

It is thus clear that the facts in the instant proceeding are distinguishable from those of the *McAllister* case and hence the *McAllister* decision does not apply here.

Upon the basis of the entire record in this case, the Trial Examiner is convinced, and finds, that the three essential elements of a violation—inducement, refusal, and unlawful objective—have not been proved.<sup>20</sup> The Trial Examiner further finds that the allegations of the complaint that Respondents have violated Section 8 (b) (4) (A) have not been sustained by the credible evidence. Accordingly, the Trial Examiner recommends that the complaint be dismissed in its entirety.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Trial Examiner makes the following:

#### CONCLUSIONS OF LAW

1. Firchau Bros. Logging Company, a partnership, and The Long-Bell Lumber Co., a Missouri corporation, are engaged in, and during all times material herein were engaged in, commerce within the meaning of Section 2 (6) and (7) of the Act.

2. Respondent Union is a labor organization within the meaning of Section 2 (5) of the Act, and Respondent Harris is its financial secretary and business agent.

3. The allegations of the complaint that Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (b) (4) (A) of the Act have not been sustained.

[Recommendations omitted from publication.]

<sup>20</sup> Cf. *Reilly Cartage Company*, 110 NLRB 1742; *Jay-K Independent Lumber Corp.*, 108 NLRB 1323; *Douds v. Sheet Metal Workers*, 101 F. Supp. 273 (E. D., N. Y.); *Elliott v. Amalgamated Meat Cutters*, 91 F. Supp. 690.

**The B. F. Goodrich Company and Local No. 281, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, Petitioner. Case No. 4-RC-2849. March 7, 1956**

#### DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Katherine W. Neel, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent employees of the Employer.

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

4. The Petitioner, which is the certified bargaining representative for a unit of production and maintenance employees at the Employer's Oaks, Pennsylvania, plant, seeks to represent the office and clerical employees at the Oaks plant in a separate unit.<sup>1</sup> The Employer agrees that a unit of office and clerical employees is appropriate, but the parties disagree as to the professional, supervisory, or confiden-

<sup>1</sup> The unit which the Board found appropriate in the earlier case (57 NLRB 1718) excluded office and clerical employees in accordance with a stipulation of the parties.

tial status of the individuals discussed below, the Petitioner seeking to include them and the Employer contending for their exclusion.<sup>2</sup>

The accountant and junior accountant (Fesmire and Wack) are the members of the accounting department responsible for determining the Employer's total cost of production. Such production costs are computed on a monthly basis and are arrived at by applying "necessary overhead" to the "various costs of the plant from specifications, labor standards, and other information." Both employees have taken accounting courses and it appears that about 2 years' experience on the job is required to perform their work in a satisfactory manner. Neither employee is required to be, or is, a certified public accountant or college graduate. As Fesmire and Wack do not meet the prerequisites to professional classification as set forth in Section 2 (12) of the Act,<sup>3</sup> we find they are not professional employees and shall include them in the unit.

The accountant in charge of accounts payable (Cole) directs the work of the accounts payable clerk. It is his responsibility to keep the Employer advised as to the work performance of that employee and any recommendation by him, whether for a wage increase or dismissal, would be "quite influential." In these circumstances we find that Cole is a supervisor as defined in the Act, and we shall exclude him from the unit.

The buyer-expediter (Prizer) is assistant to the manager of the purchasing department. The record does not reveal this individual's duties and responsibilities except to show that, when the manager of the purchasing department is absent, he assumes the manager's duties and authority, including the authority to direct the work of the secretary, the only other employee in the department, and to purchase materials and equipment for the Employer. There is nothing in the record to establish whether such assumption of authority is regular and substantial or merely occasional and sporadic. On the present record we are unable to determine the unit placement of Prizer. Accordingly, we shall permit him to vote subject to challenge.

The secretaries to the plant engineer and personnel, office, industrial engineering, purchasing department, production, and technical division managers perform the usual duties of their classification, handling the general secretarial, clerical, and stenographic work required by the officials to whom they are assigned. As already indicated, the Em-

<sup>2</sup> The parties are agreed as to the inclusion in the unit of the accounting clerk, production records clerk, utility clerk, time clerk, distribution control clerk, bill of lading clerk, order typist, payroll clerks, bookkeeping machine operators, and typist clerks, but they would exclude the secretary to the plant manager, the secretary to the personnel manager (Jacob), the plant manager, personnel manager, manager of industrial engineering, manager of purchasing, managers of the technical division, plant engineer, traffic manager, production superintendent, production foreman, office manager, supervisor of accounting, and supervisor of timekeeping and payroll.

