we conclude, in agreement with the Union, that the printing service supervisor is more akin to a leadman than a supervisory or managerial employee, as urged by the Employer. The ordering of supplies and repairs is not the "pledging of employer credit" which the Board has found to support a finding of managerial employee. Nor is the selection of repair services, or training, that sort of managerial authority which involves independent discretion or actions outside the Employer's guidelines which convert an otherwise rank-and-file employee into a managerial employee. The record clearly shows that, like a leadman, the printing service supervisor spends a large percentage of the workday operating printing machines. The remainder of the time is spent fulfilling routine administrative tasks such as those mentioned above. In these circumstances, we do not find this employee to be a supervisor.

The Employer maintains a centrex switchboard to handle all incoming and outgoing telephone calls

for the Company. It operates 7 days a week, 24 hours a day, and encompasses three shifts. In addition to the chief telephone operator, whom the Employer claims is a supervisor and managerial employee, the department includes eight full-time and five part-time operators. The chief telephone operator works from 10 a.m. to 6 p.m., so that her shift includes the day shift and overlaps part of the night shift. The chief operator works on the switchboard approximately 20 percent of the time, usually in relief of the other operators. The chief telephone operator is responsible for recordkeeping, including overtime reports, part-time reports, and watts and long distance reports; these are done on a weekly and monthly basis. The chief telephone operator also prepares the work schedules for the operators. These schedules appear to be based on seniority, with full-time operators having first selection and permanent part-time employees the next selection, followed by the two relief operators. As for work assignment, most operators can handle any individual position, although selected individuals handle special calls. The record indicates that the chief telephone operator has interviewed prospective operators and has been involved in reprimands or discharge, although in these latter instances the assistant manager or administrative services manager has also been closely involved. The record also shows that the chief telephone operator has hired two part-time employees without further review by higher supervisors. In addition to these duties, the chief telephone operator also orders supplies for the telephone section. In this regard, the chief telephone operator, together with the assistant manager, meets with representatives of the telephone company to decide what equipment best suits the needs of the Employer.

As the record indicates that the chief telephone operator has independently hired employees in the section, we find that the chief telephone operator is a supervisor within the meaning of the Act.

Within the administrative services department is the building services division, which is headed by a manager who is already excluded from the unit.<sup>53</sup> Reporting to the building services manager is the supervisor of composing room assistants, whom the Employer claims is a supervisor under the Act.

There are seven to nine composing room assistants who perform janitorial cleanup in the composing room. They sweep floors around the composing room machines, gather metal slugs, work a remelting machine, and perform other cleanup work in the composing room. The composing

<sup>53</sup> Under the building services manager is a building services supervisor who is the manager at night, and is excluded from the unit as well.

room assistants work on a 24-hour, three-shift workday. The supervisor and six employees start at 4:30 a.m.; one employee works evenings, and another two work on the morning shifts. The supervisor of composing room assistants performs cleanup when necessary to fill out a crew. He also keeps track of stock and inventory. Scheduling of composing room assistants is done by the supervisor, usually on a seniority system. Overtime is distributed by the supervisor equally between the composing room assistants. The supervisor of composing room assistants also has issued written reprimands and hired an assistant without further review by company officials.

Based on these facts, we conclude that the supervisor of composing room assistants is a statutory supervisor. We note specifically the uncontroverted testimony that Byrd, as supervisor of composing room assistants, hired an employee without further review by higher management, and that written reprimands have issued under the signature of the supervisor of composing room assistants, again without review by the building services manager or administrative services assistant manager. For these reasons, the supervisor of composing room assistants must be excluded from the unit.

The Employer's purchasing department is responsible for buying supplies and materials for the Company.<sup>54</sup> The department is headed by the purchasing manager, Robert Dawn, who is excluded from the unit. Dawn reviews requisitions for goods and services forwarded by various departments to the purchasing department. He also receives a weekly inventory of critical supplies which he monitors in order to maintain these supplies at an operating level. Dawn interviews potential suppliers, and may negotiate terms and prices with vendors. Moreover, he is responsible for the sale or disposal of surplus equipment.

The assistant purchasing manager, who the Employer claims is a supervisor and managerial employee, works under the purchasing manager. The department also includes a secretary, a purchasing clerk, and two full-time and one part-time stock-room employees. The primary function of the assistant purchasing manager involves the acquisition of stock items. Indeed, both the purchasing manager and the assistant purchasing manager spend approximately half of their time in the stock area determining the need for items and reordering them. Requests for items may also come from other departments. There are department guidelines which assist the purchasing agents when they seek to secure items. Thus, the assistant purchasing man-

ager usually solicits three bids from vendors and then, using price and quality as guidelines, selects the most appropriate vendor for the Employer. The assistant purchasing manager authorizes approximately 50 purchases a month. The total of the inventory under the control of the assistant manager approximates \$500,000 and includes such items as scotch tape, paper, and preprinted forms for data processing. The monthly authorization falls between \$25,000 and \$50,000. The assistant manager also has taken responsibility for drafting an evaluation form for the employees in the purchasing department and will show managers in the administrative services section how to use that form. Although there was testimony that the assistant purchasing manager was told she could hire and discharge, the record shows only that she has interviewed and made recommendations on hiring. However, the decision to hire employees has been made by the purchasing manager. It also appears that the purchasing manager is absent from the department approximately 6 to 8 weeks a year, at which time the assistant purchasing manager handles the duties of the department.

Based on the foregoing and the record as a whole, we conclude that the assistant purchasing manager is neither a managerial nor supervisory employee under the Act. In *Bell Aerospace, a Division of Textron, Inc.*, 219 NLRB 384 (1975), the Board found that buyers who "do not exercise sufficient independent discretion in their jobs to truly align them with management are employees, not managerial, under the Act." As the Board had noted in the earlier *Bell Aerospace* case, "[w]hile it is true that buyers are in a position to commit the Employer's credit, the record reveals that the discretion and latitude for independent action must take place within the confines of the general directions which the Employer has established." (190 NLRB 431.) These precepts are readily applicable to the authority of the assistant purchasing manager here, who, although able to commit the Employer to purchasing stock items, must conform to certain Employer guidelines and, on occasion, must clear decisions with higher department or company authorities.<sup>55</sup> Further, with respect to the Employer's supervisory claim, we note that were the assistant purchasing manager found to be a supervisor, there would be two supervisors and only four full-time and one part-time employees in the department. Although the record does indicate that the assistant purchasing manager does make some recommendations with respect to hiring and transfer,

<sup>54</sup> There are some exceptions to this responsibility, such as newsprint, which is purchased through another department.

<sup>55</sup> See also *Barnes and Noble Bookstores, Inc.*, 233 NLRB 1326, 1332-33 (1977); compare *Simplex Industries, Inc.*, 243 NLRB 111 (1979).



such action appears sporadic. Similarly, scheduling by the assistant manager is routine. We therefore decline to find the assistant purchasing manager to be a supervisory employee.<sup>56</sup>

#### E. Insurance Department

This department is responsible for the insurance programs at the Post. It also handles various health and welfare and pension plans, and administers workmen's compensation claims. Approximately 10 employees work in the insurance department, which is headed by Insurance Manager John Cannon. The Employer asserts that the assistant manager and the insurance administrator are supervisory, managerial, and/or confidential employees who should be excluded from the unit.

The assistant insurance manager position was created in March 1977. The position was filled at that time by Catherine Thompson, who was hired by the insurance manager. Thompson was brought into the department because of her expertise in ERISA.<sup>57</sup> Thompson spends most of her worktime studying pension plans, including the Guild pension plan, at the direction of the insurance manager. In performing this function, she calculates benefits for employees under the various plans, and works on data relating to benefits accumulated by employees when they are terminated. The assistant insurance manager also works or will be working in the future on other insurance, such as fire, theft, and casualty, and her duties will expand to include claims handling and welfare benefits. The assistant insurance manager also will be involved in calculating the cost of proposals for employee benefits under the collective-bargaining agreement. In performing her tasks, she has access to employee files.

The Employer argues first that Thompson was recruited as a management trainee, is in a management exempt plan for pension purposes, works closely with the manager of the insurance department, and is therefore a managerial employee. The Employer next asserts that the assistant insurance manager should be excluded as a confidential employee because of the nature of the material with which she works, and the fact that she works with the vice president for labor relations. Finally, the Employer avers that the assistant insurance man-

ager is a supervisor because she directs the work of a secretary and a clerk. We cannot agree with any of these assertions.

We first reject the Employer's argument that the position of assistant manager of insurance is similar to that of the management trainees in *Curtis Industries, Division of Curtis Noll Corporation*.<sup>58</sup> In that case, unlike the instant case, the management trainees were precisely that; i.e., persons who were training to advance into management positions and who would leave the respondent's employ if they did not so advance. These management trainees were recruited and hired because of special education backgrounds, and accepted employment with a designated managerial goal in mind; remained with the employer only if they successfully completed the training program; and had dissimilar conditions of employment from regular employees. Here, unlike the situation in *Curtis Industries*, the assistant manager of insurance is not involved in a training program which will lead either to a higher management position or the prospect of leaving the employ of the Post.

It is true, as the Employer points out, that the assistant manager has a secretary and an office, and participates in a pension plan which differs from that of employees represented by the Guild. However, the assistant insurance manager spends the majority of her time on insurance programs—specifically at this time ERISA—which is similar to the function of other employees in the insurance department. While we have no doubt that the assistant manager is well educated and uniquely talented in her area of expertise, such facts do not convert an experienced, knowledgeable employee into a managerial employee. The assistant insurance manager's close relationship with the manager of the department, although perhaps indicative of her status as a valuable employee, does not, in itself, dictate a conclusion that the assistant manager is a managerial employee.

Nor does the assistant manager's access to confidential information lead us to conclude that this position is a confidential one under the Act. "The Board has held that it will not exclude as 'confidential' employees who merely have access to personnel or statistical information upon which an employer's labor relations policy is based; nor will it exclude employees with access to labor relations information after it has become known to the union or the employees concerned."<sup>59</sup>

While it is clear that Cannon, as insurance manager, deals directly with the vice president for

<sup>56</sup> Also included in the administrative services department is the food services division. The Employer asserted at the hearing that the manager of the food services department was a supervisory/managerial employee who should be excluded from the unit. The Union in its brief to the Board and in its reply brief did not contest or mention the position of food services manager. The record does indicate that the food services manager, *inter alia*, has interviewed and hired employees without review by superiors in the department. We thus conclude, in agreement with the Employer, that the manager of food services is a supervisory employee who should be excluded from the unit.

<sup>57</sup> Employee Retirement Insurance Security Act of 1974, 29 U.S.C. §1001, *et seq.*

<sup>58</sup> 218 NLRB 1447 (1975) (then Member Fanning dissenting).

<sup>59</sup> *Pullman Standard Division of Pullman, Incorporated*, 214 NLRB 762, 763 (1974).

labor relations during the course of collective-bargaining negotiations, it does not follow necessarily that the assistant in this department has a confidential relationship with that vice president. The Employer argues that because of Thompson's access to information which is used by the Post's labor negotiations, Thompson is a confidential employee under *Pullman Standard*, *supra*. We do not agree. In *Pullman Standard*, it was noted that employees who were involved in estimating freight rates were "privy to the precise labor rates to which the employer in pursuit of its own labor policy would be willing to agree in some future collective-bargaining agreement."<sup>60</sup> Accordingly, the Board found them to be confidential employees. While the assistant insurance manager here may calculate costs of various insurance programs, this does not mean that the assistant manager is "privy to precise labor rates" used by the Employer's management negotiating team.<sup>61</sup> Moreover, the assistant insurance manager's job of studying pension plans and calculating benefits for employees under such plans, or future benefits does not, in our opinion, create such a conflict or so closely align the assistant insurance manager with management as to mandate her exclusion from the unit. Finally, we cannot agree with the Employer that the minimal record evidence on the relationship between the assistant insurance manager and her secretary and clerk indicates that the assistant insurance manager is a supervisor within the meaning of the Act. We therefore conclude, in agreement with the Union, that the position of assistant insurance manager should remain within the unit.

The insurance administrator, who the Post claims is a supervisory, managerial, and confidential employee, is responsible for handling group insurance plans, enrolling new employees in insurance plans, handling all insurance claims except those made under the Guild's insurance program, and handling all workmen compensation claims. Working with the insurance administrator on these jobs are one full-time and two part-time clerks. Under company guidelines, the insurance administrator and the clerks can reject fraudulent or excessive claims. However, the insurance administrator reviews the work of the clerks.

The insurance administrator—at the time of the hearing, Doris Grubbs—testified without contradiction that she has hired clerks on her staff without prior approval or review by the manager of the insurance department. It appears that prior to a clerk's starting date, the insurance administrator informs the insurance manager of these hires. Also, a

part-time clerk was hired in Grubbs' absence by Manager Cannon; however, Cannon told Grubbs that, if the employee did not meet the needs or desires of the department, Grubbs could dismiss that employee. Although the Union attempts to minimize this evidence of supervisory status by noting the high percentage of time spent by the insurance administrator in processing claims, the undisputed fact, as mentioned above, that the insurance administrator can hire or discharge employees in the department renders the insurance administrator a supervisory employee who must be excluded from the unit.

#### F. Employee Relations Department

The employee relations department consists of 22 employees, and is headed by the director of employee relations. The employee relations department is responsible for various personnel matters, including maintenance of employee records and services, provision of training and development, support and recruitment in employment, as well as safety and security for the Employer. The Employer asserts that the night employee relations manager and the manager of training and development should be excluded from the unit as supervisory, managerial, or confidential employees.

In 1976, the Employer created the position of night employee relations manager and appointed Roscoe Crawford to the position. The night employee relations manager is the only employee from the employee relations department working during the evening shifts. Hence, he does not supervise any employee relations department employee. The main function of the night employee relations manager is to provide department services during the evening to those employees who work at that time, including the mechanical force employees who produce the newspaper, and various employees in the newsroom who do not have access to the employee relations department during the day. Thus, employees with complaints, or those who are in need of job counseling, notify Crawford of these problems. He then answers questions and attempts to ameliorate the complaints. Examples of the problems handled by the night employee relations manager include issuance of I.D. cards, answering insurance questions, and explaining sick and vacation leave plans. Crawford does not usually resolve grievances but attempts to secure answers to problems that may lead to grievances. He will advise the employee relations department director of problems encountered during the night rounds.

Based on the foregoing, we agree with the Union that the position of night employee relations

<sup>60</sup> *Pullman Standard*, *supra*, 214 NLRB at 763.

<sup>61</sup> *Carling Brewing Company, Incorporated, et al.*, 131 NLRB 441 (1961).

manager is neither supervisory, nor managerial, nor confidential. It is conceded that Crawford supervises no employee relations department employees; nonetheless, the Employer asserts that, because Crawford deals with complaints and other grievance-related problems, he is thereby a supervisory employee. We do not agree. Thus, the record shows that in "adjusting grievances" the employee relations manager is performing nothing more than the functions endemic to the employee relations department, and as such is routinely implementing department policy pursuant to Employer guidelines. Crawford is not so much an adjuster of grievances, as he is an answerer of questions. Nor do we find persuasive the evidence relating to the alleged managerial status of this position. While it is obvious, as the Employer urges, that the night employee relations manager is the only representative for that department during those hours, it is nowhere made plain that the functions of the night manager are any different than those of the various other 22 employees within the employee relations department. Perhaps recognizing that fact, the Employer also asserts that the fact that the employee relations manager at night meets with the executive vice president for the Company, and that he has been involved in developing communications vehicles for management employees and setting up apprenticeship programs in the pressroom, aligns this employee with management. However, it is not so clear, as the Employer urges, that the night employee relations manager "speaks for management," or that he has "substantial discretion and authority in connection with the performance of his duties." We decline to construe the night employee relations manager's duties as those involving formulation or determination of management policy. Nor is the evidence convincing that merely because the night employee relations manager discusses matters with the executive vice president or the vice president for labor relations, he is "assisting or acting in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." That the night manager for employee relations may monitor various aspects of the job—employee services or records, safety or security, training and development or recruitment, or employment problems—does not convert what are otherwise rank-and-file employee duties to the level of managerial duties. Further, the mere fact that the night employee relations manager has access to personnel files or discusses possible changes in procedures utilized for primarily the mechanical employees does not render the position confidential. We thus decline to exclude

the night employee relations manager from the unit.

The manager of training and development is in charge of designing, developing, and implementing programs for management training and development at the Post. Jerilyn Weaver, the incumbent, testified at the hearing that she spends approximately half of her worktime actually training employees, and the remainder of the workday researching and developing projects and evaluating training programs. In presenting and developing the training programs, the manager utilizes a budget of approximately \$25,000 a year. The training and development manager also oversees the Employer's tuition refund program which has a separate \$20,000 yearly budget. Approximately 75–80 percent of the programs developed by Weaver are for management employees exclusively. It appears that the duties of this position were previously performed by the assistant director for employee relations, a position which no longer exists but which was previously specifically excluded from the unit under the most recent collective-bargaining agreement between the parties.

We agree with the Employer that Weaver is a managerial employee under the Act. It is clear that the manager of training and development has sole discretion in performing and directing her programs which primarily involve management employees. We thus conclude that this position has been shown to be a managerial one.

#### *G. Accounting Department*

The accounting department is headed by the controller, and is responsible for keeping the Employer's books for account. The accounting department is broken down into nine relatively small units, each of which is headed by an administrative assistant to the controller. The controller and all the administrative assistants are, by agreement of the parties, excluded from the bargaining unit. The Employer asserts that 11 classifications in subunits of the 9 basic units also should be excluded from the collective-bargaining unit.

