

**Pullman Standard Division of Pullman, Incorporated  
and United Steelworkers of America, AFL-CIO.**  
Case 13-RC-13297

November 7, 1974

**DECISION AND ORDER**

BY CHAIRMAN MILLER AND MEMBERS KENNEDY  
AND PENELLO

Upon a petition duly filed on February 15, 1974, under Section 9(b) and (c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Michael A. Garrigan on March 21 and 27, 1974. The hearing was reopened and additional evidence received before Hearing Officer William G. Kocol on May 16, 1974. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 13, this proceeding was transferred to the Board for decision. Briefs were filed by both the Employer and the Petitioner.

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 proceeding, the Board finds:

1. 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 Petitioner is a labor organization claiming to represent certain employees of the Employer.
3. No question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act, for the following reasons:

The Employer is a Delaware corporation with principal offices in Chicago, Illinois, and plant facilities in Illinois, Indiana, Alabama, and Pennsylvania. It is engaged in the manufacture and sale of railroad freight cars and related parts.

The Petitioner seeks to represent a single unit of all material estimators, spec writers, labor estimators, die estimators, data technician estimators, and secretaries employed in the central freight estimating department at the Employer's Camp Carry Technical center in Hammond, Indiana. The Employer contends that the proposed unit is inappropriate since all employees therein are confidential and/or manageri-

al employees who should be excluded from coverage under the Act.

Railroad industry requests for car-building bids, either competitive or exclusive, are received by the Employer's marketing department and forwarded to the central freight estimating employees, who collaborate in preparing a detailed estimate of the component costs involved in producing the desired car. Estimating projects are functionally broken down and severally assigned to one or more employees in each estimating group (material, labor, and tool-and-die) and to a specification contract writer. The lone date technician estimator primarily assists the material estimators by running computer cost analyses of steel and various other bulk production materials. The composite itemized cost estimates for a bid project are typed on "A&D" (add and deduct) forms by the department's secretary or clerk-stenographer. Final estimates on a bid request are sent to the marketing department where they remain essentially unchanged. Profit margins are determined and certain other adjustments to cost are made in formulating the final bid price to be submitted by the Employer.

An integral feature of cost estimating is the computation of labor expenses. Labor estimators figure all labor costs for a car's production, utilizing the Employer's labor bulletins, revised quarterly, which specifically indicate anticipated labor expenses up to 15 months beyond the current date. Bulletin projections are based on knowledgeable managerial estimates of the results of future contract negotiations. In essence, the labor bulletins reflect the Employer's future bargaining strategy by revealing labor cost figures which would be the acceptable end result of that strategy.

The Employer asserts that all persons in the proposed unit have regular access to confidential labor bulletin information and therefore "act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations."<sup>1</sup> Therefore, the Employer argues that recognition of a unit composed of these allegedly "confidential" employees would imperil its future collective-bargaining position, especially since they would be represented by the Petitioner, who in this case also represents a unit of the Employer's production and maintenance personnel.

We find merit in the Employer's position. The Board has in the past denied eligibility in representation elections to those employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes which

<sup>1</sup> *The B. F. Goodrich Company*, 115 NLRB 722, 724 (1956)

may result from collective-bargaining negotiations.<sup>2</sup> We regard such employees as specially aligned with the employer's interests in the area of labor relations, even absent the showing of a confidential work relationship with a specifically identifiable managerial employee responsible for labor policy. Therefore, we have accorded these employees the status of "confidential" employees and excluded them from participation with other employees in union activities which would necessarily subject them to a critical conflict of interests and impair their trust with the employer.<sup>3</sup>

In determining the issue of confidentiality, the precise nature of the allegedly confidential information is significant. 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>4</sup> In this case,

however, the employees in central freight estimating are privy to the precise labor rates to which the Employer in pursuit of its own labor policy will be willing to agree in some future collective-bargaining agreement. The record indicates that only these central freight estimating employees and certain indisputably managerial personnel are entrusted with this kind of information. Premature disclosure of this information obviously would reveal the Employer's anticipated ultimate settlement figures and thus prejudice its bargaining strategy in any future negotiations.

We therefore conclude, based on evidence regarding the access to and nature of information shared by all employees in the proposed unit, that these employees are "confidential" and should be excluded from participation in a representation election under the Act. Accordingly, we shall dismiss the petition.<sup>5</sup>

#### ORDER

It is hereby ordered that the petition herein be, and it hereby is, dismissed.

<sup>5</sup> In view of our discussion concerning the confidential issue, we find it unnecessary to reach the managerial question raised by the parties

<sup>2</sup> *American Radiator & Standard Sanitary Corporation*, 119 NLRB 1715 (1958)

<sup>3</sup> *Star Brush Manufacturing Co., Inc.*, 100 NLRB 679 (1952)

<sup>4</sup> *American Radiator & Standard*, *supra*