Union Electric Company *and* Local 1455, International Brotherhood of Electrical Workers, AFL–CIO, Petitioner *and* Local 1439, International Brotherhood of Electrical Workers, AFL–CIO, Petitioner. Cases 14–UC–40 and 14–UC–41

May 1, 1975

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND PENELLO

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer Roy V. Hayden of the National Labor Relations Board. Following the close of the hearing the Regional Director for Region 14 transferred this case to the Board for decision. Thereafter all parties filed 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 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 International Brotherhood of Electrical Workers was certified in 1945 as the bargaining representative of a unit of the Employer's physical workers which includes, for example, meter reader, overhead, underground, trouble, and installation employees. The following year that Union was certified to represent a unit of office, clerical, sales, and technical employees. Subsequently, Local 1439 was designated by the International Union to deal with the Employer with respect to the unit of physical employees[1] and Local 1455 to represent the clerical-technical unit. The locals have over the years entered into a series of contracts with the Employer covering units of employees substantially identical to the units set forth in the certifications.[2] The most recent contract covering the physical workers' unit provided that it would run from July 29, 1971, to July 1, 1973, and year to year thereafter, absent notice to modify or terminate. Local 1439's petition involving that unit was filed on July 7, 1973. Local 1455 also entered into a 1971–73 agreement with the Employer for its clerical-technical unit. That contract was to run until June 30, 1973, and was subject to yearly automatic renewal, absent notice to modify or terminate. Local 1455 filed its petition on June 6, 1973. However, on August 12, 1974, Local 1455 entered into a new agreement with the Employer, effective from that date to June 30, 1975.[3] That contract continued unchanged the recognition clause of previous agreements which was, and is, as set forth below, specific with respect to the *exclusions* of certain types of clericals and other employees from the recognized unit. Thus, in part, it provides for the following exclusions:

ARTICLE I

Section 1 . . .
(b) Professional employees
(c) Employees of the Industrial Relations and Employee Relations departments, and other employees whose jobs are essentially concerned with labor relations duties.
(d) Other employees occupying positions closely allied to and associated with management.
(e) Secretaries to elected and appointed officers, and secretaries to department heads and assistant department heads listed in Appendix "A" of this agreement.

The Petitioners by way of unit clarification here seek to have included in their units some 150 individuals in some 23 different classifications[4] who have not in the past been so included and who have therefore not been covered by the various bargaining agreements. The Petitioners predicate their requests for inclusion on the ground primarily that the individuals sought fall within the language of their certifications, do substantially the same kind of work as employees within the unit, and are not professional or managerial employees or supervisors. The Employer opposes all requests for inclusion. With respect to the status of the individuals sought, it contends that they fall within one of the excluded categories in the certifications and/or contracts and, thus, that their continued exclusion from the units is required by both Board policy and by the Act. It also

[1] Actually that unit was divided among three locals, but we are concerned only with that part represented by Local 1439.

[2] Originally Local 1455's unit included professional employees, who, however, rejected such representation in a Board election held in 1959

[3] Local 1455's contract with the Employer was not fully executed until August 12, 1974, that is, at a time after the close of the hearing in this proceeding. However, on or about August 21, 1974, the Employer filed a motion with the Board requesting that the record be reopened solely for the purpose of introducing the contract into evidence. Local 1455 opposes the motion, although it does not question—but in effect concedes—both the authenticity and relevancy of the contract. Rather its opposition is based on the legal effect to be given to the contract with respect to the issues in this proceeding As the contract does cover the unit involved in Local 1455's petition it is, we find, clearly relevant. Consequently, we hereby grant the Employer's motion and receive the contract into evidence

[4] This number of 23 classifications has no decisional significance and is dependent on what is considered a separate classification. Thus, for example, if every type of foreman, e g., yard foreman, night foreman, and so forth, and if every type of supervisor were considered separate classifications, then the number of classifications would climb to 40 or more. Also, a number of classifications are found in different functions and departments. If each appearance is counted separately, then the proceeding involves over 60 classifications

argues at length that, as the Petitioners were seeking the inclusion of contractually or historically excluded individuals and classifications, they have not presented proper cases for unit clarification. On this point, with but a few exceptions which are discussed *infra,* we are in agreement with the Employer.