The administrative assistant for receivables, Cliff Neal, heads three units which include advertising accounts receivable, circulation accounts receivable, and paper marking division. There are 22 employees in the accounts receivable department, including 19 full-time and 2 part-time clerks. This unit is responsible for processing insertions or sales orders for advertisements which are sent to data processing for preparation of bills and invoices, for recording adjustments, and for preparing earned

and short rates statements.<sup>62</sup> The Employer asserts that the supervisor and assistant supervisor for advertising accounts receivable are supervisors under Section 2(11) of the Act.

There are three groups of employees within the advertising accounts receivable unit: those who handle classified accounts, those who handle advertising adjustment and national accounts, and those who handle retail display accounts. The supervisor of advertising accounts receivable, Chris Patterson, reviews the work of the other employees in the unit. Patterson also processes the short rates and earned rates, handles problem accounts, and otherwise deals with advertisers. Schedules for employees are set by Patterson, although it appears that the employees in this department operate on a flexitime schedule. The supervisor of advertising accounts receivable interviews prospective employees and makes recommendations to the administrative assistant of this unit. Similarly, with respect to discharge, the administrative assistant would make the final decision as to whether to fire an employee. It appears that Patterson has evaluated probationary employees, although the record does not indicate whether there have been any negative evaluations, or what the effect of such evaluations are. It also appears from the record that on occasion Patterson has hired temporary employees for the unit.

Gail Stefhon is the assistant advertising accounts receivable supervisor. She heads the group which handles retail display billing. There are seven clerks who work in that group.<sup>63</sup> The retail display group is responsible for display paper marking and tear sheet operations. Stefhon works with the clerks, prepares reports and reviews the work of the clerks, and also reviews the work of the other units in accounts receivable. The assistant supervisor in this unit has conducted interviews for positions, but as noted above, the supervisor and the administrative assistant in this unit also conduct interviews of prospective employees. The assistant supervisor has assisted the supervisor in preparing schedules for employees, and has made some recommendations with respect to promotion and merit increases. Again, these recommendations are reviewed by administrative assistants and higher company personnel. It also appears from the record that Stefhon was involved in the discharge of a temporary employee. When Patterson is on vacation or otherwise not at his desk, the assistant supervisor substitutes for him.

<sup>62</sup> "Earned rates" are statements for customers with large volumes of lineage, and "short rates" are statements for customers who do not meet the minimum contract requirement for lineage.

<sup>63</sup> There are also two other employees who head the classified and advertising adjustment and national groups, respectively, which have four and six employees each.

Based on the foregoing, we conclude, contrary to the Employer, that neither the supervisor nor the assistant supervisor of advertising accounts receivable are supervisors within the meaning of the Act. We note that both Patterson and Stefhon perform functions on a daily basis that are part of the normal duties and responsibilities of the advertising accounts receivable division. Further, we note that the administrative assistant in every instance has final control over all decisions which are supervisory in nature. In this regard, the Board has held that the sporadic hiring and terminating of temporaries does not convert a rank-and-file employee to a statutory supervisor. Moreover, with respect to the assistant advertising accounts receivable supervisor, we note that the Employer does not claim that the other two group leaders are supervisors, although they perform work similar to Stefhon. In urging the Board to find the assistant to be a supervisor, the Employer relies primarily on the fact that the assistant supervisor substitutes for the supervisor of accounts receivable. However, this substitution is only during vacation and other short periods of time, and even were we to find the supervisor to be a statutory supervisor, a conclusion we do not make, we would not find such substitution to be a basis for finding this rank-and-file employee a supervisor within the meaning of Section 2(11). Finally, the Employer argues that if administrative assistant Neal is the only supervisor over the accounts in the receivables department, a high supervisory ratio of 1:45 would exist.<sup>64</sup> However, the Board has long held that, while probative, the ratio of supervisors to employees is not determinative where the remainder of the salient facts do not otherwise indicate supervisory status. We therefore decline to exclude these two positions which have long been included within the recognized collective-bargaining unit represented by the Guild.

The circulation receivables unit prepares and processes documents relating to circulation revenue, including billing of dealers as well as billing of mail and paid subscribers. Another one of the functions of the circulation receivables unit is to handle draws and adjustments of distributors. Eight full-time employees work in the circulation receivables unit, including the supervisor for circulation receivables, Jan Thompson, who the Employer asserts is a supervisor under the Act. Administrative Assistant Neal is in overall charge of this section of the receivables department. The duties of the su-

<sup>64</sup> The Employer bases this figure on the fact that there are 45 employees in the 3 receivable sections, and if none of the other alleged supervisors are found to be so, the ratio would be one supervisor (Neal) to 45 employees. There are only 21 employees in the accounts receivable section.

pervisor for circulation receivables include preparing monthly reports, maintaining circulation figures, and filling out insurance and tax reports. There are various desks within the circulation receivables group which handle particular types of work in the department. As with the supervisor of advertising accounts receivables, the supervisor for circulation receivables has interviewed and made recommendations with respect to temporaries, and has issued a reprimand to an employee in the department. However, it appears that Thompson discussed with Neal the circumstances surrounding this reprimand and that Neal approved the actions taken by Thompson. The supervisor in this group also handles time off, vacations, and excused absences.

The above facts and the record as a whole indicate that the supervisor of accounting circulation receivables is not a statutory supervisor. The Employer admits that the supervisor performs such work as the preparation of monthly reports and circulation figures, but argues that additional duties separate this supervisor from other employees in the circulation receivables group. We do not agree. Thus, the record shows that, although routine tasks involving time off and vacations are handled by the supervisor of circulation receivables, all substantial supervisory authority rests with the administrative assistant in this department who already is excluded from the unit. We do not view the responsibilities concerning time off and vacations to be anything more than the exercise of a routine function, which consists of following the company policy of permitting an employee time off on vacation if there are no conflicts with other employees.<sup>65</sup> In view of these facts we decline to exclude this position from the unit.

Within the accounting department is a unit which is responsible for the collection of advertising accounts. There are two excluded heads of the advertising collection accounts: the assistant controller and credit manager, Pierce, and the administrative assistant, Powers. The administrative assistant for credit and collection is the immediate superior of the regular accounts and the transient accounts. The regular accounts section is responsible for the collection of approximately 800 classified monthly advertising accounts. This unit includes Tom Martin, the credit supervisor for regular accounts, and six full-time clerks. Transient accounts, which also includes a credit supervisor, Dorothy Salke, as well as three to four full-time and three part-time clerks,<sup>66</sup> is responsible for the so-called classified transient accounts. The parties agree and

the record indicates that the authority and duties of the credit supervisors for both regular and transient accounts are essentially the same. However, the parties differ as to whether these facts demonstrate that either is a supervisor or managerial employee within the meaning of the Act.

Like many of the other designated "supervisors" in the accounting department, both credit supervisors interview prospective accounting clerks and make recommendations to the administrative assistant, in this case the one for credit and collection. Further, in the small units, Martin and Salke make out schedules and assignments, grant time off, assign overtime, and make recommendations for merit increases or promotions. However, there are few employees in these sections, and they have particular job responsibilities which they perform each day. Thus, the assigning and scheduling of work does not usually require the use of independent judgment. As noted above, granting vacation or time off is similarly circumscribed in discretion by the Employer's policy in this area. Finally, the record indicates that on a transfer and promotion, the credit manager independently interviewed the person and made the promotion. Moreover, several recommendations for merit increases have not been acted on. As to their daily work, both credit supervisors make arrangements for liquidation of delinquent accounts for balances up to \$300. This duty is performed pursuant to Employer guidelines, although on occasion credit may be extended beyond these guidelines. In these matters, both credit supervisors deal individually with advertisers in arranging for collection or liquidation of the delinquent balances. Because of their close relationship with advertisers in these areas, the credit supervisors have made suggestions and proposals for changes in the manner in which accounts are collected or liquidated.

Contrary to the Employer, we find that the credit supervisors of regular accounts and transient accounts are statutory employees and not supervisory or managerial employees. As found above with respect to other alleged supervisors in this department, we note that all decisions which affect the employment relationship with the clerks—in this case only 10 full-time and 3 part-time employees—must be made by personnel such as the administrative assistant of the unit or the assistant controller, who reviews all relevant facts involved in the decision. The other duties of the supervisors are demonstrably routine or *pro forma*. With respect to the Employer's argument concerning the managerial status of these credit supervisors, it is apparent that the credit supervisors follow the guidelines set down by the Employer in liquidating

<sup>65</sup> See, e.g., *Tucson Gas & Electric Company*, 241 NLRB 181 (1979).

<sup>66</sup> Three of whom work during the evening.

accounts or collecting advertising accounts. Clerks in the department have authority similar to that of the credit supervisors. Moreover, we note that there is an administrative assistant for credit and collection and an assistant controller and credit manager, both of whom are active in the management of the Employer's credit policy. The fact that the credit supervisors may on occasion grant extension of credit beyond the \$3,000 guideline given to them does not show these employees have the type of authority the Board has deemed to be managerial.<sup>67</sup> We thus decline to exclude these employees from the unit.

The Employer's cashier department handles payments and deals with the banks with which the Employer has a relationship. There is an excluded administrative assistant over this unit, Jack Pierce. In addition to the administrative assistant, there are an assistant cashier, four full-time clerks, and occasional part-timers. The Employer asserts that Hanzel Zender, who has held the assistant cashier position since 1954, is a supervisor.

At the cashier's cage, cashiers receive payments from individuals as well as payments through the mail. Employees working at the cashier area separate and arrange the payments, pay out petty cash as required, and make bank deposits. The assistant cashier is in charge of dealing with the banks and maintaining the accounts of the Employer at these institutions. Over the 25-year period she has served as the assistant cashier, Zender has helped initiate changes in the procedures in which the Employer deals with the banks. When there are discrepancies between deposits as maintained by the Employer and as counted by the bank, the assistant cashier negotiates with the banks to resolve their differences. The assistant cashier spends a majority of her workday performing functions related to these banking duties. The assistant cashier also has recommended the hire or transfer of various employ-

ees for the cashier units, although turnover has been low. However, recent hires have not been interviewed by the assistant cashier, but hired by the administrative assistant. When this hiring took place, Zender was ill. The schedules are prepared by the assistant cashier, who also makes assignments within the departments, and schedules vacations and time off. However, in this regard, it is noted that most of the employees in the cashier unit have specified areas in which they work and have been long-term employees with the Employer, and thus there is little discretion or independent judgment involved in making assignments or schedules.

We conclude, contrary to the Employer, that the assistant cashier is not a supervisor. The supervision given by the assistant cashier to the four full-time employees in the unit is clearly routine, as discussed above with respect to other alleged supervisors here. The assistant cashier spends most of her time performing work relating to the banks. This unit, although it includes only five employees, is headed by an administrative assistant who clearly is involved in hiring and other personnel decisions in the department. We thus decline to ascribe supervisory status to the assistant cashier and we shall include this position in the unit.

The accounts payable supervisor position was created in 1973. The accounts payable supervisor, whom the Employer asserts is a supervisory, managerial, and confidential employee, is accountable to Administrative Assistant Terry Wiseman. The accounts payable division is responsible for processing bills and invoices for payments. The department also processes requisitions and vouchers. Moreover, the accounts payable supervisor is responsible for payments pursuant to contracts which the Company has entered into. Recently, the accounts payable system has been automated. The accounts payable supervisor has been involved in the planning and systems operations aspect of this accounts payable system as well as in coding materials for the automated method.

There are one temporary and three regular clerks who work with the accounts payable supervisor in this unit. As with other supervisors in the accounting department, the accounts payable supervisor, Mary Brown, can make recommendations on hiring, reprimand, and discharge and is initially responsible for scheduling and assigning employees. Brown also can approve price discrepancies up to 10 percent of the value of a contract to a maximum of \$50; the accounts payable supervisor can also allow discrepancies on a bill to a value of \$30. In reviewing the payments made by the accounts pay-

<sup>67</sup> The Employer here, as elsewhere, relies on, *inter alia*, *Eastern Camera and Photo Corp.*, 140 NLRB 569 (1963), to support its assertion that employees like the credit supervisors are managerial employees. However, the facts of that case are different from those at hand. In *Eastern Camera*, the audiovisual employees found to be managerial employees were the only employees in that department. They sold audio and visual equipment to industries and schools, and such work required that they contact outside customers to determine needs, formulate bids on orders, and submit bids on behalf of the employer. Further, they regularly ordered equipment directly from manufacturers, thereby committing employer credit. The Board there found that employees with "broad authority" to pledge employer credit are managerial. Such is clearly not the case with respect to the credit supervisors here, who do not possess such "broad authority" in using limited discretion to exceed the \$3,000 guideline set up by the Employer for adjusting delinquent accounts. Nor are they the only employees in the department, there being also the administrative assistant for credit and collection as well as the assistant controller and credit manager. Indeed, in this respect we note that in *Eastern Camera* itself, the Board found that the camera repair department employees, who could pledge employer credit but were restricted and limited by employer guidelines, were, in fact, not managerial employees.

able department, the accounts payable supervisor reviews all the Employer's accounts.

Based on the foregoing and the record as a whole, we cannot agree with the Employer that the accounts payable supervisor is a supervisory, managerial, or confidential employee. The supervisory status of this employee is no greater than that of any of the other alleged supervisory accountants in this department, whom we have determined to be statutory employees. In effect, all their recommendations are subject to independent review by administrative assistants who are excluded from the unit. Nor do we find the fact that the accounts payable supervisor can approve price discrepancies probative of the managerial status of the accounts payable supervisor. These decisions are clearly within the Employer's guidelines. The Employer's argument that Brown's participation in automating the accounts payable system shows managerial status is not persuasive. The decision to automate the system was clearly made by high level Post personnel and the fact that Brown may have made recommendations concerning the efficient use and implementation of the system does not render her a managerial employee. Finally, the mere fact that Brown may have access to all the Employer's accounts does not make her a confidential employee. The Board has long held that mere access to such information does not establish confidential status.<sup>68</sup> The Employer attempts to bolster its argument in this regard by maintaining that Brown has access to accounts of the Post's labor counsel, which may list services performed by labor counsel. The tenuousness of this argument is reflected in the fact that the Employer claims only that "such information could be highly confidential in certain instances," and maintains that "detailed descriptions of management labor counsel services could be very detrimental to the Company if known to bargaining unit employee." There is no documentary evidence to show that the accounts are listed in the manner claimed; in any event, they are not of the nature of such confidential information as to render the position handling such items to be confidential.<sup>69</sup> The Post argues that Brown's participation in the department's automation program, which could lead to decisions as the size of the labor force to be used, requires finding of confidential status here. However, the mere fact that Brown participated in the computerization program does

not make her a confidential employee even though she might have access to information regarding personnel changes. Such decisions are made by higher management; moreover, this aspect of her job will end when the computerization is completed. Therefore, it has not been demonstrated that Brown is an employee who will confidentially assist persons who determine labor relations policy.

Also under the receivables administrative assistant is the paper marker department. In addition to the paper marker supervisor, Oliver Wendell Holmes, whom the Employer claims is a supervisor, there are six full-time and five to seven part-time employees in this division. The paper marker supervisor works 10 p.m. to 5:30 a.m., Monday through Friday; most employees in the division also work this schedule. However, there are employees who work on the weekend when the paper marker supervisor is not present. The paper marker department examines classified ads to (1) determine lineage of new starts, (2) advise the composing room of expired advertisement, and (3) report discrepancies to the classified department for necessary adjustments. Holmes testified that he spends approximately 70 percent of his worktime performing unit work and approximately 30 percent of the time performing "supervisory duties." These duties include: assigning employees, although the record shows that most employees have specific classifications of advertisement for which they are responsible; scheduling employees' hours, vacations, and time off; interviewing employees and making recommendations on hire to the administrative assistant; making recommendations on discharge; and evaluating probationary employees.

While the issue of the status of the paper marker supervisor is somewhat close, based on this record, we decline to find the paper marker supervisor to be a statutory supervisor. The Board has found that leadmen who on occasion make recommendations and perform lower level supervisory actions such as scheduling and allowing vacation and time off are not supervisors when significant supervisory authority is vested in higher personnel and decisions are, and must have been, reviewed by these management employees.<sup>70</sup> Thus, we conclude that longtime employee Holmes, who had been paper marker supervisor for 14 years prior to the hearing, is not a supervisor within the meaning of Section 2(11) of the Act.

The budget section of the Employer prepares annual and long range forecasts and budgets for the Company. The budget section is headed by an administrative assistant, and is staffed by a senior

<sup>68</sup> See, e.g., *Planned Parenthood Association of Miami Valley, Inc.*, 217 NLRB 1098 (1975); *Ohio State Legal Services Association*, 239 NLRB 594 (1978).

<sup>69</sup> See *Ernst & Ernst National Warehouse*, 228 NLRB 590 (1977) (the Board looks not to the confidentiality of the information, but to the confidentiality of the relationship between the employee and persons who exercise "managerial" functions in the field of labor relations).

<sup>70</sup> See, e.g., *Plastic Industrial Products, Inc.*, 139 NLRB 1066 (1962).



budget analyst, Richard Nichols, alleged to be a supervisor and confidential employee, and three clerks. In compiling the data for the annual and long range—2-1/2 and 5 years—forecasts, the employees within the budget section have access to almost all of the Company's records.<sup>71</sup> In preparing these budgets and forecasts, duties are divided among staff members. Thus, two clerks are responsible for the news and production budget, respectively. The senior budget analyst is responsible for administrative and executive preparations. It is undisputed that the senior budget analyst is involved in costing out the payroll for future wage packages. Thus, information relating to probable increases under the collective-bargaining agreement are forwarded from the labor relations section of the Employer's operation to the budget section for inclusion in these estimates. In addition to these duties, the senior budget analyst substitutes for the administrative assistant during the latter's absence from the department.