<sup>3</sup> See *Florence Stone Company*, 94 NLRB 1434, 1436, *Automatic Electric Company*, 78 NLRB 1057, *Bonnet Teller, Inc.*, 84 NLRB 414, 423.

ployer contends for the exclusion of these secretaries as confidential employees while the Petitioner requests their inclusion.

The plant engineer and the industrial engineering, purchasing department, production, and technical division managers are charged with substantially similar responsibilities, such as hiring, discharge, disciplining, and promoting employees under their supervision, as well as granting merit increases to and, at some stage of the grievance procedure, handling the grievances of those employees. The personnel manager acts as the Employer's legal officer and, in addition to representing the Employer in the third step of the grievance procedure, participates in the negotiation of bargaining contracts with the Petitioner. If the Petitioner is certified herein, he will also bargain with it as to the clerical unit. The office manager, apart from the role he plays in the disposition of grievances of the employees whose work he directs, will assist in the bargaining negotiations with the Petitioner if it is certified as a result of the election hereinafter directed.

Since the early *Ford Motor Company* case,<sup>4</sup> in which definitions theretofore accorded the term "confidential employees" were reexamined, the Board has consistently excluded from bargaining units as confidential employees persons who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. Although announcing its intention in the *Ford Motor Company* case to limit the term "confidential" so as to embrace only such employees, the Board has, from time to time since that decision, expanded its view as to what constitutes a confidential employee by designating as "confidential," for example, secretaries to persons involved in the handling of grievances<sup>5</sup> and cashiers having access to labor relations policy data.<sup>6</sup> Upon further reexamination of our holdings in the instant connection, we are still of the opinion expressed in the *Ford Motor Company* case that any broadening of the definition of the term "confidential" as adopted in that decision needlessly precludes employees from bargaining collectively together with other employees sharing common interests. Consequently, it is our intention herein and in future cases to adhere strictly to that definition and thus to limit the term "confidential" so as to embrace only 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.<sup>7</sup>

<sup>4</sup> 66 NLRB 1317.

<sup>5</sup> *International Smelting & Refining Co. (Raritan Copper Works)*, Case No. 4-RC-2143 (not reported in printed volumes of Board Decisions and Orders), upon which the Employer relies herein, is one such case.

<sup>6</sup> *Bond Stores, Incorporated*, 99 NLRB 1029.

<sup>7</sup> To the extent that *Minneapolis-Honeywell Regulator Co.*, 107 NLRB 1191, relied upon by the Employer, and the cases cited in footnotes 5 and 6 and other cases are inconsistent with the views expressed herein, they are hereby overruled.

On the basis of the foregoing, we find that the secretaries to the personnel manager and office manager are confidential employees who should be excluded from the unit because of the role in past and future bargaining negotiations assigned to the officials for whom they work.<sup>8</sup> However, there is nothing in the duties of the other management representatives involved which would warrant a finding that they formulate, determine, and effectuate management policies in the field of labor relations. It therefore follows that the secretaries to the plant engineer and industrial engineering, purchasing department, production, and technical division managers are not confidential employees, and we shall include them in the unit.

There remains for consideration the status of the senior payroll clerk (Punyko) and the telephone operator and receptionist (Hakun). Punyko assumes the duties of the supervisor of timekeeping and payroll, whom the parties agreed to exclude, when the latter is ill or on vacation. Hakun performs the usual duties of her classification. She also operates the teletype machine when the utility clerk, whom the parties agreed to include in the unit, is elsewhere engaged. It appears that on occasion Hakun receives messages concerning labor relations over the telephone or teletype machine. It is manifest from what has been said above that Punyko and Hakun are not confidential employees. And as the supervisory authority vested in Punyko is of a sporadic nature, we find, contrary to the Employer, that she is not a supervisor within the meaning of the Act. We shall include Punyko and Hakun.

Accordingly, we find that all office and clerical employees at the Employer's Oaks, Pennsylvania, plant, including the accounting clerk, production records clerk, utility clerk, time clerk, distribution control clerk, bill of lading clerk, order typist, payroll clerks, bookkeeping machine operators, typist clerks, senior payroll clerk, telephone operator and receptionist, accountant, junior accountant, and the secretaries to the manager of industrial engineering, manager of the purchasing department, managers of the technical division, production manager, and plant engineer, but excluding the secretaries to the plant manager, personnel manager, and office manager, professional employees, guards, the plant manager, personnel manager, manager of industrial engineering, manager of purchasing, managers of the technical division, plant engineer, traffic manager, production superintendent, production foremen, office manager, supervisor of accounting, supervisor of timekeeping and payroll, the accountant in charge of accounts payable, and all other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

<sup>8</sup>The secretary to the personnel manager whose status is in dispute performs substantially the same duties as the personnel manager's other personal secretary, who the parties quite correctly agree should be excluded from the unit