Unit clarification, as the term itself implies, is appropriate for resolving ambiguities concerning the unit placement of individuals who, for example, come within a newly established classification of disputed unit placement or, within an existing classification which has undergone recent, substantial changes in the duties and responsibilities of the employees in it so as to create a real doubt as to whether the individuals in such classification continue to fall within the category—excluded or included—that they occupied in the past. Clarification is not appropriate, however, for upsetting an agreement of a union and employer or an established practice of such parties concerning the unit placement of various individuals, even if the agreement was entered into by one of the parties for what it claims to be mistaken reasons or the practice has become established by acquiesence and not express consent.[5]

Here, most of the classifications or jobs sought by the Petitioners have been excluded from their units for substantial periods of time—in some instances for as long as 20 years. And with respect to Local 1455 those it seeks to add to its unit include not only historically excluded individuals but, as it concedes, also a "substantial number of classifications" specifically excluded by certain clauses of its past and present agreements with the Employer.[6] Consequently, we are faced for the most part with claims by the Petitioners that cannot appropriately be resolved in a unit clarification proceeding.

To be sure, the Petitioners make certain broad claims—apparently intended to bring their cases within the reach of clarification—concerning changes in the Employer's operations; alterations in the duties, responsibilities, and work practices of employees and other individuals; the creation of new classifications; and the interposition of new levels of management. Nevertheless, when discussing the particular individuals or classifications they here seek to have included, the Petitioners, with but a few exceptions, do not claim, much less show, that any of the foregoing alleged changes have had any specific, appreciable recent effects on the duties, responsibilities, or job practices of such individuals or classifications as would warrant our now determining whether they are accretions to the existing units. Rather, the Petitioners' basic position would seem to be that it would be improper for the Board to require that relevant changes—i.e., ones creating a unit placement ambiguity—must first be shown to exist before their requests for clarification can be acted upon by this Agency. On the contrary, they argue essentially that, as the requested individuals or classifications come within the inclusionary language of their certifications, the Board must now include them in the recognized units irrespective of any contrary practices or contract provisions.[7] Thus, the main thrust of their presentations has been to show that those they seek to include by clarification do not fall into some necessarily excluded category, such as confidential employee or supervisor. But, as our discussion above should make clear, even if the Petitioners did prove that their requested individuals and classifications do not come within some such excludable categories—and we express no opinion on such matters—they would not thereby have raised a proper case for unit clarification where, as here, contractual and established exclusions are involved. Instead, the issues thus raised are, as we have pointed out in the past, ones to be resolved through the collective-bargaining process[8] or in a proceeding under Section 9(c) of the Act.[9]

As indicated above, most all of the individuals and classifications here in dispute fall into either one or

[5] *Plough, Inc*, 203 NLRB 818 (1973), and cases there cited A possible exception to this broad statement would be a situation involving agreed inclusions of individuals who are not employees within the meaning of the Act. See, for example, *Wallace-Murray Corporation, Schwitzer Division*, 192 NLRB 1090 (1971); *Peerless Publications, Inc*, 190 NLRB 658 (1971) We are not, however, concerned with any such situation here

[6] As has been noted, sec 1, of Local 1455's contracts with the Employer provides for a basic unit of technical and clerical employees, excluding guards, professionals, supervisor employees in the industrial relations and employee relations departments, and secretaries to elected and appointed officers and to department heads listed in "Appendix A" of the agreements Most of the clericals Local 1455 now seeks to have included in its unit are secretaries coming within the Appendix A exclusionary language, while some of the other requested individuals are in the employee relations department

[7] For example, Local 1439 argues with respect to certain distribution dispatchers excluded from its unit for over 20 years that the exclusion is "arbitrary and capricious" and "is not justified by time." As for Local 1455, it takes the position that the Board in carrying out its responsibilities to determine the appropriate unit must decide if the individuals or classifications excluded by the provisions of the contract—provisions it alleges it was forced to accept—can, under the language of its certification, be deemed excluded That is, Local 1455 argues the Board must police the situation so as to conform the contractually agreed-upon unit to the precise contours of the certified unit The Board has rejected such an argument. See, e.g, *Plough, Inc., supra.* Also, an aspect of this argument is Local 1455's contention that the contractual exclusions of secretaries to various officers and department heads and of employee relations department employees were intended to apply to such secretaries and employees only if they are confidential employees However, the language of the contract is explicit, and clearly not so limited, and, thus, Local 1455's claim is little more than a request that we rewrite in part its contract with the Employer

[8] Local 1455 contends that it sought to bargain over the contractual exclusions it has here put in dispute prior to signing the 1974–75 agreement, but that the Employer unlawfully refused to bargain concerning such exclusions It argues in part from this that we should grant its requests and include the employees it seeks However, even if it were determined in an appropriate unfair labor practice proceeding that the Employer had unlawfully refused to bargain, the proper remedy would be an order that it bargain, not a decision resolving the bargaining issues in Local 1455's favor.