Contrary to the Employer, we do not find that the record supports the contention that the senior budget analyst is a supervisor or a confidential employee. The sole factor relied on by the Employer in support of its supervisory contention is the substitution of the senior budget analyst for the administrative assistant when the latter is not present in the department. However, the record indicates that this substitution is not frequent, and that the senior budget analyst exercises no more authority in that role than he does normally while acting as the senior analyst in the department. With respect to the confidential employee claim, the facts indicate that the senior budget analyst, like other employees in the department, primarily compiles data and has access to information in compiling such data in preparing the annual budget and long range forecast. The Board has long held that mere access to information and mere compiling of information without more does not convert a rank-and-file employee to some enjoying a confidential status.<sup>72</sup> Nor are we persuaded in this case that the relationship between the senior budget analyst and the labor relations department of the Employer requires a finding of the senior budget analyst's confidential status. The record shows only that, at most, the budget department receives probable increases which may result from negotiations, and estimates from current collective-bargaining agreements which must be computed to prepare the annual budget and the long range forecast for the Employer. Much of this in-

formation, as the Union notes, is available in the public record; i.e., through the collective-bargaining agreement or through the annual reports of the Employer. Further, the Board has held in cases such as *Pullman Inc.*, *supra*, and *C&I*, *supra*, that more than just access to or dealings with the labor relations aspects of an employer's operations are required to substantiate a confidential employee finding. In these cases, the Board has required that the parties seeking to establish the confidential status of an employee show that an employee has access to precise labor rates which the employer is willing to agree to. In this case, the senior budget analyst receives only projections and possibilities forwarded from the labor relations section of the Company for calculation purposes only.<sup>73</sup> It is interesting to note that while the Employer claims that a conflict of interest would exist because of the senior budget analyst's access to such information, the only example on the record, despite the long history of inclusion of the senior budget analyst in the unit, is a recent instance of an alleged contact by a union-related person who allegedly approached an *administrative clerk* and requested advance wage information. The Post does not claim that any of the clerks in this department are confidential.<sup>74</sup> The senior budget analyst was not approached, nor, in fact, was such information divulged. We therefore conclude that the senior budget analyst is neither a confidential employee nor a supervisory employee who should be excluded from the unit.

The operating statements clerk alleged to be a confidential employee is responsible for the input of journal vouchers to the data processing department and for balancing outputs. Essentially, the operating statements clerk, who is supervised by the administrative assistant for general ledger and operating reports, is responsible for closing the books of the Employer. In performing this function, the operating statements clerk, Carter, prepares profit and loss statements, balance sheets, and expense and supplies figures. The operating statements clerk has access to Employer information, including, among other things, the regular payroll register, the corporate executive payroll, and expense accounts.

The Employer asserts that because of the sensitive nature of the information to which the operating statements clerk has access, the Board should exclude this position from the unit as one essentially confidential in nature. The Employer specifically requests the Board reexamine its doctrine of includ-

<sup>71</sup> However, they do not have access to the records concerning the payroll of the Employer's executives.

<sup>72</sup> See, e.g., *Pullman Standard*, *supra*, fn. 60; *N.L.R.B. v. Union Oil Company*, 607 F.2d 852 (9th Cir. 1979).

<sup>73</sup> See, e.g., *Loma Prieta Regional Center, Inc.*, 241 NLRB 1071 (1979).

<sup>74</sup> Although the Post claims that it is currently evaluating the status of these individuals to determine their confidential nature, we note that, although the Employer had prepared this case for over 2 years, it nevertheless made no claim that these employees were confidential.

ing employees who have access to payroll information of unit employees.<sup>75</sup> However, we believe that the Board law in this area is correct and we decline the Employer's request. Moreover, we note that documentation for the Employer's argument is lacking. Thus, the Employer's claim of "sensitive material" centers on the allegation that the operating statements clerk could monitor management-labor policy by keeping track of the pattern of top executives through evaluation of their expense accounts. Certainly, such a remote possibility cannot be used to exclude an employee who otherwise performs work which historically has been recognized as unit work. As it is clear that the operating statements clerk is not an employee who is involved with a person who formulates, determines, and effectuates management policy in the field of labor relations, we do not find the operating statements clerk to be a confidential employee, and thus we refuse to exclude the operating statements clerk from the unit.

The payroll department of the Employer is responsible for issuing checks for the Company. It is administered by the administrative assistant for payroll and includes a payroll supervisor, whom the Employer argues is a supervisor or confidential employee, and several clerks. As in other areas in the accounting department, the payroll supervisor performs initial interviews and documents initial problems with respect to such matters as discipline, but all problems are referred to the administrative assistant, who is outside the unit and who is responsible for this section. The record also indicates that on occasion the payroll supervisor is consulted by or consults with the vice president for labor relations, Wallace, concerning interpretations of payroll matters derived or emanating from the Post's collective-bargaining agreements.

The record fails to demonstrate that the payroll supervisor is a supervisor within the meaning of the Act. All alleged relevant supervisory actions taken by the payroll supervisors are reviewed by the administrative assistant in charge of the payroll department. Nor is the payroll supervisor a confidential employee. As discussed above, the Board has uniformly held that mere access to information such as payroll information is insufficient to confer confidential status on an employee.<sup>76</sup> We thus decline to exclude this position from the unit.

#### H. Data Processing Department

The data processing department provides the Employer with systems analysis and programing in the development of data processing, operates the

data processing equipment, and provides support maintenance and modification of the Company's existing data processing system. The department is headed by a director, who is excluded from the unit. There are also assistant directors for cold-type conversion, publishing systems, business, cost and schedule systems, and systems programing.<sup>77</sup> No employees work for the assistant director for cold-type conversion. Working under the other three assistant directors are six managers for various systems and subsystems. The Employer claims that four of the managers—those for computer operations; production subsystem; business systems and programing; ad cost and schedule systems—are supervisors or managerial employees.<sup>78</sup> There are approximately 40 staff personnel under the various systems managers.<sup>79</sup>

The manager of computer operations, James Yannon,<sup>80</sup> heads the actual operations of the data processing system. There are 22 employees working in this area, including keypunch and data control clerks and computer operators. These employees do the manual work pursuant to user requests. As manager, Yannon has interviewed and hired several employees. Other managers have interviewed applicants and made recommendations to the director or assistant directors. In addition, Yannon had been involved in disciplining employees, having issued two written reprimands. There was also testimony by Yannon and Abbott, former manager and current assistant director, that managers assign work to employees and determine staffing for projects. Managers also prepare evaluations of probationary employees. Unsatisfactory evaluation may lead to discharge.

<sup>77</sup> During the course of the hearing, the data processing department was increased from two assistant directors to four assistant directors. Although the Employer asserts that the assistant directors have been historically excluded from the unit, and that the record was not developed on their status, the Union contends they are unit employees. We agree with the Employer that the status of the assistant directors is not before us in this case. Witnesses who testified concerning positions on the data processing department were questioned about the assistant directors in addition to the managers whom the Employer claimed were at issue. The testimony concerning the assistant directors, including that elicited by counsel for the Union, appears to have been intended to clarify the assistant directors' duties in comparison to those of the managers. The Employer correctly notes that the status of the assistant directors was never fully contested at the hearing. This position contrasts with other positions, such as the systems research consultants discussed below, which the Employer asserted had always been excluded and which should not be considered new, but for which the Employer permitted and assisted in presenting record evidence to resolve the status because of the special nature of the proceeding.

<sup>78</sup> The Employer states that two managers are ITU personnel and thus not at issue here. The Union does not contest this fact.

<sup>79</sup> As indicated above, the data processing department employs a mixture of union-represented and ITU-represented employees.

<sup>80</sup> This manager position was the only one filled at the time of the hearing. In addition to Yannon, the former manager of business systems and programing, Abbott, and Director Crocker testified about the responsibilities of managers.

<sup>75</sup> See, e.g., *Dinkler-St. Charles Hotel, Inc.*, 124 NLRB 1302 (1959).

<sup>76</sup> See *Dinkler-St. Charles, supra*; *Pullman, supra*.

Based on the foregoing, it is clear that the managers in the data processing department possess and exercise many of the supervisory responsibilities contemplated by Section 2(11) of the Act, and therefore are excluded from the unit.

### I. *Advance Systems Research Department*

In November 1976, the Washington Post Company created the advance systems research department.<sup>81</sup> A similar if smaller advance planning division had been contained in the data processing department, but the instant department was developed to consider planning projects for the Employer. In charge of this department is the director of advance systems and assistant to the president, Donald Rice. There are also four planning project managers whose exclusion is not in dispute. In addition to these managers, there is a manager of systems research, Sol Broder, who is excluded from the unit. Working under this manager are two research consultants, William Churchill and Frederick Mickert, whom the Employer asserts are managerial or confidential employees.

The consultants are involved in the long-term planning projects for the Company. Essentially, they are to identify, define, formulate, and evaluate systems projects for the Employer. For example, the consultants investigated and reported on the four systems projects initially selected by the Company's president.<sup>82</sup> These projects involved technological change, automation, and improved information processing. In performing these tasks, the consultants spoke with department managers and other personnel in areas related to the project topics in order to prepare a report and framework for further work in those areas. After the implementation of the projects, the consultants worked with the project group to study their progress and provide technical assistance.

We agree with the Employer that the two research consultants should be excluded from the unit as managerial employees. The record indicates that they clearly are part of a department which is involved in special projects and planning which will affect jobs and utilization of equipment and other facilities for the Employer's operation. Although they do not lead the projects which were approved for implementation by the Employer, they studied and made recommendations which

were used by the project leaders, and they continued studying the project during their implementation. In developing and improving policies and procedures which impact on the Employer's business, especially its use of technology and personnel, the research assistants meet the standard of managerial employees and are therefore excluded from the unit.<sup>83</sup>

### III. THE NEWSROOM<sup>84</sup>

The news section of the Washington Post is headed by a group consisting of the publisher, the president, the executive editor, the managing editor, and the deputy managing editor. Below these management personnel are assistant managing editors (AMEs) who are in charge of the various departments within the Employer's newsroom structure. It is undisputed that the AMEs are supervisors or managerial employees, and, that they have never been included in the bargaining unit represented by the Guild.

A general comment about the Employer's news operations seems warranted here. The record establishes that, prior to the hire of most reporters, the executive editor or managing editor (and sometimes both) make the final decision whether the Company should hire the individual under consideration. Indeed, the record is replete with instances where the executive and managing editors initiated the hiring process themselves. This method of hiring is not surprising, since the Employer considers its reporters to be its "most precious commodity." The significance of this fact will manifest itself in the discussion below.

#### A. *National Desk*

This department is responsible for the reporting of national news. The national desk is headed by an AME. The Post contends that six other editors in this department—national editor, deputy national editor, three national assistant editors, and night national editor—should be excluded as either supervisors or managerial employees, or both. The national desk staff includes, in addition to these six edi-

<sup>83</sup> See *CF & I Steel Corporation*, 196 NLRB 470, 472 (1972).

<sup>84</sup> The positions which the Employer seeks to exclude were filled by various persons during the course of the hearing. Reference to named individuals is, for the most part, for identification purposes only. The record shows, and we recognize, that changes in personnel in positions involved here were, and are, frequent. For example, the national desk underwent several changes in personnel during the course of the hearing. In most instances, such changes did not result in different functions or methods of operation, and, thus, the discussion of the duties of a particular incumbent is generally applicable to the position at all times. In addition, we note that the disputed position of managing or deputy editor for *The Washington Post Magazine* was vacant and its duties revised at the time of hearing. Consequently, we shall not make any determination with respect to the alleged supervisory status of such position.

<sup>81</sup> The Employer avers that the Employer's parent company, not the Employer itself, formed this department to assist the parent company in developing major projects for the Employer and other corporate properties. However, the Company does not dispute that it hired the personnel in this department, and the record reflects only the work performed by these personnel for the Employer.

<sup>82</sup> These projects included sales information, cold-type conversion, cost control, and ad production.

tors, approximately 33 reporters, 6 full-time and 6 to 12 part-time copy editors, 7 aides and secretaries, and a number of "stringers." There are national desk bureaus in New York, Los Angeles, and Houston. Many of the reporters based in Washington, D.C., have "beat" assignments; i.e., well-defined areas which a reporter covers on a continuing basis. Other reporters are on general assignment.

The record reveals that the AME for the national desk is involved in most major decisions on hiring, discharge, budgets, and beat assignments. Reporters on the desk work closely with their editors, either developing ideas in conjunction with the editor or, in many instances, informing an editor of the work being done and developing stories on their own.<sup>85</sup> These reporters work under various editors, as discussed below.

The national editor regularly substitutes for the AME during the latter's vacations and absences. The national editor is involved with the AME in the day-to-day running of the national desk. Together with the AME, the national editor makes decisions regarding changes in beat assignments. These two also conduct conferences with reporters when there is concern about a reporter's progress with the Employer. Budgetary matters are also within the domain of the national editor; in conjunction with the AME, the national editor plans the annual budget. This planning involves making decisions on allocations for new employees, merit increases, and stringers.

In addition to these duties, the incumbent national editor at the time of the hearing, as well as his predecessor, presided over a group of reporters. Further, it appears that the national editor assists in the selection of national assistant editors and there is undisputed evidence that a national editor has hired a researcher for the national desk.

It is evident from this record that the national editor shares with the AME major responsibility for the direction of the national desk. We do not disagree with the Guild's assertions that the AME exercises extensive control over the department,

and that the AME is consulted or consults with editors on almost all major decisions. We also note that the national editor, like other editors discussed below, reads reporters' copy. Nor have we overlooked the fact that the AME, as well as the managing and executive editors, decides matters without consulting other editors. Nonetheless, as the facts discussed above disclose, the national editor effectively exercises supervisory authority in daily administrative and personnel matters within the department. Accordingly, we shall exclude the national editor from the unit.<sup>86</sup>

Deputy National Editor Fox, who was a national assistant editor before assuming the deputy slot just prior to the close of the hearing, handles many of the administrative tasks on the national desk. Fox is responsible for promulgating the day schedule—both for the week and weekend—for the department. While it appears that most reporters, and especially beat reporters, cover events as necessary, they otherwise work regular hours. Fox sets schedules for reporters and editors for holidays and nights. Fox also administers the vacation system, and has authority to grant up to 2 weeks time off for reporters. Among other duties, he prepares the "futures book," a list of events across the nation which may be covered. He is also in charge of a small coterie of reporters.

In view of the above, we conclude that the deputy national editor should be excluded from the unit. The largely undisputed evidence concerning various tasks of the incumbent qualifies him as a supervisor under the Act. Thus, while the deputy's authority with respect to reporters generally may be circumscribed by the AME, as alleged by the Guild, the factors detailed above and contained in the record as a whole, particularly his authority to schedule and to grant time off, lead us to conclude that the deputy national editor should be excluded from the unit.

Copy editors (also referred to as assistant national editors) read a reporter's story for accuracy and grammatical structure, and write headlines. Copy editors "sit on the rim" of the copy desk, i.e., they sit around a desk, and the night national editor or "slot man," i.e., the person in the middle, passes out work to them.<sup>87</sup>

Former Night Editor Crenshaw testified that as night editor he began work at 3 p.m. and stayed until work was completed, usually 11:30 p.m. On an average day, there are usually four copy editors working Monday through Saturday, and three on

<sup>85</sup> The Guild alleges, and the Employer denies, that the Washington Post is a "reporter's paper" rather than an "editor's paper." This issue arose several times during the hearing and in the briefs, concerning various news departments, including the one under discussion here. The difference between the two can be described as follows: a "reporter's paper" is one in which the reporters have a major responsibility for developing topics, covering and writing about these topics, and devising an approach regarding the story; an "editor's paper" is one in which the major role in making such decisions is assumed by editors. For purposes of the instant Decision, we find it unnecessary to decide which category best describes this Employer since, in any event, it is the actual duties of each individual and the position each occupies that is relevant in determining his status. Of course, whether or not reporters assume the burden in developing stories will be probative in determining the working relationship between reporters and editors.

<sup>86</sup> See *Bulletin Company*, 226 NLRB 345, 349 (1976).

<sup>87</sup> The phrases "slot man" and "rim men" were used by both parties to describe the positions of night national editor and copy editors respectively.

Sunday. Their starting times are staggered between 3 and 6 p.m. Overtime is worked as required to get out copy. The night editor prepares the copy editors' schedules which are based on staff preferences. Any conflicts are resolved by seniority. Vacations and times off are handled in the same manner.

The night editor distributes copy to the copy editors as it arrives at the copy desk. If a copy editor, in reviewing a reporter's copy,<sup>88</sup> has problems with a story, he may refer it to a day-side editor or the reporter. The night editor reviews the work of the copy editor before the copy is sent to be printed. Since the night editor is generally the only editor present on the national desk after 8 p.m., he may call reporters or the AME regarding a news event.

Although there is some conflict in the testimony concerning the night editor's role in hiring and discipline, Richard Harwood, a former AME of this department, indicated that the night editor interviewed and approved the employment of copy editors. In its brief, the Post contends that the night editor "is responsible" for hiring copy editors.<sup>89</sup> Crenshaw, a former night editor, stated that he did not interview applicants for these positions, but admitted to giving applicants tryouts and to making recommendations to the AME.<sup>90</sup> On occasion, the AME-national or AME in charge of personnel has interviewed prospective copy editors. The composite of this mosaic of testimony indicates that the night national editor does make recommendations to superiors who must make the ultimate decision on whether to hire a copy editor. Crenshaw stated that of three recommendations to hire that he had made, two were accepted, and no negatively evaluated copy editor was hired. Crenshaw further testified without contradiction that a copy editor has been transferred into the department without prior consultation with the night editor.

With respect to discipline, it is undisputed that the night editor reviews the work of the copy editors before it leaves the copy desk, and may return it to the copy editor if he does not consider it suitable for publication. Further, the AME has instructed the night editor to "keep book" on the copy editors; in other words, if a problem develops, the night editor has been authorized to monitor the situation. However, the record does not indicate that a "book" has ever been kept on a copy editor by the night editor.

<sup>88</sup> This review process occurs after editing by the editor of the reporter.

<sup>89</sup> Harwood testified, "People are brought in for try outs, and on the basis of [the night editor's] recommendation, [the copy editors] are either hired or not hired."

<sup>90</sup> Crenshaw himself was hired as a copy editor by an AME.

Based on all of the above, we conclude that the night editor is not a supervisor under the Act. While the night editor does make recommendations concerning copy editors, these appear to be more akin to the judgments that a leadman would pass on the product of a lesser skilled worker. As indicated previously, the record reveals that the AME does receive recommendations from the night editor concerning the hiring of prospective copy editors but the record also reveals that the AME makes the final decision on hire. Similarly, while there have been no instances of discipline on the copy desk, it appears that the night editor, upon instruction by the AME, is the conduit for keeping track of possible poor performance. The review of copy editor's work by the night editor does not prove supervisory authority, nor does the routine assignment of work by the night editor to the copy editors.<sup>91</sup> Since the night editor's authority to evaluate copy editors is circumscribed and the overall performance of his tasks does not require independent judgment or use of discretion we shall not exclude the night national editor.

The remaining positions in controversy on the national desk are the three assistant national editors. As indicated previously, the Employer maintains bureaus in three cities. It also has contacts with over 150 stringers throughout the country. One national assistant editor presides over the out-of-town posts. The incumbent at the time of the hearing, Joe Garreau, was involved in the establishment of the Houston bureau. Garreau wrote a proposal on the matter at the request of the AME, who had consulted previously with the executive and managing editors. Both the national editor and Garreau recommended opening a Houston bureau. The AME also consults Garreau on budgetary matters concerning stringers and free lancers, as well as the bureaus. As an assignment editor, Garreau may direct general assignment reporters to stories or tell a beat reporter to undertake another task within the beat.

The Post claims that this national assistant editor position should be excluded from the unit because it is both managerial and supervisory. We cannot agree. The managerial assertion rests on this editor's alleged degree of control over and his recommendations concerning bureaus, and his preparation of budgets for stories to be purchased from stringers. However, the recommendation concerning the opening of the Houston bureau was done at management's behest, and the directive filtered down through at least two superior levels, includ-

<sup>91</sup> *The Peoria Journal Star, Inc.*, 117 NLRB 708, 709-710 (1957); *Suburban Newspaper Publications, Inc.*, 226 NLRB 154, 157 (1976); compare *Bulletin Company, supra*, 226 NLRB at 354.

ing the executive and managing editors. Garreau's control over the bureaus as detailed in this record does not reflect managerial authority.

Thus, while the Employer contends that Garreau's participation in budget planning is managerial, testimony by a former AME for the national desk reveals that the AME and the national editor are primarily involved in determining the budget, and only "in a minor way" would Garreau participate in budgetary discussions for purchase of stringer articles, and bureau expenses. There is no direct evidence that Garreau prepares the budget, nor that he is directly responsible for the bureau's expenditures. Nor does Garreau's relationship with stringer and free lancers reveal managerial status. The Board has determined an employee's status as managerial on the basis of "whether the employee participated in the formulation, determination or effectuation of policy with respect to employee relations matters or whether there exists other inconsistencies or conflicts of interest."<sup>92</sup> The relationship between Garreau and stringers, i.e., his selection of them from a group and their payment from within an apparently limited amount of funds, does not establish a conflict between this editor and employees that requires a finding that Garreau is a managerial employee.<sup>93</sup>

Further, contrary to the Employer's assertions, the record does not establish that national assistant editor Garreau's duties are supervisory within the meaning of Section 2(11) of the Act. The record does not show that a national assistant editor actually hires reporters, and, while Garreau may have recommended various reporters be hired, the record shows that most of these recommendations were made for positions in other departments. Garreau's recommendations in these instances appear to be personal ones, and former AME Harwood testified that many prospective reporters are initially considered by the Post because of recommendations by current employees.<sup>94</sup> Finally, the direction given by the national assistant editor to the bureau reporters appears to be more attenuated than argued by the Post. Thus, many stories are self-generating, and reporters work independent of desk control in many instances. In sum, the relationship between this editor and the reporters appears to be

cooperative and informal, although certain lines of authority do exist.<sup>95</sup>

Another national assistant editor performs "swing" work and special projects. At the time of the hearing, former Night Editor Crenshaw had been transferred to this position. The "swing" editor does a variety of tasks: he fills in on the bureau desk 1 day a week, he replaces the night editor, and he works as project editor, reviewing long stories for Sunday's paper. In addition, he fills in for the national editor on weekends. This swing editor does not control a regular group of reporters, as do other editors in the national department, although there are usually two reporters on duty during the weekend.

The Employer contends that because the swing editor replaces the national editor, a national assistant editor, and the night editor, the position should be excluded from the unit. However, we have decided that the night editor and the national assistant editor's position occupied by Garreau should not be excluded, and the Employer does not contend, nor does the record show, that the 1-day job as projects editor, in which the editor moves copy, establishes a basis for statutory exclusion.

There remains for consideration the swing editor's substitution for the national editor on weekends. As the Employer concedes, the swing editor and AME divide management of the national desk on weekends. Moreover, there are only two reporters on Saturday and one on Sunday available for assignments. Of greater significance, almost all weekend assignments have been made in advance. Crenshaw testified that if a story breaks on a particular beat, the swing editor calls the reporter responsible for that beat. These facts, without more, do not establish that the swing editor should be classified as a supervisor. The weekend substitution for a supervisor, while somewhat probative on its face of the status of the editor, cannot obscure the actual facts relating to his activities during such substitution. The AME or national editor rotate responsibility for the department on weekends. Moreover, staffing is small and is prearranged in terms of most assignments. Thus, there is little room for independent judgment or discretion. Accordingly, we conclude that this national assistant editor should not be excluded from the unit.<sup>96</sup>

<sup>92</sup> *Boston After Dark, Inc.*, 210 NLRB 38, 41 (1974).

<sup>93</sup> See *Boston After Dark, supra* at 41-42.

<sup>94</sup> Harwood stated that the hiring process for reporters commenced in one of four ways: (1) the "old boy network," i.e., referrals from other reporters or friends in the industry, as with Garreau's recommendations here; (2) established reputation, where the Post actively seeks a "known reporter"; (3) transfers; and (4) formal, "over-the-transom" applications.

<sup>95</sup> Garreau's relationship to reporters may be somewhat similar to that of the national and deputy national editors but the exclusions of the latter are based on supervisory functions other than editorial functions.

<sup>96</sup> The Employer seeks to exclude a third national assistant editor position, which was vacant at the close of the hearing. Since this contention is based on the Employer's arguments concerning the other national assistant editors, who have not been excluded, and, as the record does not demonstrate to the contrary, we will not exclude this position as supervisory or managerial.

### B. Metro Desk

The metro department is responsible for covering Washington, D.C., its suburbs, and Maryland and Virginia. It includes four main sections: District, Maryland, Virginia, and Weekly. Heading this section is the AME-metro. Beneath the AME is the assistant (deputy) metro editor, whom the Employer asserts is a supervisor or managerial employee. There is an editor for each of the four main area sections of the metro desk. The Employer also claims these four editors are supervisors or managerial employees. The Employer also seeks to exclude four assistant editors, the night metro editor, the district day and district night editor, the copy aide supervisor, and the copy chief, alleging they are supervisors under the Act. In addition to the above-mentioned editors, the metro section employs approximately 90 employees: several editors whose exclusion is not sought here, approximately 60 reporters, and numerous aides, messengers, and clerks.

The deputy metro editor, Tom Wilkinson, is the principal assistant to the AME. Metro AME Downie testified that Wilkinson helps prepare the budget for the department. Downie also described the hiring process for the metro desk. He testified that there are three hiring methods used at the Post.<sup>97</sup> One method involves unsolicited applications, which are screened first by the AME-personnel, Elsie Carper. Carper forwards applications to Deputy Editor Wilkinson, who further screens them. Negatively rated candidates receive no further review; however, if Wilkinson considers an applicant worthy of further consideration, he forwards it to the AME. The AME, if interested, may then invite the area editor's opinions, and, together with the AME, the deputy editor, and the area editor, interviews the prospective hire. If the metro editors desire to hire a reporter, Executive Editor Bradley and Managing Editor Simons will be notified. They review the applicant's qualifications and may accept the hiring determination without further review, or they may conduct further investigation or interviews.

Potential reporters may also be referred to the metro department through "word-of-mouth" from reporters, editors, or friends. Finally, the Post engages in active recruitment to fulfill coverage needs or affirmative action programs. The metro department is an entry point for young reporters, and the turnover is larger than on other desks. It is also the largest news desk, and the hiring needs are concomitantly great. The district and other area

editors are involved in these selection processes, as described more fully below.

The Union concedes that the deputy metro editor is involved in the hiring process. Further, the record indicates that Wilkinson is acting AME for the 2 days a week that the AME is not present in the department, and during the AME's vacation. We also note that the Guild's claim that only the AME is a supervisor in the metro department is particularly untenable in light of the fact that the supervisor-to-employee ratio would then be 1:99. Although it is clear that the executive and managing editors maintain an ultimate control over the operation of the news department, this does not mean that there is no effective supervisory or managerial direction at the lower editorial levels. On the basis of this record, particularly in light of Wilkinson's role in hiring, we conclude that the deputy metro editor position is a supervisory one and must be excluded from the unit.<sup>98</sup>

The four area editors are responsible for beat and general assignment reporters who report directly to the editor. Fred Barbash, the Maryland editor, is responsible for the coverage of news within the Maryland jurisdiction. There are 11 reporters working in the Maryland section and operating from outgoing bureaus which Barbash oversees. A number of reporters cover particular beats—city hall or the courts—while others are available for assignment to stories as they occur. Although the AME generates ideas on the particular stories the section should cover, Barbash is free to initiate and direct stories. If another reporter is needed to cover news in Maryland, he may meet with another area editor and secure a reporter temporarily. More permanent transfers within the metro department result from recommendations by the area editor, but the final decision is made by the AME. Barbash, as well as all editors, including the AME, edits copy, and may return copy to a reporter with directions to revise it. In these circumstances, the editor and the reporter discuss the need for the changes. The AME reviews all major area stories before deadline, as does Wilkinson. As noted above, the Maryland editor interviews prospective hires referred by the deputy editor or AME. Recommendations are made to the AME, who, along with the executive and managing editor, retains the ultimate authority to hire.

Virginia editor, Judy Nicol, and District editor, Herb Denton, operate similarly to the Maryland editor. There are 11 reporters working for the Virginia desk. These reporters are rarely observed by the AME, although he does read their copy. The

<sup>97</sup> Compare fn. 94, above.

<sup>98</sup> *Bulletin Company*, *supra* at 349.



Virginia editor insures that the beat and general assignment reporters provide the paper with adequate coverage of Virginia. Like Barbash, Nicol interviews prospective employees who may work in the Virginia section. Denton, in addition to overseeing the largest group of reporters, is also actively involved in the Employer's affirmative action program.

Another section of the metro desk is the Weekly section, which evolved from the Panorama section of the newspaper. Panorama had been a soft news weekly section, appearing separately within the paper but under the metro desk. The Company subsequently decided to publish three general sections once a week concentrating on Virginia, Maryland, or District news, respectively. Weekly Editor Stan Hinden utilizes a staff of 12 employees, including 2 assistant editors, several reporters, and news aides. Testimony of AME Downie and assistant Weekly editor, McCallister, indicated that Hinden was involved in the decision to hire part-time copy editors, interviewed prospective employees, and made recommendations to the AME.

Although the Union contests the supervisory status of these four area editors, it concedes that they have made recommendations with respect to the hire and transfer of employees on the metro staff, have authorized overtime for reporters, and have required rewrites. The Guild primarily argues that the editor's effectiveness and exercise of independent judgment in these matters are nonexistent because of the daily control of the AME. However, the record establishes that the Virginia, Maryland, District, and Weekly editors handle assignments to beat reporters, are involved in changing beats, and approve overtime of the 5-30 reporters under them. On the basis of this record, which establishes the frequent independent exercise of various supervisory powers by the area metro editors, we conclude they are first-line supervisory personnel who must be excluded from the unit.<sup>99</sup>

The night metro editor, Bill Brady, works from 3 p.m. until approximately 11 p.m., and is the ranking editor on the metro desk after 8 p.m. His initial duties upon arrival at the Company include studying the daily assignment sheet, participating in editorial planning, and editing copy for content. After the day editors, including the AME, depart from work, Brady observes late news developments. During this time, two unassigned reporters are scheduled, as well as the night District editor, Bill Elsen. Reporters who finish their assignment early may also be present on the metro desk. Brady assigns work to these reporters as necessary to inves-

tigate and write late-breaking stories. This editor also reshapes the metro page as the importance of news items or stories change during the evening. On occasion, Brady telephones the AME to discuss the advisability of such restructuring. The AME also monitors late news stories from his home, and sometimes calls the night editor to analyze the news and decide what, if any, action should be pursued. The record also reveals that Brady once recommended the disciplining of a reporter, but the AME independently reviewed the situation before instituting the discipline. Also, Brady has studied the affirmative action needs of the metro desk.

The Employer argues that the night metro editor is a supervisor primarily because he can assign work to reporters and is the highest ranking editor on the metro desk during the evenings. However, the record indicates that the discretion used in assigning stories to reporters is limited, both because of the small number of reporters assigned to the night metro operations and the nature of the stories assigned; i.e., fast-breaking, late-developing stories which the paper is required to cover. Such responsibility is in keeping with the Employer's standards for preparing a quality newspaper, and is essentially "production" work.<sup>100</sup> Indeed, the limited discretion of the night metro editor is further illustrated by the fact that the AME calls on occasion to discuss with the editor the need for proper coverage. And it is for this reason, i.e., that the AME keeps in contact with developments on the metro desk, that we find unpersuasive the argument that, because Brady is the ranking editor during the evenings, he is a supervisor.<sup>101</sup> Accordingly, we conclude that the night metro editor should not be excluded from the unit.

The copy aide supervisor, Paul McCarthy, reports to the AME-metro. He is in charge of the 21 messengers and copy and news aides utilized by the metro department. The record establishes that McCarthy is responsible for the hiring of the copy aides. The Guild does not contest this fact, but argues only that, because this position has been included in the unit since prior to 1970, it should not be excluded now. However, we have rejected this argument for purposes of this case,<sup>102</sup> and thus will exclude the copy aide supervisor as a supervisor within the meaning of the Act.

The metro copy desk is responsible for the final editing of all metro copy. The copy desk makes

<sup>99</sup> *Bulletin Company, supra*, 226 NLRB at 350-351; *The News-Journal Company*, 227 NLRB 568 (1976).

<sup>100</sup> See *National Broadcasting Company, Inc.*, 160 NLRB 1440 (1966); *The Herald Star, Canton Division, Thomason Newspapers, Inc.*, 227 NLRB 505 (1976).

<sup>101</sup> Cf. *Shadecrest Health Care Center*, 225 NLRB 1081, 1082 (1977); *Sol Henkind, an Individual, d/b/a Greenpark Care Center*, 231 NLRB 753 (1977).

<sup>102</sup> See discussion at sec. I, *supra*.

sure that the copy is grammatically correct. In addition to editing copy, the copy desk writes headlines. The chief copy editor, Rick Reikowsky performs some of the copy editing work. However, the bulk of that work is performed by the six to seven full-time and six to seven part-time copy editors.

The chief copy editor assigns copy editing and headline writing to the editors who sit on the desk. He also reviews the work of the individual copy editors. The metro chief copy editor also determines the schedules of the copy editors and approves overtime. The record also indicates that the chief copy editor has hired employees in the past, but recently has hired only part-time copy editors. Moreover, Reikowsky on one occasion discharged a copy editor.

Although we have determined elsewhere in this case that some chief copy editors are not supervisors, we conclude based on all of the above that the metro chief copy editor is a supervisor who should be excluded from the unit.<sup>103</sup>

In addition to the four area editors, there are six subordinate area editors, including a day District editor, a night District editor, and assistant Virginia, Maryland, State, and Weekly editors, who the Employer asserts should also be excluded from the unit.

Judy Mann is the incumbent day District editor. As described by various witnesses, Mann's function is to work with some of the metro reporters to develop stories. Reporters and editors maintain contact with each other as a story is covered. The editor is a resource guide for the reporter and may help shape or direct a story. Testimony by former assistant editors, Hanrahan and Barker, indicates that reporters also investigate and develop stories on their own initiative. As noted above, the AME and area editor also provide direction and analysis for the stories and issues they desire to be covered. The record is not clear on how many reporters the day District editor edits. It does indicate that, like other metro editors, Mann spends the bulk of her time editing for content the product of the reporter. In addition to these general editorial duties, the day District editor is the ranking editor on Sunday; it appears that the AME works on Saturday. Although the Employer asserts that the day District editor and other subordinate editors discussed here are involved in hire and discharge decisions, there is little direct evidence of such participation. The Employer relies primarily on the argument that a conflict of interest between these lower-ranking editors and the reporters exists by virtue of the as-

signing and editing process, and because of this their exclusion from the unit is warranted.