[9] See, e.g., *Copperweld Specialty Steel Company*, 204 NLRB 46 (1973)

both of the categories discussed above—i.e., they are either contractual and/or established exclusions from the units[10]—and in consequence the instant petitions for unit clarification are not, as we have found, a proper means for raising valid issues concerning their unit placement. Therefore, further consideration of the situation of such individuals and classifications is unnecessary and we shall for the reasons given above dismiss the petitions with respect to all the requested individuals and classifications,[11] except those dealt with below which raise matters requiring us to consider each individual case on its merits before determining whether any of them should be included as sought by the respective Petitioners herein.

Case 14–UC–40: Local 1455, Petitioner

Secretary-Confidential, Computer Service Function: Local 1455 seeks to have included in its unit T. B. Emmett, secretary since 1969 to A. S. Reck, both in his present position of director of computer service function and in his former capacity as assistant controller. At all times Emmett has been excluded, as have been her predecessors in the position of secretary to the assistant controller. Computer service was established as a separate function in May 1972 out of the data processing department, the methods department and engineering computer service—all of which were Reck's responsibility administratively in his position as assistant controller. The primary effect of the reorganization was, it appears, to give Reck greater administrative authority over the three departments under his control in his former capacity. There is no showing that the changes had any effect whatsoever in Emmett's—or any other employee's—duties, responsibilities, or place of work. Also, the record shows that since 1969 Emmett has spent about 20 percent of her time as secretary to the manager of internal audit, an exempt position, and her unchanged over the years.[12] Consequently, we find that despite the formal reorganization of computer functions on the administrative level Emmett has continued to do substantially the same work for the same individuals as she performed in her historically excluded positions. Therefore, we find no merit in Local 1455's request to include her now and its request to do so is denied.

Engineers, Engineering Computer Services Department: The Petitioner seeks to include Engineers Karr and Minford, contending that they are not professional employees, as contended by the Employer, but technicals performing work "identical to that of unit included Electronic Data Systems Processing Analysts and Console Operator Programmers." Karr and Minford do, as the Petitioner stresses, perform in part the same kind of work and utilize the same equipment in regard to the Employer's computers as do unit-included technicals. Nevertheless, unlike the technicals, they are both graduate engineers, and the record shows that their work also requires the use of mathematical techniques involving statistics and calculus and of certain background information and understanding learned in their engineering education, which are not required nor utilized, insofar as the record shows, by the technical employees with whom the Petitioner seeks to include them. Consequently, as a degree in engineering appears to be a necessary requirement for the positions held by Karr and Minford, we find they are professional employees specifically excluded from the unit.

Supervisor of Library Services, Library: P. Gatlin was hired as a library technician, a classification included in the unit by the Board in a 1967 decision.[13] However, just before that decision issued Gatlin was promoted to supervisor of library services, a nonunit position, and as a consequence Gatlin has never been included in the unit. Nevertheless, the Petitioner now contends that despite her promotion, and aside from her title, Gatlin has remained in practice a library technician who should be included in its unit. We find no merit to this contention, notwithstanding that there is some overlap in the research which Gatlin does as a titled supervisor and which she formerly did as a technician. Gatlin's promotion resulted in her filling the position of supervisor of library services that had been left vacant by the promotion of the former occupant to the job of head librarian. In her new job, unlike in her former one, Gatlin purchases books for the library and is responsible for the operations of the library during the head librarian's absences, which includes a month's vacation, and it appears that she may responsibly direct the work of employees working under her in the library. Consequently, we find that not only has the

[10] In some instances it is not clear from the evidence how long a disputed job or classification has been in existence. Nevertheless, as it appears such jobs or classifications are and have been excluded, and as there is no evidence of any relevant changes affecting their unit placement or of there being a recent creation, there is patently no ambiguity concerning their exclusion and thus no basis for clarification Also supporting our conclusion that the Petitioners have not for the most part raised proper issues for clarification is the fact that practically all of the presently excluded classifications and individuals in dispute were so excluded prior to the Petitioner's executing their 1971–1973 contracts with the Employer See *CF & I Steel Corporation*, 196 NLRB 470 (1972).