The Board has recognized that not all direction or involvement by editors with reporters in the news industry is supervisory in nature. Thus, the Board has found that where editors assign reporters to events by mutual consent, and the editor's primary duty is to check the quality of the copy and require unsatisfactory copy to be rewritten, the editor's authority was clearly routine and not supervisory.<sup>104</sup> Indeed, the Board has noted that although editors may have been delegated the responsibility for the efficient function of the newsroom, such responsibility sometimes calls for the exercise of only such judgment and execution of only such tasks as appropriately fall within the scope of the newswriting craft or profession.<sup>105</sup> In our opinion, the record establishes that although the day District editor, as well as the assistant Maryland, Virginia, and State editors, assign work and provide direction to reporters, the nature of the relationship is not supervisory but that of a working leadman. Even though some of the assistant editors have engaged in interviews with prospective employees, or have made comments to superior editors regarding the quality of a reporter's work, that is insufficient to render these editorial positions supervisory, especially considering the fact that there are two higher levels of supervision—the area editor and AME in charge of the metro department.

The assistant Weekly editor, Mason McAllister, is involved in the layout, graphics, and production of the Weekly section. Another editor, Ann Mariano, primarily does layout. McAllister, like Hinden and Mariano, contacts freelance writers. Although the photographer generates some of his own assignments, McAllister may also make assignments to him. McAllister is in charge of the Weekly section during Hinden's absence, but the record indicates that, prior to his vacations, Hinden lists and informs McAllister of many of the tasks required to be performed.

Contrary to the Employer, we do not find the assistant Weekly editor is a statutory supervisor. The Weekly group in the metro department is a small operation of approximately 12 employees. We have found above that the Weekly editor, Hinden, is a supervisor of this group. Some of the employees for Weekly have set tasks, such as layout. There are not many reporters, and Hinden effectively heads the department. The evidence on McAllister's supervisory authority is not persua-

<sup>103</sup> *Bulletin Company, supra*, 226 NLRB at 351.

<sup>104</sup> *The Peoria Journal Star, Inc.*, 117 NLRB 708, 710 (1957); *The Herald Star, supra*.

<sup>105</sup> *National Broadcasting Corporation, supra*.

sive, and we therefore decline to exclude this editor from the unit.

### C. Style Desk

Style was introduced as a new separate section to the newspaper in late 1968. As described by AME Shelby Coffey, this section was a transformation of the "traditional women's" section of the newspaper, and contains feature articles—longer, in-depth stories about particular people or issues—as well as regular news stories on, among other things, entertainment, society, travel, and food. In addition to the daily Style section, the newspaper produces a Thursday Food subsection, as well as Arts, Travel, Living, and Show subsections on Sunday. The Style desk, as with other departments, is headed by an AME.<sup>106</sup> Under the AME are various editors whom the Employer seeks to exclude: deputy editors for culture and feature stories, projects editor, night editor, copy chief editor, two assistant editors, and editors for Travel, Living, and two for Food. There are approximately 30 reporters<sup>107</sup> who work for the Style section, and 14 copy editors.<sup>108</sup>

The AME takes responsibility for hiring reporters and editors for the Style section. Reporters or subordinate editors sometimes make suggestions on possible candidates for hire and on occasion attend lunches or dinners with prospective hires. In these instances, the AME also interviews the prospective reporter or editor, or may consult with the executive editor concerning salary offers.<sup>109</sup> The final hiring decision within the department rests with the AME. The AME also makes determinations on daily matters such as schedules, vacations, and travel.

The AME generally works 9:30 a.m. to 7:30 p.m., or later, as necessary. The AME may also work weekends. Moreover, the AME keeps in contact with the night crew, since he receives the "capital" or first edition of the newspaper, and may call the Style desk with suggestions and recommendations.

During the week, the AME holds two daily news conferences in his office, which are attended by various editors. The first of these meetings lasts

only a short time. At this meeting, the editors discuss the news budget<sup>110</sup> and the proposed length for the stories. The second news conference in the Style department is held later in the day, when the night and copy chief editors are present. The editors discuss possible stories of interest to the Style section which may develop over the next few days, and longer feature stories which are ready to be printed or are being prepared.<sup>111</sup> In addition to discussing the various stories and deciding which should be pursued, the editors also suggest and discuss which reporters should be assigned to the stories. The AME retains ultimate authority to decide assignments. Indeed, on certain occasions when these second meetings are not held, the AME will make the necessary assignments himself. Thus, assignments may be made by the AME when discussing and approving story ideas and projects directly with reporters, or with reporters and their editors. For example, AME Coffey discussed with reporter Michael Kernan a series concept on the American family. The AME and reporter developed the idea, and AME Coffey closely guided the early stories. After the series ran in the newspaper several months, one of the deputy editors also started editing the copy. The edited copy was then forwarded to the AME for review. Such occurrences are not uncommon in this department.

The special projects editor assists in developing story ideas for Style desk reporters. This title was newly created in January 1977, and assumed by Phil Smith at that time. In this role, Smith reads numerous publications and converses regularly with reporters to evolve concepts for articles. The projects editor also maintains the writing projects list, which details major long-range stories that reporters are working on so that the style desk may keep track of those stories. In line with project duties, this editor deals with freelancers and may purchase freelance work and determine the amount to be paid. In this latter regard, the editor usually makes payments within a particular range, and the AME often reviews the fee decisions. According to Coffey, the projects editor in 1977 undertook a continuing self-study project of the style desk with the object of analyzing the budget and functions of the Style section.

The projects editor also edits the work of four writers. Smith edited work prior to assuming his position and retained this duty when he became projects editor. Smith also is one of several editors who act, on a rotating basis, as AME on Sundays.

<sup>106</sup> The current AME, Shelby Coffey, was installed in July 1976.

<sup>107</sup> This number includes approximately 15 "critics."

<sup>108</sup> In addition, there are four news aides, two full-time and seven part-time copy aides, and a confidential secretary.

<sup>109</sup> Several examples of this process were described at the hearing. Nancy Collins was suggested as a qualified candidate for a reporter position by, among others, deputy editor (features) Sandy Rovner and reporter Sally Quinn. Collins was hired after interviews with AME Coffey, and AME (personnel) Elsie Carper, Managing Editor Howard Simons, and Executive Editor Ben Bradlee. Similarly, when a reporter appeared to be leaving the paper, several editors, including AMEs of Metro and Foreign as well as Style, spoke to the executive editor in an attempt to retain the particular reporter's services.

<sup>110</sup> The news budget is a listing and brief description of the stories of the day for the sections.

<sup>111</sup> The lists of events ("up-comings") and features ("take-outs") discussed at this meeting are prepared by news aides prior to the meeting.

Moreover, Smith is one of three editors who substitutes for the AME during the latter's vacations or days off.

Based on the foregoing, we conclude that the special projects editor is a managerial employee who should be excluded from the unit. We note that the projects editor is responsible for a project to study the Style section. While the exact nature of this project was not explicitly defined at the hearing, it is clear that it encompasses proposals for revising the Style section and that the analysis contained therein may lead to significant changes in the department. In these circumstances, we believe that the projects editor should be excluded.<sup>112</sup>

The two deputy editors in the department, Sandy Rovner and Chris Williams, are involved with general features and cultural affairs, respectively. There are four to six writers who report to each deputy editor. These writers are responsible for covering social events, such as White House parties, or cultural events, like ballets or television programming. The assignments for these stories are usually made during the editorial conference chaired by the AME. However, the deputy editor can order a reporter to undertake a certain project. On the other hand, many of the stories covered by cultural or general feature writers are generated by the reporters themselves. For example, the dance critic determines which ballets to cover, and how to write the story on the ballet. Reporters and editors speak freely concerning the scope and manner of reporting on various events. The deputy editors read the reporter's copy for content,<sup>113</sup> and may request that the story be altered, cut, or reshaped. However, the content of stories prepared by critics is rarely changed, since the critic's job is to analyze and give his opinion about a particular event.

The deputy editors, who the Employer contends are supervisors or managerial employees, usually work from 10:30 a.m. to 7 p.m. Together with the projects editor and the night editor they substitute for the AME on a rotating basis during the AME's absence. Reporters inform the deputy editors of their desire for time off, which is usually granted if staffing requirements are met. Reporters also speak to the deputy editors to request certain stories or duties. The deputy editors discuss these requests with the AME. In addition to these duties, Rovner is the Sunday editor of the Style section. However, most of the stories for the Monday section have been assigned prior to Sunday. Both Rovner and Williams may contact freelancers to produce stories for the section. While each may select the free-

lancer desired, Coffey has expressed his opinion about various freelancers to the deputy editors. Further, the amount authorized to be paid freelancers is within parameters set by the deputy editors' superiors. Moreover, these freelance arrangements may be worked out with staff reporters as well as outside writers, but Coffey's approval must be secured.

The Style section also utilizes two assistant editors who read and edit reporter copy for content. These two assistant editors have less authority than the deputy editors. In addition to their editing duties, they work with four to six reporters or critics in a manner similar to that of the deputy editors. That is, the assistant editors may direct and assign reporters to particular stories, although this is a process in which the reporter may express disagreement with the direction or assignment. The assistant editors also participate in the daily conferences held in the Style department. The record also indicates that the assistant editors, with the other ranking editors in the section, participated in the realignment of the department's reporters and critics and the manner in which copy would be controlled.

Based on this record, we conclude that the deputy editors are supervisors under the Act, but that the assistant editors are not. It is evident that the relationship between the deputy editors and the writers and critics is relaxed and informal. Reporters argue with editors over content and assignments, and deputy editors often agree with reporters on these issues. Reporters also generate their own assignments. Nevertheless, it is clear that the deputy editors can and do give assignments to reporters, including critics. The deputy editors also have been consulted about prospective personnel changes, including hires. Further, they participate on a regular basis in the editorial conference wherein the decisions on assignment and direction of the Style writers are made. As this record shows that the deputy editors possess and exercise supervisory authority, we shall exclude them from the unit.<sup>114</sup>

The assistant editors do not possess the same degree of supervisory authority as do the deputy editors. Thus, although consulted about the realignment of the Style section, it is evident that they do not participate in the hiring or discharge of employees. Indeed, their primary contact with the reporters is based on development and execution of stories. The direction by the assignment editors is more akin to that of an experienced newspaper person than that of a supervisor.<sup>115</sup> In the absence

<sup>112</sup> See *Bulletin Company*, *supra*, 226 NLRB at 358. Compare our discussion of the position of deputy editor in the Financial section, *infra*.

<sup>113</sup> If the writer covers a night event, the night editor will edit copy.

<sup>114</sup> *Bulletin Company*, *supra*, 226 NLRB at 354.

<sup>115</sup> See *Suburban Newspaper Publications*, *supra*, 226 NLRB at 156.

of evidence of the exercise of independent judgment in responsible direction or policy matters, we conclude the assistant editors are not supervisors or managerial employees.

In addition to the day editors discussed above, there is a night editor for the Style section. James Yenckel, the current night editor, arrives at the Post in time to participate in the second Style conference, and is informed of placement and layout decisions for the section. He also does substantial editing of copy as night editor. Many of the stories covered by the Style section occur during the evening, and the necessity for editing these stories is the responsibility of the night editor.

Yenckel also edits the Living and Travel section stories for the Sunday Style section. The editing at night for the Style section involves reviewing headlines as well as editing for content. Yenckel may determine that a story needs to be rewritten, and can require a reporter to do so. Yenckel also monitors breaking news stories, and may call a reporter to cover an unplanned event. Because of such developments, Yenckel can determine story length and location. Yenckel may also change the layout plans for the section. In doing so, he decides on whether to "play" or "kill" a story; i.e., whether to publish a reporter's copy. Yenckel is the ranking editor working in the Style department from approximately 7:30 to 12 p.m., but Coffey receives the capital edition of the paper and stays in contact with Yenckel concerning stories.

Based on the record, it is evident that Yenckel is essentially involved in production work. The assignment of reporters and the duty of checking the quality of the reporters' work is routine.<sup>116</sup> The night editor's work involves considerable personal responsibility and good judgment, but is not of a supervisory nature.<sup>117</sup> That the night editor exercises these responsibilities when the AME is not present does not require a contrary result.

As in other departments of the paper, the Style department uses copy editors who read and correct reporter copy for typography, grammar, accuracy and the like. In Style there is a chief copy editor, Robert Kelleter. There is also a principal assistant who carries out most of the assignment responsibilities.<sup>118</sup> Kelleter is closely involved in the layout decision for the section. He designs page 1 of the Style section, and also plans artwork for the section. With respect to hires, Kelleter makes recommendations to the AME after giving a copy editor a tryout. Kelleter also informs Coffey of performances of copy editors.

We do not agree with the Employer that Kelleter's recommendation or "tryout" candidate requires a determination that he is a supervisor.<sup>119</sup> We note that the assignment functions have been delegated by Kelleter to an assistant editor, yet no claim is made that the assistant editor is therefore a supervisor. We thus decline to exclude this position from the unit.

Within the Style section are special subsections, each headed by editors whom the Employer contends are supervisory or managerial employees. The Living section is a separate section of the paper appearing each Sunday, and is concerned with domestic arts, crafts, architecture, and the like. Sara Booth Conroy became Living editor in 1971. The Living editor spends the majority of her time writing articles; Conroy writes at least one piece a week for the Living section. Conroy's material is edited by Night Editor Yenckel. Conroy also does the layout for the Living section. In addition, she reviews the copy of columnists and freelancers, and decides what items will be placed in the Living section.<sup>120</sup> In this regard, the Living editor contacts and reviews the work of freelancers, selects material for placement in the newspaper, and arranges payment of between \$35 and \$75 an article. There is no set budget for the Living section for the purchase of freelance work; however, payments are within the range noted above. Conroy may also request that reporters or news aides at the Style desk write small pieces for the Living section. In so doing, Conroy approaches the AME for permission if the work is to be performed on the Employer's work time; otherwise, Conroy treats the employees as freelancers and makes payments accordingly. One news aide works part time for the Living section; this news aide also works for the Food section. The record indicates that Conroy probably participated in interviewing, along with the Food editors, applicants for the aide position and apparently expressed a preference to the AME for a particular applicant. However, it is clear that the Food editors had input in the selection of the aide and that the ultimate hiring was done by higher management.

Based on the foregoing, we conclude that the Living editor is not a supervisor or managerial employee. The Employer's allegation of supervisory status rests primarily on the one recommendation regarding a news aide and a recommendation that a particular reporter transfer to write a column for

<sup>119</sup> See discussion of metro copy editor, *supra*.

<sup>120</sup> Although there is a regular column by writer Henry Mitchell which usually appears within the Living section, the Employer does not assert that the Living editor's relationship with this writer and this column is supervisory in nature.

<sup>116</sup> *The Peoria Journal Star*, *supra*, 117 NLRB at 711.

<sup>117</sup> *Post-Newsweek*, *supra*.

<sup>118</sup> The Employer does not seek to exclude this position.

the Living section. The former exercise of authority was both shared and limited, as detailed above. With respect to the "transfer" of the reporter, it appears that the Living editor recommended that the reporter write a weekly column, but that the recommendation was not implemented for approximately a year. This sporadic and limited exercise of authority, as such, does not demonstrate supervisory status. Nor do we conclude that the authority to purchase freelance material proves managerial status.<sup>121</sup> Finally, there is no potential for conflict of interest with respect to whether a particular employee will be permitted to write an article on company time for the Living section since it is the AME, not the Living editor, who makes that decision. If the AME decides that a reporter cannot write the article on company time, then the Living editor may contract with the employee, but that merely creates a freelance situation, not an employee-supervisor relationship. Although the editor has some discretion in making payments for freelance material, it is clear that such payments are made within set parameters. Finally, the editor's participation in planning what will appear in the section does not demonstrate managerial status. Choosing stories for placement in the newspaper is not a managerial decision, but rather a journalistic and technical judgment as to the importance of the story to the paper's readers and the manner in which to bring that story to the reader's attention.<sup>122</sup>

The Employer publishes a Travel section on Sundays and may include travel material in the paper during the week. Morris Rosenberg, the Travel editor at the time of the hearing, has been a Post reporter for 22 years, and since 1967 has been editor of the Travel section. Like the Living editor, the Travel editor is responsible for selecting material to be placed in the Travel section. Most of this material is procured from freelancers. The number of pages available for Travel articles is usually dependent on the amount of advertising for a particular week; accordingly, the Travel section may appear as a separate section or as part of another section of the newspaper. There are no other employees besides the Travel editor who work on the Travel section.

In addition to selecting and paying for freelance material, the Travel editor also utilizes a budget to travel for investigatory trips. The budget for the Travel section is included in the Style section budget, and is determined before each fiscal year. Small trips may be taken without prior approval of the AME. Travel which requires a large expendi-

ture of the budget is usually cleared through the AME. Rosenberg has discretion to pay freelancers a fee usually amounting to between \$25 and \$100, with an average fee of approximately \$75.

It is evident from these facts that the Travel editor is not a managerial employee as asserted by the Employer. In preparing the section, the Travel editor is limited to a predetermined number of pages and a budget determined by superiors or by circumstances in the Style section. The exercise of judgment in purchasing freelance material and deciding what trips to embark on does not amount to the use of discretionary judgment in implementing or determining employer policy. Accordingly, we decline to exclude the Travel editor from the unit.

The last special subsection in the style department under consideration here is the Food section. This section appears every Thursday and prior to some holidays. There are two editors in the Food section: Executive Food Editor William Rice and Food Editor Marian Burros. The Food section also shares a news aide with the Living section, utilizing that news aide 4 days a week. Like other editors of the Style subsections, the Food editors prepare their subsection for publication, write their own articles, procure freelance work and read submitted manuscripts for publication. It appears that the executive food editor has more responsibility over budget matters such as travel and compensation for freelancers than does the food editor. Trips taken by these editors are approved in advance by the AME. Payments for freelance material range between \$40 and \$100 which is the "going rate." Compensation above these rates is usually approved by the AME pursuant to a recommendation by the executive food editor. When the news aide was hired for the Food and Living sections, the Food editors interviewed the applicants and made a recommendation to the AME. The AME consults the executive food editor on evaluation of the news aide, but does that evaluation himself. The news aide does some writing, as well as clerical and production work.<sup>123</sup>

Contrary to the Employer, we find that neither the executive food editor nor the food editor qualifies as a supervisor or managerial employee. If both of these editors were found to be supervisors, the supervisor-to-employee ratio would be 2-to-1. Further, it is clear that the AME makes the ultimate decisions on hiring and other personnel matters and

<sup>121</sup> See *Boston After Dark*, *supra*.