[11] In view of our conclusion here, it is apparent that in this case the impact of the contract signed by Local 1455 in August 1974 is at most minimal because that Union has not properly raised unit clarification issues subject to defeat by any such subsequently executed contract covering the disputed classifications

[12] Emmett also works as a stenographer for L A. Rawlings in his capacity as personnel assistant to Reck Even assuming—and we express no opinion on that matter—that such work might be considered unit included, as it occupies only about 20 percent of Emmett's time, it clearly is insufficient alone to support her now being included in the unit

[13] *Union Electric Co*, Case 14–UC–4 (1967), not reported in printed volumes of Board decisions

Petitioner failed to show that Gatlin's promotion was nothing more than a change in title to keep her out of its unit, but also that it appears to have been a bona fide promotion to an established nonunit position. Thus, we conclude that Gatlin in her position as supervisor of library service is, irrespective of her supervisory status under the Act, outside the unit, and the Petitioner's request for her inclusion is denied.

Senior Clerk-Stenographer, Claims Department, General Counsel Function: The Petitioner seeks to have the senior clerk-stenographer included on the ground the classification involves only the performance of regular unit clerical work. We disagree but for the reason that the senior clerk-stenographer is the secretary to the claim agent and, thus, is an Appendix A exclusion from the unit. However, at the time of the hearing, J. Kueneke, the incumbent in the position, had been out ill for some 15 weeks and S. Wrigley, a unit clerical, had been assigned temporarily to take over some of Kueneke's duties. Omitted from Wrigley's work was, according to Claim Agent Cova, "anything I think is confidential or shouldn't go to her." In view of the foregoing, we can see no basis for finding that Wrigley, as a partial substitute for Kueneke comes within the contract exclusion for the claim agent's secretary. Consequently, we agree with the Petitioner that Wrigley in her limited substitute capacity remains a unit clerical.

Assistant Engineer, Industrial Engineering Department: The Petitioner seeks to include T. D. Finnell, an assistant engineer, on the ground that he is only engaged in "semi-technical clerical work" and is, thus, not an excluded professional. Finnell was hired on June 1, 1973, or only some 10 weeks before he testified at the hearing. He has a bachelor of science degree in engineering, is a member of the American Institute of Industrial Engineers, and had, at the time of the hearing, taken and passed the engineering in-training test. His application for membership and approval of his passing the test was then pending before the Missouri Society of Professional Engineering Board. Also, according to Finnell, one of the stated reasons for his being hired was "to introduce some of the new industrial engineering techniques that are being taught in the school of industrial engineering." However, he had not in the few weeks of his employment had an opportunity to introduce any such techniques and his work during that time may well have been, as the Petitioner seems to claim, essentially on a technical rather than professional level. Nevertheless, the above shows that Finnell has the educational background of, and is otherwise seeking to qualify as, a professional engineer, and that he was employed for the purpose of acting in such capacity. In these circumstances, and despite the fact introductory work may not have reached a full professional level, we find that Finnell is a professional employee and thus excluded from the unit.

Senior Stenographer-Confidential, Construction Department, Engineering, and Construction Function; Secretary, Supply Service Function; Senior Stenographer-Confidential, Distribution Planning Department, Transmission and Distribution Function; Senior Stenographer-Confidential, General Support Functions Department, Senior Clerk Stenographer-Confidential, Regional Operations Function, Alton, East St. Louis, Jefferson, and Keobuk Districts: The Petitioner contends that these various stenographers are not, as the Employer maintains, secretaries to their respective department heads or assistants and thus are not Appendix A exclusions. Rather, it claims, they are just general clericals and thus belong in the unit. However, the record shows that these individuals do work as secretaries for their department or assistant department heads and that they spend not less than 70 percent of their time working in such capacity. Accordingly, we find that the record establishes that these individuals are secretaries to department or assistant department heads and thus excluded from the unit under the terms of article I, section 1(e), of the contract. Further, insofar as the record shows, these individuals and their predecessors have always been outside the unit and, thus, have historically been excluded therefrom as well.

Supervisor, Control Section; Supervisor, Regular Accounts Section; Supervisor, Special Accounts Section of Customer Accounts Department in Customer Business Function: The Petitioner contends that these three titled supervisors, Mollerus, Huber, Sculley, have essentially the same duties as leadmen who are in the unit and therefore should be included therein. This argument, which the Petitioner also uses elsewhere, is without merit because, conversely, it leads as much to the conclusion that unit-included leadmen are supervisors who should be excluded as to the conclusion the Petitioner champions. It is also unsupported by the record which clearly shows that these alleged supervisors have more authority and responsibilities than the leadmen in that, *inter alia,* they grant time off, attend supervisors' meetings, determine if overtime is needed and how many employees are to work it, and are basically responsible for the operations of their section. Consequently, we find Mollerus, Huber, and Scully to be supervisors within the meaning of the Act and thus properly excluded from the unit.[14]

[14] The record also indicates that these supervisory positions have been historically excluded, hence, the question of their unit placement cannot properly be raised in this clarification proceeding However, in view of some testimony concerning changes in 1971 in the customer accounts department, we have considered these exclusions on their merits.