<sup>122</sup> See *Bulletin*, *supra* at 359.

<sup>123</sup> When Marian Burros, the food editor, was hired, she was first contacted by Executive Editor Bradlee. She was interviewed by Bradlee and other Post executives. She met with Executive Food Editor Rice, but it is clear that the decision to hire Burros was made by higher Post authorities. The Company does not rely on Rice's exercise of authority with respect to the hire of Burros in urging a supervisory finding here.

that with respect to the news aide any authority of the editors<sup>124</sup> is both shared and very limited. Assignments of work and evaluations are clearly routine, or based on news, not supervisory, judgment. Moreover, consistent with our discussion concerning other subsection editors, we do not find the authority to use freelancers to be managerial in nature.

#### *D. T.V. Channels Editor*

The Employer seeks to exclude the editor of "T.V. Channels," the Sunday supplement which contains listings of area TV programs for the week. In addition to the seven or more pages of program listings, T.V. Channels includes movie summaries and highlights of certain television shows. Further, there are cover stories and, on occasion, other articles. The supplement also includes advertisements and puzzles. T.V. Channels falls under the jurisdiction of the AME for that magazine and the Weekend and Comic sections. There is a T.V. Channels editor, Lawrence Laurent, as well as news aides who work in the department.

The T.V. Channels editor writes the highlights of various programs as well as summaries of movies. The editor also prepares listings of local TV programs, and does layout work for the supplement in conjunction with the AME. The editor selects the cover for the publication and coordinates the procurement of an article in conjunction with that cover. Laurent writes the cover article approximately 26 weeks and a freelance or Post reporter writes the story the remaining 26 weeks. The AME or the TV editor goes to the AME of a particular section of the paper from which the story for the T.V. Channels is to be written, e.g., if the cover story involves a dance program, the editor may go to the AME of the Style section to request that the dance critic or a particular Style writer prepare the article for the lead story. The AME over T.V. Channels or the editor also may first approach the writer to see if the writer is interested in writing such a story, and then secure the permission of the AME for that writer to draft the article. On occasion, these stories are written on freelance time which requires the TV editor to make a payment of approximately \$75 for the piece. A TV editor may also procure articles from outside the newspaper for which freelance fees are paid.

In addition to the editor, several news aides work in the T.V. Channels department. These include part-timers as well as a full-time news aide. The editor of the T.V. Channels has interviewed

prospects for the news aide slots. The AME also has been involved in the hiring of the part-time and full-time news aide positions. The news aides are responsible for correcting and changing television logs that appear in the T.V. Channels and in the daily newspaper.<sup>125</sup> The news aides may also get the names of guests on public affairs programs. In addition, they go over the mail, type, file, and prepare copy. When the editor is on leave, the full-time news aide is in charge of the department.

The record does not establish the T.V. Channels editor as a supervisory or managerial employee. It is clear that this editor's primary responsibility is preparing the TV listing and insuring the completion of the publication for Sunday printing. In addition, the editor has primary responsibilities for writing or procuring columns to be placed in T.V. Channels. There is no evidence that the editor exercises supervisory authority with respect to the news aides. Moreover, the record shows that the procurement of freelance material is highly structured, many times coming from other writers on the newspaper, and that the payment of freelance fees is fixed. On these facts, it is clear that the TV editor should continue to remain in the unit.

#### *E. Outlook and Book World*

Outlook is a Sunday section of approximately eight pages which incorporates news analysis, in-depth articles, and the editorial and op-ed pages for the newspaper.<sup>126</sup> An AME is in charge of both the Outlook and Book World sections, although the AME, Harry Rosenfeld, spends the majority of his time supervising the Outlook section.<sup>127</sup> In addition to the AME, the Outlook section utilizes an editor, Alexander Horne, and two assistant editors. The Employer contends that the editor of Outlook is a supervisor.

The approximately six articles a week which appear in the Outlook section are obtained by the newspaper in one of four ways. Approximately 20-40 manuscripts a week are sent to the newspaper unsolicited and are read by the editors. However, the editor, rather than the assistant editors, has the primary responsibility for reviewing these manuscripts. Those articles which meet the approval of the editor are forwarded to the AME for an evaluation and determination for inclusion in the Outlook section. Articles are also referred to the Outlook section by other desks if they do not meet the

<sup>124</sup> It appears that the executive food editor exercises more "authority" in this area than the food editor.

<sup>125</sup> The editor of the T.V. Channels does not write television reviews for the weekly paper. This is performed by a regular Style writer, John Carmody.

<sup>126</sup> Outlook does not edit or prepare the editorial page which appears on Sunday in the Outlook section.

<sup>127</sup> This AME at the time of the hearing also was in charge of special projects, such as the Korean scandal investigation.



requirements of that desk but could fit within the format of the Outlook section. A third manner in which articles are procured for the Outlook section is through commissioned works. These articles are secured primarily by the AME, who has set guidelines and approves the payment for such material. Finally, there are reprints from other news sources which are published in this section. Rates for reprinting such articles are usually set by the publisher of the article, although some negotiation on price may take place.

As noted above, the editor is primarily involved in reviewing the manuscripts, speaking with the authors, and editing the publications. The two assistant editors read and edit manuscripts, but are also involved in layout, proofing, and production. They also write headlines and perform other copy work which the editor reviews.

Recently a new assistant editor for Outlook was hired. This assistant editor was a former assistant editor in the Outlook section, and also had worked for AME Rosenfeld when the latter was AME-metro. The AME solicited the advice of Editor Horne concerning the advisability of hiring the former assistant editor back into the department, but it is clear that AME Rosenfeld made the final decision. Similarly, when a writer was proposed as a columnist for the Outlook section, Horne was involved in securing the writer's services. However, another reporter actually introduced the writer to the Outlook section by notifying it that the writer was interested in writing for Outlook. The amount to be paid to the writer was set by the executive editor. The authority to negotiate final payment was delegated to Horne, who persuaded the writer to accept an offer below the maximum set by the executive editor. With respect to discipline, the record indicates that on one occasion the AME requested the editor to instruct one of the assistant's to perform at a better level.

Based on the foregoing, we cannot agree with the Employer that the editor of the Outlook section is a supervisor or managerial employee. The editor primarily reviews manuscripts and performs production tasks. The editor's involvement in hiring and discipline is clearly attenuated and does not rise to the level of supervisory authority as envisioned in Section 2(11) of the Act. This is true especially considering the fact that there are only three employees in the department, which is headed by an active AME who spends the majority of his time supervising the content of the Outlook section. We do not believe that the "substitution" by the editor for the AME during the latter's absence otherwise indicates supervisory status here. Nor do we find the evidence regarding payment

for freelance work, or contracting with writers to prepare articles for the Outlook section, sufficiently managerial in nature to warrant the exclusion of the editor here.

The Book World section is responsible for the preparation of a weekly publication devoted to review of literature, the daily book reviews, and sections on special types of books. As indicated previously, an AME heads both the Book World and Outlook sections. However, the AME spends only approximately 1 day a week reviewing Book World material. There is also an editor of Book World, who is not included in the unit. In addition, Book World employs a managing editor, who the Employer asserts is a supervisory and managerial employee, three editor/critics, a secretary, and a part-time news aide.

Most of the writing and reviewing for Book World is done by freelancers. The editor takes the lead role in deciding what books to review, but the managing editor assists in the selections. Both the editor and managing editor contact freelancers, although the editor has worked out several permanent relationships with freelancers for regular reviews. The managing editor has sole responsibility for the children's book section of Book World, and arranges with freelancers for review of such books. The range for payment to freelancers is from \$75 to \$200. These fees were set by the editor, and the managing editor follows set guidelines on such payments.

At the time of the hearing, several editor/critics also worked in Book World. Thus, one editor was responsible for reviews of records, which he either wrote himself or secured from freelancers. This editor also wrote a column on paperback books. Another editor is responsible for layout, design, and production of Book World. The editor of Book World testified that the managing editor "sees that [the work] gets done." The record indicates that the managing editor assigns some work, although it is clear that each subordinate employee has several regular duties to perform, such as reviewing or layout. When the editor interviewed a prospective transfer for the department, he solicited the managing editor's opinion of the employee. The editor also testified that he told the managing editor to decide on the status of the part-time news aide, who was a probationary employee at the time. The managing editor decided to retain the news aide, who continues to work in the section.

Since this record demonstrates the managing editor's responsible involvement in personnel decisions and his authority responsibly to direct Book World employees, we conclude that the managing editor is a supervisor and must be excluded from the unit.

### F. Photo and Art Department

The Employer maintains a photo and art department to take photographs and produce graphics for the newspaper. This department employs approximately 8-9 artists and 14 photographers. The Employer argues that three editors in the photo section, and the director and assistant director of art, should be excluded from the unit as either supervisory or managerial employees.

The AME for this department<sup>128</sup> is involved in many of the daily supervisory and managerial functions of the photo section. The AME usually works from 9:30 a.m. to 6:45 or 7:45 p.m. during the week. Assignments, including beat assignments, may be made by the AME, although some assignments may be generated by the photographers themselves. The AME prepares work schedules for the photographers on a rotating basis. The AME also assigns photographers to stories until the photo assignment editor arrives at the office.

As mentioned above, there are 14 photographers employed in this section,<sup>129</sup> as well as 3 aides and the 3 editors whom the Employer seeks to exclude from the unit. Photographers are generally present at the newspaper from 7 a.m. until midnight, although photographers may work overtime as required. Shifts during the day are staggered. Approximately five employees in this section work on beats; e.g., a photographer may be permanently assigned to cover the White House or Capitol Hill. For those photographers not assigned to a beat, assignments are generated by stories breaking on other desks. For example, a story may occur which falls within the jurisdiction of the metro desk; a person from metro would call the photo desk and request that a photographer be assigned to that particular story. This process is discussed more fully below.

Picture Editor, Susan Eisert, who arrives at 10:30 or 11 a.m., works closely with the national desk and attends Managing Editor Simons' twice-weekly news conferences. Eisert is also involved in assignment of photographers, especially on out-of-town projects, for which she is consulted by the AME. In line with duties connected with national desk pictures, the picture editor presides over the procurement of and payment for freelance work. The need for freelance photographs arises from the countrywide scope of the national desk and the limitation of staffing in the photo department. In contacting freelancers, Eisert works from a long-es-

tablished list and the range of fees to be paid for freelance work is fixed.

The record reveals that Eisert, in conjunction with the AME, has reviewed candidates for hire and has made recommendations regarding a promotion. Furthermore, Eisert assisted AME Lewis in reviewing and reorganizing the photo department. This restructuring was carried out shortly after Lewis' appointment as AME, and Lewis consulted with Eisert and effectuated many of her recommendations.

In view of the above, we agree with the Employer that the position of picture editor should be excluded from the unit. It is clear that Eisert has been a close consultant of the AME, and bears major responsibility for direction within the photo section. The sum of the picture editor's responsibilities compels the conclusion that the picture editor should not be included in the unit because of her supervisory duties.

The photo assignment editor, Ed Heiberger, is responsible for selecting photographers to fill the call-in requests from other newspaper departments for photos to accompany stories. When appointed, Heiberger replaced Arthur Ellis, who acted for a while as a photo assignment editor but without assuming that title.<sup>130</sup> At least half of the time, Heiberger chooses a photographer for assignment based on availability. Of the 14 photographers in the department, 5 work on specific beats. The remaining nine congregate in a waiting room for assignments, although the record reveals that rarely are all nine present at the same time since the schedule is staggered over shifts from 7 a.m. to midnight. Thus, availability is a major factor in determining assignments in this department. On particular stories, however, the photo assignment editor may select a photographer because of his skill and enthusiasm. After completing an assignment, a photographer may call in to the office or speak to the office by way of a two-way radio, and be directed to a new assignment.<sup>131</sup> While most photographers decide on the method and angle of shooting a picture, Heiberger may direct photographers to take pictures in a certain manner. Moreover, photographs are reviewed by the assignment editor, and reprints may be ordered. Photographers are primarily responsible for the printing of film.

The night picture editor, James McNamara, performs duties at night similar to those done by the photo assignment editor during the day. The night editor is essentially the only editor present Wednes-

<sup>128</sup> Matthew Lewis was the AME at the time of the hearing, having assumed that position in approximately December 1976. Lewis is a former photographer.

<sup>129</sup> There are three other photographers employed by the Post who work separately for the Sports, Weekly, and Magazine desks, respectively.

<sup>130</sup> Ellis is designated "chief photographer." The Employer does not claim Ellis is a supervisor.

<sup>131</sup> Testimony indicates that, on occasion, one photographer may convey the next assignment to another photographer.

day through Friday evenings and on the weekend. He makes assignments, monitors wire photos, and deals with freelancers. The night picture editor may alter a photographer's hours or call in a photographer at night to cover a breaking story.

Based on the record, it is evident that neither the photo assignment editor nor the night picture editor are supervisors or managerial employees. The major task of these editors—the assignment of photographers to stories—is largely routine. Moreover, neither editor exhibits any other authority or indicia of supervisory or managerial status. That one of these editors may direct that a reprint be made of a picture, or indicate that a certain angle is better for a picture, does not warrant a contrary result. Nor does the fact that Heiberger and McNamara saw the reorganization plan conceived by AME Lewis and picture editor Eisert demonstrate managerial status. Moreover, we believe it relevant that, were these 2 editors found to be supervisors, there would be 4 supervisors to 14 photographers. We think that these two editors have duties and responsibilities akin to assignment editors, whom we have previously found herein not to be supervisors.<sup>132</sup>

The Employer further maintains that the art director, Terry Dale, and assistant art director, Harold Hoover, are supervisors and managers and must be excluded from the unit. The art department is under the overall supervision and direction of AME Lewis. As noted, there are nine other artists in the employ of the Post. Four work during the day and three during the evening, Monday through Friday; two artists work on the weekend, when neither editor is usually present. The art section, like the photo section, serves the needs of other desks of the newspaper. Requests for graphics are initiated by a news desk and transmitted to the art section for completion. If the graphic cannot be finished as requested, the art section contacts the originating desk to work out a solution to the problem.

The art director is responsible for assignments and schedules during the day. The assignments, initiated by a request as described above, are made on the basis of predefined designation (e.g., the same artist draws the weather map each day), availabil-

ity, and specialty. The art director, while performing these responsibilities, also does artwork. In addition to these duties, the art director is involved in the hiring process in the art section and in making decisions about the use of freelancers for the department. Thus, the art director has interviewed prospective hires and discussed them with the personnel AME, the executive editor, and the managing editor. More recently, Art Director Terry Dale interviewed and selected three candidates for a cartographer position to present to higher management. There was testimony that Dale had the final choice on who was selected. The AME had no input on the hiring decision.

When Dale was appointed art director, in March 1977, he undertook an evaluation and reorganization of the art department. He drafted and, after management review, circulated memos detailing assignments, schedules, and other procedural matters for the art department. Although these memos quantified several preexisting procedures, they also set policy directives. Further, the art director prepares a budget for the department and submits it to the AME.<sup>133</sup> Moreover, Art Director Dale was a member of a committee which studied and evaluated the graphic needs of the newspaper.

The foregoing establishes, in our opinion, that the art director is a supervisor and thus should be excluded from the unit. While higher management appears to review hiring and policy decisions, the art director does make effective recommendations and takes dispositive action in these areas. Further, the art director appears to operate somewhat apart from the AME's supervision, as evidenced by the independent hiring process in this section. The record reveals that the art director responsibly directs the artists and exhibits other indicia of supervisory status and thus should be excluded from the unit.

The assistant art director, Hal Hoover, works at night with other artists. Testimony indicates that the assistant art director spends considerable time performing unit work.<sup>134</sup> Besides performing regular artwork, the assistant art director also checks the artwork of the first edition, part of which is done in the composing and engraving room, and performs additional layout work if necessary. Hoover is not involved in hiring or discharge. He prepares work schedules, although the record indicates they have not changed for many years. As-

<sup>132</sup> The Employer argues that Heiberger's position is similar to that of Picture Editor Brothers in *Bulletin Company*, 226 NLRB at 354. Heiberger, like Brothers, makes decisions regarding assignments and picture use. However, the Employer overlooks the fact that Brothers was solely responsible for evaluating photo desk employees, made final decisions with respect to hiring, and interviewed candidates for jobs. Brothers, unlike Heiberger or McNamara, also evaluated, promoted, and transferred employees. The record here falls far short of that in *Bulletin*. Indeed, Brothers' position there appears more akin to that of AME Lewis in the instant case. In this regard, we note that the manager of the photography department was included in the unit in the *Bulletin* case. *Bulletin Company*, *supra*, 226 NLRB at 354-355.

<sup>133</sup> The AME has suggested to the executive editor that the art budget be submitted directly to the budget committee, but as of the hearing such a change had not occurred.

<sup>134</sup> When Dale circulated his memos, he stated that Hoover was not to do artwork. The record shows, however, that Hoover performs tasks throughout his shift.

signments in the evening are handled like those in the day; however, late in the evening shift, only one artist works with Hoover.