Case 14–UC–41; Local 1439, Petitioner

Standards Coordinator, Transmission and Distribution Function, Distribution Planning Department, Special Support Functions Section, T and D Standards Group; Foreman, Transmission and Distribution Function, Substations Department, South Maintenance and Construction District: Local 1439 seeks the inclusion of the standard coordinator and the foreman essentially on the grounds that they are not supervisors. However, the evidence in the record is wholly insufficient to reach any conclusions concerning these classifications. Thus, with respect to the standard coordinator, what evidence there is came in incidentally with testimony concerning another classification and was never developed, while evidence concerning the foreman was introduced through a witness who, insofar as the record shows, was not competent to testify concerning the duties and responsibilities of the foreman. Furthermore, there is no basis for concluding here that the standards coordinator and the foreman are other than long-established unit exclusions. For all these reasons, we find no case for clarification has been made out concerning these two classifications and their exclusion is continued.

Night Foreman, Supply Function, Motor Transportation Department: The Employer maintains several repair garages with night crews which normally work from 4 p.m. to midnight. Before 1969 or 1970, the employees in each garage worked under the immediate direction of a unit-included leadman, with the garages under the supervision of a roving supervisor. Around 1970 the leadman classification was discontinued and a night foreman assigned to each garage. Local 1439 claims the foreman have no more responsibility and authority than the former leadmen and so should be included in its unit. However, the record fully supports the Employer's position that the night foremen are supervisors. According to undisputed testimony, the foremen have complete responsibility for the operations of their respective garages and the authority to discipline and reprimand employees. More specifically, they assign work, transfer employees from one job to another or from one garage to another,[15] determine when overtime is to be worked, and receive and settle, if possible, complaints or grievances from employees in their garages. They also determine if lateness is excusable—i.e., if the employee will be paid for the missed time—and can and do permit employees to leave early if they have in the foremen's judgment adequate reason for doing so. In carrying out these various responsibilities, the foremen need not and usually do not consult with higher supervision. Therefore we find that, whether or not the foremen have more authority and responsibility than the former leadman[16] did, they are nevertheless statutory supervisors and thus excluded from the unit.

Classifications Sought by Both Petitioners

Supervisors, Employee Relations Function, Personnel Service Department, Educational and Service Division: There are two individuals classified by the Employer as supervisors who are involved here: (1) Thomas, who is concerned mainly with arranging apprenticeship classes and in effect monitoring or approving their content, and (2) Meesey, whose primary job is making videotapes with respect to the work of the physical employees. Thomas had held his job for only a few months at the time of hearing, and it is claimed that he received his present responsibilities in 1973. Meesey has had his present job for 11 years.

Each Petitioner seeks to add these individuals to its unit. With respect to Local 1455, they are excluded from its unit by article I, section 1(c), of its bargaining agreement which excludes all employees of the employee relations department. As for Local 1439's claim, we find it wholly without merit as neither Thomas nor Meesey performs physical work, such as that done by its unit employees, and, with respect to their conditions of employment and conduct of their work, they have little community of interest with such employees. Finally, Meesey, having been in the same job for 11 years but outside any established unit, is clearly with respect to both locals and historical exclusion. Accordingly, we find no basis for including these two supervisors in either unit.[17]

In conclusion, we have found with respect to all classifications and individuals[18] placed in issue by the two Petitioners that there is no basis for concluding that they are or should be included in the existing recognized bargaining unit of either Petitioner. Consequently, we shall dismiss the petitions herein.

ORDER

It is hereby ordered that the petitions in Cases 14–UC–40 and 14–UC–41 be, and they hereby are, dismissed.

[15] Actually, it really takes two foremen to manage a temporary transfer of an employee from one garage to another in that a foreman in one shop, after determining that he needs extra help, must obtain the approval of a foreman at another garage to send an employee over This is worked out on the foreman level without any appeal to higher management.

[16] The record shows, however, that in fact the night foremen have authority not possessed by leadmen. For example, leadmen could not determine that overtime must be worked, could not transfer employees from one garage to another, and could not grant time off

[17] Our result here, as our discussion should make clear, is not predicated on any finding that these Education and Service division titled supervisors are supervisors within the meaning of the Act On that point we express no opinion

[18] With the exception, however, of Sharon Wrigley, whose continued inclusion in the unit we have found to be appropriate