The record falls short of establishing that the assistant art director is a supervisory or managerial employee. In this regard, we note that neither the art director nor the assistant art director is present on the weekend, when two artists are working and performing functions similar to Hoover. Further, it appears that, if an editor is not working, an artist may deal with freelancers. The record is devoid of any other facts which suggest that Hoover possesses any of the authority exercised by Dale. Since Hoover spends much of his working hours performing artist's work, we believe his position is more akin to a rank-and-file employee than a supervisor or managerial employee.<sup>135</sup>

#### *G. Financial Desk*

The financial desk at the Post has grown recently. Thus, from a base of four reporters, the staff increased to approximately eight, including a reporter stationed in New York. The recently expanded real estate portion of the paper also falls under the jurisdiction of the financial desk. In addition to reporting about the stock market and related developments, the financial desk covers, among other things, Federal agency regulations, banking, housing, transportation, local and metropolitan business news, and other economic issues. These areas are covered by reporters with defined beats, as well as by general reporters.

The AME-financial, Peter Silberman, was involved extensively in the expansion of the department. While recommendations for expansion had been presented to management on several prior occasions, it was not until 1974 that the AME's suggestions were finally approved by the Employer's executives. In preparation for the expansion, the AME requested William Jones, deputy financial editor, to draft a memorandum explaining the need for an expanded financial desk staff. Jones prepared a memorandum, which the AME reviewed; using these ideas, the AME wrote his own memorandum and presented the case for expansion to the management editors, who approved an increase in reporters and column space. In a similar manner, the AME restructured the real estate section, as more fully discussed below.

The AME is involved in all major decisions affecting the department. Thus, the applicants to fill the newly created positions in the expanded financial desk were interviewed and hired solely by the

AME. The beat assignments in the department also are approved by the AME. Similarly, the AME grants vacations. The AME's responsibilities also include preparing the budget proposal for the financial desk. This, like budgets submitted by other desks, is sent to the executive editor and the budget committee for ultimate approval.

The deputy financial editor has been the "number 2 man" in the department at least since 1969. His duties have remained relatively constant during these years. William Jones, the deputy editor at the time of the hearing,<sup>136</sup> primarily writes stories. He averages 10-12 stories a week. These may appear in the business and finance section of the paper, or, on occasion, on the front page.<sup>137</sup> Jones was hired by Hobart Rowan, the AME before Silberman. Shortly after Silberman replaced Rowan as AME, the decision to expand the department and reorganize the real estate section was made. Silberman, prior to assuming the job as AME, worked as a national editor. As indicated previously, the deputy editor was involved in the expansion of the financial desk and the real estate section. Thus, as noted above, Silberman requested Jones to prepare a memo on the need for expansion of the department. The deputy editor also supplied a list of 12 writers for consideration because of the increase in reporter slots. Similarly, the AME asked the deputy editor's opinion about certain reporters and editors and the need for restructuring the real estate section. However, the decision to transfer reporter Ross, and to appoint Claudia Levy as assistant editor for real estate was made by the AME. In addition to reporting, the deputy financial editor may assign reporters to stories, although the AME makes most assignments. Moreover, the deputy financial editor is in charge of the desk when the AME is on vacation. In this regard, the deputy editor speaks with the AME prior to the latter's leaving, and does not deviate from established routine in the department. The AME calls in during absences.

Based on this record, we cannot agree with the Employer that the deputy financial editor is a managerial or a supervisory employee. Although Jones, as deputy editor, was involved in the expansion plans for the financial desk and the changes in the real estate section, he did so at the behest of the AME and because, as the person most familiar with the entire financial desk structure, Jones could provide useful information to the AME. While

<sup>135</sup> That Dale may have spoken with Hoover concerning the reorganization plan does not establish, without more, that Hoover is a managerial employee.

<sup>136</sup> Jones was "promoted" to deputy financial editor in 1975, but, apparently, had been performing the duties for a longer period.

<sup>137</sup> As with other desks, the AME attends the daily news conferences chaired by the executive editor where decisions regarding front page (or A-1) stories are made.

Jones may have desired and urged such changes, he was not the managerial entity determining whether they would go into effect. Thus, it is well established that employees, too, are concerned about improving working conditions. The changes in the financial desk were made to improve the quality of work produced by that desk, and merely because Jones would want such a result is not inimical to his employee status. For similar reasons, merely because the AME sought the advice of the deputy editor on certain personnel matters does not establish the deputy's position as a statutory supervisor. It is unrefuted that the deputy editor was not involved in any fashion with the interviewing and hiring of reporters for new slots. Nor does the deputy editor make recommendations concerning discharge. Further, it cannot be overlooked that the deputy editor spends a substantial portion of his working hours—described in testimony as much as 80–90 percent of his time—writing stories. The time he spends in making assignments is certainly *de minimis* and routine, and, in light of the above, does not warrant exclusion of this position.

The assistant financial editor is the copy chief editor on the financial desk. There are usually two copy editors who edit, write headlines, and assist on production work in the composing room.<sup>138</sup> The assistant financial editor, Charles Puffenbarger, gives copy editing work to the copy editor based on availability, although certain stories may be given to employees who have expertise in specific areas. Such duties occupy approximately 50 percent of the assistant financial editor's day. When first arriving at the desk,<sup>139</sup> the assistant financial editor reviews copy which has come in over the wire services. Stories of particular interest are referred to the reporter who covers the appropriate beat. The assistant financial editor also prepares the news budget for the daily conferences. Additionally, the assistant financial editor is engaged in layout and design work for the financial pages. In this capacity, the assistant financial editor places stories, including the lead or headline stories, but the AME often is consulted on or reviews layout decisions. There are also standard items such as the stockmarket reports which are printed daily. Further, design and layout considerations often determines the length of a story, and sometimes requires cutting a story. In making such cuts, the assistant financial editor consults with the reporter who wrote the story.

<sup>138</sup> There were three individuals who performed copy editing work at the time of the hearing. One, Sullivan, did copy editing half of the time, and wrote the remaining time. She was hired by the AME. There also was one full-time and one other part-time copy editor.

<sup>139</sup> The assistant financial editor usually starts work between 10:30 and 11 a.m.

Based on the record as a whole, we conclude that the assistant financial editor is not a supervisor. The assignment of stories to reporters and preparation of the news budget are clearly routine in nature, and do not involve discretion or independent judgment. Further, unlike the *Bulletin*<sup>140</sup> situation relied on by the Employer, the record here does not show responsible direction of copy editors commensurate with supervisory authority. Thus, here the AME, not the assistant financial editor, determines the schedules, vacations, and other working conditions of the copy editors, whereas in the *Bulletin* these powers rested with the copy desk chief.

As already mentioned, the real estate department falls under the financial desk's jurisdiction. Three employees work for the real estate section; the Employer seeks to exclude the two assistant editors, John Willmann and Claudia Levy. Real Estate appears as a separate section in the newspaper on Saturday. During the rest of the week, real estate stories are submitted to the financial desk. Of the two assistant editors for Real Estate<sup>141</sup> one, Willmann, does not perform editing, but exclusively writes a weekly column as well as other stories. The other assistant editor, Levy, edits and handles copy, lays out the real estate pages, deals with stringers, and occasionally writes stories. Willmann's assignments are not controlled by Levy; Levy does assign stories to reporter Ross. Vacations, overtime work, time off, and merit increases for real estate employees are handled by the AME. It was the AME who made the decision to place Levy as an assistant editor and Ross as a reporter in the real estate department. The record does not reveal that Willmann, as assistant editor, was consulted about either of these additions.

We cannot agree with the Employer that the assistant editors for Real Estate are supervisors, as the record evidence falls far short of warranting such a conclusion. It appears that Levy was added to the real estate department to improve its quality and was delegated the responsibility for the efficient functioning of that department. However, such responsibility is part of the craft or function of a newspaper person; it does not, without more, convert a rank-and-file employee into a supervisor.<sup>142</sup> Thus, we conclude that the assistant editor

<sup>140</sup> 226 NLRB at 351–352.

<sup>141</sup> Claudia Levy was made an assistant editor in January 1977; John Willmann was the other editor; and Nancy Ross was a reporter for this section.

<sup>142</sup> See, e.g., *NBC, Inc.*, *supra*; *Post-Newsweek Stations, Capital Area, Inc.*, 205 NLRB 522 (1973).

positions occupied by Levy<sup>143</sup> and Willmann<sup>144</sup> are not supervisory.

#### H. Research Department

The Employer maintains a reference library where research requests are filled. The director of research, Mark Hannon, is excluded from the unit already. Under the director is one librarian, Bill Hifner, whom the Employer maintains should be classified as a supervisory and managerial employee. There are approximately 20 other employees in the department: assistant librarians, whose duties include researching and indexing, and library assistants, who do filing work. However, the record indicates that there is functional overlap between the two classifications. The research department responds to requests from reporters for information or particular entries from files. Employees check files for the reporters for printed as well as pictorial information. Some employees operate as "indexers," clipping out stories for appropriate subject headings; others gather articles to be placed in byline files. There is also a traditional library with reference material which can be checked out to reporters. Department employees are present at the library from 8 a.m. to 2 a.m. during the week, and also work during the weekend.

The director of research works from 10 a.m. to 7:30 p.m., and is in charge of overall operations within the department.<sup>145</sup> Hannon has been director since 1968 and has assumed the task of upgrading the Post's library facilities. Hannon coordinates research with the various news desks to ensure efficient use of the library facilities. Thus, he is involved with major projects undertaken by the research department and sometimes personally engages in research for such projects. Major equipment purchases are made by the director, who also prepares the department's budget.

As head of the department, Hannon approves or is involved in all hires of full-time employees. Even when the librarian interviews particular applicants, the director invariably reviews the candidate's credentials. Although he is concerned with the overall functioning of the library and its progress, the director frequently walks through the working areas to observe employees. On such occasions, Hannon

sometimes instructs the librarian to issue a verbal warning to an employee. Finally, all complaints from library employees are received by Hannon.

The librarian, Hifner, works from 1 p.m. to 8:30 or 9 p.m. He usually works out of the bookroom, but does not have a formal office. The librarian does considerable research for reporters and, together with another employee who works in the bookroom, supplies books or quotes on subjects, or locates the same, as needed by the reporters. In connection with these duties, the librarian reads numerous publications and purchases books for the library. While the librarian possesses the discretionary authority to order these books, he can spend only within the budgeted amount, approximately \$15,000. The librarian also suggests to the director when to prepare the research department budget.

Schedules are prepared by Hifner and rarely changed. Weekend assignments are rotated among employees. The director is not involved in these decisions, nor is the director concerned with vacations or times off; the librarian is in charge of making these decisions. As mentioned above, the librarian transmits warnings at the director's request to employees. Further, Hifner occasionally talks to other research department employees about lateness or other work-related problems.

It appears from this record that the librarian is not a supervisory or managerial employee. Hifner does not responsibly direct employees in their work or effectively recommend hiring or discipline. In this regard, the director of research makes final determinations on hiring; further, the director uses the librarian as a conduit for warnings. The librarian, for the most part, performs research and other library work. In light of these facts, we are not persuaded that the librarian is a supervisor merely because he sometimes schedules work or reminds employees when they are late.<sup>146</sup> Further, we cannot agree with the Employer that the librarian's function in purchasing books forms a basis for a managerial finding here since that is simply part of the librarian's job, and is limited in any event by budget restraints of \$15,000. As we have stated elsewhere, "even the authority to exercise considerable discretion does not render an employee managerial where [the] decision must conform to . . . established policy."<sup>147</sup> Certainly the purchase of books is consistent with the Employer's policy of maintaining an adequate research facility for its reporters.

<sup>143</sup> The Guild asserts that the Employer's attempt to exclude Levy's position was untimely. In view of our determination here, we need not reach that issue.

<sup>144</sup> The Employer admitted that Willmann did not exercise any supervisory authority, but was in an "emeritus" position, still possessing such authority if necessary. Having concluded that the assistant editors are not supervisors, we are not required to decide whether a person of emeritus status would still be a supervisor under the Act.

<sup>145</sup> The Employer averred that the director's position was similar to that of an AME. The Union does not dispute the exclusion of the director.

<sup>146</sup> See *The Capital Times Company*, 234 NLRB 174 (1978).

<sup>147</sup> *Eastern Camera & Photo Corp.*, 140 NLRB at 471.

### I. Foreign Desk

The Employer maintains 13 correspondents in foreign countries to gather and report world news.<sup>148</sup> The Employer also utilizes stringers to report foreign stories. A separate foreign department was created in 1968; until that time, the foreign and national departments together constituted the world desk. An assistant managing editor presides over the department; since 1968, Phil Foisie has occupied this position. There are three other editors in the department whom the Employer seeks to exclude: foreign editor, deputy (day) editor, and a night editor. The foreign department also employs seven full-time and six part-time assistant foreign editors who function as copy editors.

Correspondents are chosen for their assignments after a consultation process which usually involves the AME, the executive editor, and the managing editor. The correspondents usually serve a 3-year term in their location, although these stays may be lengthened or shortened upon request or management determination. After returning to the newspaper, the correspondents are usually assigned to another department. However, it is not unusual for a foreign correspondent to be an editor on the desk before or after stints overseas.<sup>149</sup>

The foreign editor oversees the daily operation of the foreign desk. The foreign editor generally works a 12-hour day. He proposes stories to correspondents, maintains telephonic contact with them, and consults with the deputy foreign editor regarding the stories to be placed in the paper. Correspondents discuss travel and assignments with either the AME or the foreign editor. Furthermore, the AME periodically visits correspondents at their foreign location; these and other travels occupy 2-1/2 months of the AME's working year. During the AME's absences, the foreign editor is responsible for the foreign desk, although no foreign editor has ever effectuated any changes in the department without the AME's approval.<sup>150</sup> Responsibility for, contact with, and control of the stringers used by the Employer resides with the foreign editor. While the foreign correspondents operate somewhat autonomously during their stint, the foreign desk, through the foreign editor, may direct a reporter to pursue or write a specific story.

<sup>148</sup> One of the correspondents works 6 months a year for the Employer on a contract basis. The 12 cities where correspondents are located are Bonn, Tel Aviv, Moscow, Cairo, Paris, London, Tokyo, Buenos Aires, Beirut, Bangkok, Hong Kong, and Johannesburg. In 1963, there were only two to three correspondents. Each correspondent controls a staff at the foreign city from which the reporter works.

<sup>149</sup> For example, Osnos, the foreign editor at the time of the hearing, had been a Moscow correspondent.

<sup>150</sup> There have been five foreign editors since 1968. Foisie has been AME during this time, and even served in a dual capacity as AME and foreign editor for approximately 2 years.

The foreign editor also prepares the work schedules of the desk personnel.

Although the AME, in conjunction with the managing and executive editors, is responsible for the placement of correspondents, he consults the foreign editor before making the decision. In addition, the foreign editor has input into the decision to hire other editors in the foreign department. For example, while substituting during an AME's absence, a foreign editor hired three assistant foreign editors.<sup>151</sup> Although instances of discharge and discipline are rare in this department, the foreign editor, among others, recommended discharging a foreign correspondent who was subsequently fired. The budget for the foreign desk exceeds \$1 million a year. The foreign editor makes detailed recommendations on budgetary matters, and oversees the financial matters of the foreign correspondents and bureaus.

The deputy foreign editor, or day editor, spends the bulk of the working day reading copy and deciding at the initial stage what will appear in the newspaper. Story selections are reviewed by the foreign editor and page-one story candidates also are discussed at the daily news conferences. The day editor also maintains communication with correspondents, often transmitting messages from the foreign editor. The day foreign editor may also be consulted for recommendations on hiring.

In light of the record evidence of the foreign editor's duties and responsibilities, we conclude that the foreign editor possesses sufficient supervisory and managerial authority to warrant exclusion from the unit. While the AME undoubtedly controls the overall operation of the foreign department, it is the foreign editor who daily insures the smooth functioning of the desk. On the other hand, we cannot agree with the Employer that the deputy (day) foreign editor must be excluded. The mere fact that because the day foreign editor may play a part in deciding what will appear in the newspaper is insufficient to demonstrate his managerial status.<sup>152</sup> Further, although the day editor maintains frequent contact with correspondents, he clearly is subordinate to the foreign editor in this regard. Finally, the day editor's relationship to assistant foreign editors does not provide a basis, in light of the above, for exclusion.

The night foreign editor<sup>153</sup> is the chief copy desk person in this department. As indicated previously, there are seven full-time and six part-time as-

<sup>151</sup> However, the foreign editor does not select part-time assistant foreign editors (copy editors).

<sup>152</sup> See *National Broadcasting Company, Inc.*, 160 NLRB 1440 (1966).

<sup>153</sup> At one time, the night foreign editor worked during the day. The record indicates that the copy chief would be working at night.



sistant foreign editors who work on the copy desk and who edit, rewrite, and check copy for errors. The night foreign editor's responsibilities include managing the copy flow. The AME originated the idea of having assistant foreign editors who have some expertise in certain areas of foreign news, and is the AME responsible for helping them develop that expertise. The night foreign editor checks over the copy handled by the assistant foreign editors prior to it going to the copying room. He makes out their work schedules; however, these schedules generally are rotated, changes may be made by the assistant foreign editors themselves, and the schedule must be approved by the foreign editor. The record does not contain any evidence of hiring in this department, but it appears that, as in the national department, assistant foreign editors are given tryouts, after which the night foreign editor or slot man relays his appraisal to higher management. In this regard, the evidence reveals that, for some time, and at least just prior to the close of the hearing, assistant foreign editors have been working in the slot at night, because the night foreign editor worked during the day. During this period, the employee acting as slot man passed out copy editing assignments. Moreover, testimony indicates that assistant foreign editors acting as slot men made recommendations concerning the qualification of a candidate for an assistant foreign editor position.

Considering all of the above, we are of the opinion that the night foreign editor is not a statutory supervisor. While there are indications that the night foreign editor does participate in the selection and assignment processes, certain rank-and-file employees are also engaged in the tasks and have been for a substantial period of time. That the Employer asserts that this staffing situation will no longer exist, i.e., that the night foreign editor will actually be employed during the night, does not alter our conclusion, because it is clear that, under the record facts, the night editor does not make judgments as contemplated by Section 2(11) of the Act which requires exclusion here.

#### *J. Sports Desk*

The Employer has 15 reporters, 2 to 5 news aides, 5 full-time and 3 to 5 part-time copy editors, 2 assistant editors, and 1 administrative aide reporting sports for the newspaper. The AME of sports takes responsibility for all hiring decisions.<sup>154</sup> Many of these decisions, however, are reviewed and ratified by the executive editor. The AME of sports also actively involves himself in the daily re-

porting assignments in the department. On a daily basis he discusses coverage of events, long-term assignments, and story placement. For example, the AME left a plan with the night employees on how to cover Henry Aaron's 715th career home run. Further, the AME determines whether to establish new beat areas and determines beat assignments—who will cover football, basketball, and so forth. The AME usually works 5 days a week, Tuesday through Saturday, although it is not uncommon during the football season for the AME to work on Sunday or Monday night. The AME prepares the work schedule for other employees in this department, and approves all overtime, time off, and vacation decisions. The AME enjoys 4 to 5 weeks of vacation per year.

The day sports editor is one of three editors<sup>155</sup> the Employer seeks to exclude from the unit. This editor works hours similar to those maintained by the AME. During the AME's vacation, the day sports editor substitutes for him. The day sports editor assumes primary responsibility for reading reporter copy for content. The day editor, a position filled by Mike Hill at the time of the hearing, participates with the AME in long-range planning conferences. The editor also makes recommendations to the AME concerning beats and other reporting assignments. Recommendations may also be made concerning prospective hires. The day sports editor has interviewed and screened prospective hires. Furthermore, the day sports editor, along with the AME, works with reporters in developing stories, including topic and style formats. In addition to these duties, the day editor draws up the news budget—the listing of stories of the day—for the sports department.

The night sports editor performs somewhat analogous duties during the evening hours. This editor is primarily responsible for moving copy written during the day or evening. Further, the night sports editor may call beat reporters if there are developments on stories in their area. Because many of the events covered by this department occur in the evening, this editor maintains frequent contact with many of the reporters. In this regard, the AME may request from the night sports editor recommendations concerning the qualifications and progress of current and prospective employees. O. D. Wilson, the night sports editor, also participated as a member on the Employer's cold-type conversion committee.

From this record, we find that the day sports editor possesses and exercises supervisory authority

<sup>154</sup> At the time of the hearing, George Solomon, former day sports editor, was AME-sports.

<sup>155</sup> The Employer's claim to exclude a fourth position, the sports II editor, was abandoned because that section of the sports page, and thus the position, no longer exists.

and for that reason must be excluded. Thus, while the record reveals that the reporters in the sports department are responsible for their respective beat area, it cannot be gainsaid that direction and authority is exercised by superiors in the department. Although the evidence presented here shows that the AME of sports maintains a high degree of control over this desk, it also supports the Employer's assertions that the day sports editor exercises independent authority in the direction of work within the department.<sup>156</sup> For similar reasons, we find that the night sports editor also should be excluded from the unit.<sup>157</sup>

The chief copy editor in the sports department works from 4:30 p.m. to 1 a.m., when he presides over three to five copy editors. The functions of the copy editors include reading copy for grammar, style, and syntax. The copy chief editor assigns work to the copy editors; although this assigning usually is done on an availability basis—whoever is not busy receives the next assignment—the chief copy editor endeavors to hand copy concerning certain topics to copy editors who are expert or interested in that area. As in the foreign and national departments, the sports chief copy editor does tell the AME his opinion of the qualifications of a copy editor after a tryout. However, based on the above, and for the reasons already stated with respect to other chief copy editors, we cannot conclude that the sports chief copy editor is imbued with supervisory authority which requires exclusion from the unit.

#### K. News Desk (a/k/a Night Operations)

The major functions of the news desk are to determine placement of all news and graphics from the metro, foreign, and national desks,<sup>158</sup> and coordinate production of the daily and advance editions of the newspaper. Ben Cason is the AME in charge of the news desk. The news desk also utilizes nine other editors and two news aides. The Employer asserts that the news, production, swing, chief makeup, and late news editors are supervisors or managerial employees. It also claims that metro news editor is a supervisor. That is, the Employer seeks to exclude six of the nine editors below the rank of AME. No such claims are made for the world news and two makeup editors. The Employ-

er concedes that the layout functions of these editors are not supervisory or managerial in nature, but asserts that other responsibilities of each of the editors under consideration warrant their exclusion from the unit.

The news editor, Robert Price, works from 2:30 p.m. to midnight. He and the AME attend the daily news conferences at which the placement and play of stories is decided. As stories develop the AME and Price determine the work of the material to be published and select the stories for placement. Price then manages the production process. AME Cason testified that Price was involved in the recent hires of the two makeup editors. Cason discussed the vacancies which occurred in 1977 with Price. They decided to fly an applicant, Ross, in from Minneapolis. Cason and Price, and several other news desk editors, interviewed this applicant, as well as other applicants. Both Cason and Price recommended to executive editor Bradlee that Ross be hired. Bradlee interviewed Ross and she was hired. Price also interviewed and made a recommendation on Jackson, who was hired as the second makeup editor. Price is the only editor besides Cason who can authorize compensatory time off. He also substitutes for the AME during the latter's absence, including the 2 days a week Cason does not work.

Based on the foregoing, including the uncontroverted evidence of Price's involvement in the hiring of new personnel, we conclude that the news editor is a supervisor and must be excluded from the unit.

The production editor, James Roseberry, works from 10:30 a.m. to 7 p.m. Essentially, Roseberry is the liaison between the news and production departments. Roseberry's responsibilities include dealing with managers and supervisors in both departments to ensure proper production of the newspaper. Thus, Roseberry arranges for adequate staffing in the composing department by informing the supervisors there of the pending contents of the pages. Roseberry also is in charge of ensuring production of any special sections the newspaper intends to include in an edition. In addition to those duties, Roseberry is also a representative on the Employer's quality control committee, which is designed to correct production deficiencies and has prepared studies and recommendations in that area. At the time of the hearing, Roseberry was chairman of a study project concerning production aspects of printing, and served on the automation projects committee which was concerned with the Company's transition from hot to cold type.

Contrary to the Employer, we find the evidence concerning this production editor does not estab-

<sup>156</sup> See, e.g., *A. S. Abell Company*, 81 NLRB 82, 87 (1949).

<sup>157</sup> *Bulletin Company*, 226 NLRB at 355.

We are cognizant of the Guild's assertion that two assistant editors who substitute on a regular basis (two times a week) for the day sports editor are not sought to be excluded by the Employer. However, the record does not reveal that those assistant editors have the same daily input that the day sports editor possesses regarding effective recommendation of hiring, discharge, and other supervisory indicia.

<sup>158</sup> Other sections, including Style, Sports, Financial, and The Magazine, employ editors who do their own makeup and layout.

lish that the position is supervisory or managerial. Although Roseberry may give directions to production people, such direction is not supervisory but informative. Roseberry contacts the relevant managers and supervisors to determine production levels and informs composing room supervisors of the staffing requirements. Further, we do not view Roseberry's participation on the various quality control and production committees as reflective of managerial status. These committees are investigatory and informative in nature. Roseberry does not set management policy or determine, formulate, or effectuate the Employer's labor relations policy. We thus decline to exclude this position from the unit.<sup>159</sup>

The swing editor, Robert Crocker, handles the responsibilities of several other news desk editors on a rotating basis. When news editor Price is present, Crocker lays out the foreign and national stories in inside pages of the paper's section A.<sup>160</sup> In the AME's or news editor's absence, Crocker assumes their functions in selecting stories for print and placement and directs the production process. Cason testified that Crocker was the prime contact with Jackson, who was hired as a makeup editor. Crocker was one of the several news desk editors who interviewed and made a recommendation on Jackson's hire, but, as noted above, both Cason and Price interviewed and recommended Jackson to Bradlee.

Based on the record before us we find no evidence that Crocker, in the course of his duties as swing editor, possesses or exercises managerial or supervisory authority. As the Board has stated:

Although concededly a news editor's job requires a high degree of journalistic skill and experience, we conclude that a news editor's function is not one that marks him as a managerial employee. In this regard we think it clear that decisions as to (1) the newsworthiness of a news story, and (2) the actual placement of the story in the news section of the paper cannot be described as "policy" decisions. Rather, such decisions reflect a purely journalist judgment as to the probable importance of a particular story to the paper's readership and a technical judgment as to the best

placement of the story in the news section so as to insure that the story comes to the reader's attention. [*Bulletin*, 226 NLRB at 359.]

With respect to the supervisory claim, it is clear that Crocker's authority is both limited and shared. His substitution for the AME or news editor does not involve him in substantive personnel decisions or require the use of independent judgment or discretion in the exercise of his duties. Nor can Crocker's participation in the hire of Jackson be viewed as supervisory in nature. Almost every news desk editor spoke with or considered the application of the makeup editor applicants. Ultimately, Cason and Price decided whom they wanted to hire, and they made the effective recommendation to Bradlee on the hires. Such informal consensus decisionmaking is more akin to that of skilled craftsmen passing judgment on the technical merit of an applicant rather than an effective exercise of supervisory authority. We therefore decline to exclude the swing editor from the unit.

Barbara Taylor, the chief makeup editor, is the news desk and news room representative in the Company's composing room operations. Essentially, Taylor oversees the actual production of the newspaper, and ensures that the printers follow the plans set by the editor. She can tell printers what to do, but, if they refuse, she contacts their supervisors or foremen. Taylor also decides whether a section is "good"; i.e., set for printing. In this regard, she may allow a news item to be placed in the paper before certifying its readiness for printing. In line with this responsibility is Taylor's authority to trim stories as necessary. The chief makeup editor also prepares the daily index for the section A-1 page. The two makeup editors assist in guiding the printers, adjusting story length, and ordering new headlines for revised stories. Taylor, like other editors in the news room, was involved in the hire of Ross and Jackson. She was one of the editors who interviewed Ross, and she participated in an editor's group discussion on Jackson.

On the basis of this record, we conclude that the chief makeup editor is not a supervisor. Taylor is involved in the production process for the news desk. When dealing with the printers, she contacts the supervisor or foremen of the printer if he "is stubborn"; i.e., will not follow her production directives. Her participation in the hiring of the makeup editors was clearly limited and not supervisory in nature.

Also working on the news desk is the late night editor, Thomas Sherwood. His duties consist of controlling the changes in content and look of the newspaper's A-1 section during the few hours

<sup>159</sup> *Bulletin Company*, 226 NLRB at 358, relied on by the Employer is not to the contrary. There, Associate Editor Lewis reported directly to the editor-publisher or the executive editor. He alone was charged with revising the metro coverage and for recommending personnel and procedural changes. Lewis also was continually involved in personnel matters, such as minority recruiting. The Board thus concluded that Lewis was necessarily involved in the formulation and implementation of the paper's policy decisions. As detailed above, such is not the case here with Roseberry.

<sup>160</sup> The "A" section is the front or first section of the newspaper, including the front page.

prior to final publication. As the various editions of the paper are printed, Sherwood checks on A-1 stories and other developments. On several occasions, Sherwood decides that a "major tear-up" is required; i.e., that the front page must be remade because of significant developments in events. The late news editor also lays out stories as required and reads corrected proofs from the composing room. In addition, Sherwood is the ranking editor when Cason and Price are at dinner.

The Employer asserts that Sherwood's duties and responsibilities are managerial and therefore his interests are sufficiently different from other employees to require his exclusion. However, unlike the instance of the Sunday editor in the *Peoria Journal Star*,<sup>161</sup> and *Bulletin Company*,<sup>162</sup> Sherwood does not work directly under the executive editor and is not responsible for every part of the paper. Nor does he chair meetings involving story selections or control all story placements. Those factors were important in finding the editors in those cases to be managerial employees. In the instant case, we find the late news editor shares similar working conditions to the other editors on the news desk who are not managerial employees. Further, the daily 1-hour "substitution" by Sherwood for Cason and Price during their dinner hour does not establish supervisory authority, since there is no showing that Sherwood actually exercises or possesses any true supervisory responsibilities.

The final position under consideration on the news desk is that of metro news editor, William D. Stewart. Stewart's responsibilities include layout, production, and changes in page 1 of the Metro section, and also some of the inside pages. Two news aides work with Stewart in this process. We cannot conclude, based on this record, that Stewart's direction of the news aides is supervisory in nature, and therefore decline to exclude him from the unit.<sup>163</sup>

#### L. Editorial Department

The editorial page editor and a deputy editorial page editor, both excluded from the unit, are in charge of the editorial page. The Employer seeks to exclude the approximately eight writers who write editorials and occasional columns, edit the "op-ed" page of the newspaper, edit the letters to the editor, and prepare graphics. The editorial department also includes a copy chief, three copy

editors, and a cartoonist.<sup>164</sup> The Post also seeks to exclude the copy chief.

The editor and deputy editor of the editorial page review all editorials written in the department. Usually, there is a daily 10 a.m. conference presided over by these editors, during which the editors and editorial writers discuss topics for possible editorials, and the position the newspaper should take with respect to the issues under consideration. Testimony indicates that these meetings are collaborative. Each of the editorial writers has a particular expertise in a certain news area and usually composes editorials on those topics when they are discussed on the page.

The editorial writers, in addition to writing the editorials, edit columns and screen material for possible inclusion in the newspaper. As noted above, all editorial material is forwarded to the editors, who make the final selection concerning the material that will be used. However, the record reflects that once an editorial is prepared, the editors rarely change the substance of the editorial, although they may make grammatical and other technical corrections. The record further reflects that when there are sensitive topics or proposed changes in the newspaper's editorial stance, the publisher is advised by the editors of the editorial department's proposals.

The Employer contends that its editorial writers should be excluded from the unit because they are closely aligned with management. In this regard, the Employer recognizes that the Board traditionally has not found editorial writers to be managerial employees. The Employer maintains, however, that the duties of its editorial writers are sufficiently different from those considered by the Board in the past to warrant their exclusion. Alternatively, the Employer maintains that the Board should recognize the potential conflict inherent in the job of editorial writer; in other words, that the Board should reconsider its holdings in this area.<sup>165</sup> We do not agree with the Employer that the duties of its editorial writers differ significantly from the duties of those editorial writers whom the Board has found not to be managerial employees in the past.<sup>166</sup> Since we are not persuaded that we should

<sup>161</sup> 117 NLRB 708, 711 (1957).

<sup>162</sup> 226 NLRB 345, 358-359.

<sup>163</sup> The Employer offered little testimony regarding this position, and argued that the position was similar to others in the department in scope of responsibilities, and should be excluded on that basis. We do not agree.

<sup>164</sup> The cartoonist is Herbert Block, "Herblock," whose work appears on the editorial page and whom the Employer does not seek to exclude.

<sup>165</sup> In support of this contention, the Employer relies on *Wichita Eagle and Beacon Publishing Company, Inc. v. N.L.R.B.*, 480 F.2d 52 (10th Cir. 1973), cert. denied 416 U.S. 982 (1974).

<sup>166</sup> See *Bulletin* at 357-358, where the Board found editorial writers not to be managerial employees where the preparation and direction of the editorial page was handled by admitted supervisors above the editorial writer level, and where "major" proposed editorial topics were cleared first with the editor-publisher.

reconsider our decisions in this area, we will not exclude the editorial writers here.

The Employer asserts that editorial writer Johnson, in addition to her writing duties, is a speechwriter for the publisher and thus is a confidential employee. Testimony by the editorial page editor indicates that Johnson has worked on the preparation of the publisher's statements concerning labor relations matters.<sup>167</sup> We agree with the Employer that an employee who acts in a confidential capacity to a labor relations policymaker meets the definition of a confidential employee, and we conclude that the relationship between the speechwriter and the publisher is confidential in nature. Accordingly, we shall exclude Johnson from the unit because of her position as speechwriter.

The editorial department, like other news departments, utilizes a copy chief and copy editors to move written copy. The copy chief, Dave Gunder-son, along with three full-time and an unspecified number of part-time copy editors, perform the copy functions. This group of editorial department personnel is responsible for copy flow, layout, the physical makeup of the editorial page, and review for technical purposes of the editorial and op-ed page material. Like the other copy chiefs, the copy chief of the editorial department makes recommendations concerning tryouts by copy editors. However, as in most other departments, the final decision on hiring is done by admitted supervisors.

<sup>167</sup> These were primarily related to a strike which took place at the newspaper in 1975.

Consistent with our conclusions with respect to copy chiefs generally, and based on the facts contained in the record herein, we conclude that the editorial department copy chief is not a supervisor within the meaning of the Act.

#### ORDER

It is hereby ordered that the collective-bargaining unit of editorial, news, advertising, circulation, and business departments of The Washington Post Company, represented by The Washington-Baltimore Newspaper Guild, Local 35, affiliated with The Newspaper Guild, AFL-CIO-CLC, be, and it hereby is, clarified by specifically excluding zone sales managers, the chain and department store manager, the commissioned sales manager, the phone room training manager, the classified sales manager, the sales development and training manager, the assistant manager of advertising services, the customer relations manager, home delivery managers, the assistant public relations manager, the chief telephone operator, the supervisor of composing room assistants, the manager of the food services department, the insurance administrator, the manager of training and development, data processing managers, research consultants, the national editor, the deputy national editor, the deputy metro editor, area editors, the copy chief supervisor, the special projects editor (Style), the deputy editor (Style), the picture editor, the art director, the foreign editor, the day sports editor, the night sports editor, and the news editor.