

Western Electric Company, Incorporated and Association of Engineers and Associates/Communications Workers of America, AFL-CIO, Petitioner. Case 1-RC-17876

13 December 1983

DECISION AND DIRECTION OF ELECTIONS

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Robert D. McGrath. Following the hearing and pursuant to Section 102.67 of the Board's Rules and Regulations, the Acting Regional Director for Region 1 transferred this case to the Board for decision. Thereafter, the Employer and the Petitioner filed briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

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

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

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

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

The Employer manufactures communications products at approximately 23 facilities in the United States, including the Merrimack Valley Works location in North Andover, Massachusetts, involved herein. Within the Employer's Manufacturing Division is the Transmission Equipment Division, which operates two factories, one at the Merrimack Valley Works and the other in North Carolina. The Petitioner seeks to represent approximately 465 professional employees¹ and approximately 186 technical employees² within the Transmission Equipment Division at the Merrimack Valley Works. The Employer contends that the petitioned-for unit is inappropriate because it excludes approximately 132 professional employees and approximately 7 technical employees who work at the same location in the Employer's Operations

¹ The parties stipulated that the following classifications are professional employee classifications within the meaning of Sec. 2(12) of the Act: engineer, development engineer, government project communications engineer, planning engineer, plant engineer, system equipment engineer, design engineer, industrial engineer, field engineer, senior staff engineer, senior engineer, information systems designer, information systems staff member, information systems staff senior member, and consulting member of the information systems staff.

² The parties stipulated that the engineering associates and information systems associates are technical employees.

Support Systems,³ Engineering and Information Systems Centralized CAE/CAM Development,⁴ and Quality Assurance organizations. For the following reasons, we find merit in the Employer's contention.

Professional and technical employees in the petitioned-for unit perform a broad range of functions related to manufacturing, from traditional production and quality engineering to the maintenance and enhancement of computer-aided design systems. OSS employees produce diagnostic software programs used with computer hardware produced by the Transmission Equipment Division and provide installation and field support engineering services. The Automatic Transmission Terminal Systems Software Engineering Department (ATTS), which is a part of the Transmission Equipment Division sought here, performs functions identical to those performed by OSS, but ATTS works on different products. Quality Assurance employees perform test engineering and inspection functions on products manufactured by the Transmission Equipment Division and have the authority to stop production if statistical controls are not met. At least two departments within the sought Transmission Equipment Division, including the Quality Control Engineering Department, perform similar or identical quality control functions on the same products using some of the same facilities as Quality Assurance. Finally, the CAE/CAM group is developing a new computer-aided manufacturing system. The engineering and information systems employees in CAE/CAM write the software, select the computers, and test the feasibility of the new system.

The Merrimack Valley Works functions as a landlord and administrative agency for most of the operations conducted at the facility. It provides personnel, support, and accounting services for those operations and charges each division for the services received. Most Transmission Equipment Division departments report to department heads whose offices are at Merrimack Valley. Thus, most of the Transmission Equipment Division's Merrimack Valley activities are administered at Merrimack Valley. However, some of the Division's departments that operate at Merrimack Valley report to managers in North Carolina and New Jersey who control those departments' budgets and functions.

In October 1981, administrative control of OSS operations at Merrimack Valley was transferred to the Employer's Columbus, Ohio facility as part of a

³ Hereinafter referred to as OSS. OSS is in the Employer's Switching Equipment Division.

⁴ Hereinafter referred to as CAE/CAM. CAE/CAM is in the Employer's Corporate Engineering Division.

5-year plan to consolidate all OSS functions from various locations across the country in Columbus. As a result of this consolidation, administrative functions such as budgeting, payroll, purchasing, and maintenance of personnel records for OSS employees working at the Merrimack Valley Works are performed by OSS administrators in Columbus. The Employer plans to transfer some OSS employees to Columbus when their work is transferred. Some will be transferred to other departments at Merrimack Valley, and some have been transferred to Merrimack Valley Transmission Equipment Division departments already. Additionally, merit pay raises for OSS employees at Merrimack Valley are determined by Columbus administrators. Similarly, many Transmission Equipment Division employees working at Merrimack Valley are rated against their counterparts in North Carolina.

All technical and professional employees at the Merrimack Valley Works have the same opportunities for training, including tuition reimbursement, fellowships, and inhouse training. They receive the same cost-of-living salary differential based on geographical location. All may participate in a number of professional and social organizations associated with the Merrimack Valley Works, and they receive the same newsletter. They share the same health facilities, cafeteria, parking facilities, and restrooms, and are served by the same credit union, employee relations department, and purchasing service. All professional employees are eligible for the same pension and health benefit program, salary administration program, and incentive program for early retirement; all technical employees may participate in separate but corresponding programs. There are no temporary transfers between departments, but there have been numerous permanent transfers between departments sought by the Petitioner and departments the Petitioner would exclude. All professional and technical job openings at Merrimack Valley, including those for OSS, Quality Assurance, and CAE/CAM, are posted on an equal basis at the facility.

In general, the smallest appropriate unit of technical employees working in similar jobs with similar working conditions and benefits comprises all such technical employees.⁵ Although a unit of less than all professional employees may be appropriate if that unit consists of a readily identifiable group with distinct skills and functions, the Board will not certify an arbitrarily defined segment of an employer's similarly situated professionals.⁶ As de-

⁵ *TRW Carr Division*, 266 NLRB 326 (1983); *Aerojet General Corp.*, 131 NLRB 1094 (1961).

⁶ See *General Electric Co.*, 148 NLRB 1660 (1964).

scribed above, the record shows that the Employer's professional and technical employees working in OSS, Quality Assurance, and CAE/CAM at its Merrimack Valley Works exercise the same skills and perform the same functions as many technical and professional employees in the sought Transmission Equipment Division, and that no substantial community of interests separates the sought employees from those whom the Petitioner would exclude. Contrary to the Petitioner's contention, the Employer's placement of the sought employees in a separate division does not necessarily establish the appropriateness of that grouping for purposes of collective bargaining.⁷ Therefore, we hold that a unit of employees working in the Transmission Equipment Division at the Merrimack Valley Works is inappropriate because it does not include all similarly employed technical and professional employees at that location.⁸ We agree with the Employer that the smallest appropriate unit includes all technical and professional employees at Merrimack Valley Works.

Accordingly, and inasmuch as the Petitioner did not indicate an unwillingness to proceed to an election in a unit broader than the one petitioned-for, we shall direct separate elections in the following voting groups:⁹

(a) All full-time and regular part-time technical employees employed by the Employer at its Merrimack Valley Works facility in North Andover, Massachusetts, but excluding all professional employees, guards, and supervisors as defined in the Act.

(b) All full-time and regular part-time professional employees employed by the Employer at its Merrimack Valley Works facility in North Andover, Massachusetts, but excluding all technical employees, guards, and supervisors as defined in the Act.

The employees in the professional voting group (b) will be asked two questions on their ballots:

⁷ See *Aerojet General*, *supra*.

⁸ In *Martin Co.*, 162 NLRB 319 (1966), cited by the Petitioner, we found appropriate a small voting group of technical employees where the petitioner already represented a small production and maintenance unit. A small group of professional employees was found to constitute an appropriate unit in *Douglas Aircraft Co.*, 157 NLRB 791 (1966), where the sought professionals performed a unique function and other professional units already existed. These cases clearly are distinguishable from the instant facts.

⁹ Because the inclusion of the technical and professional employees in OSS, Quality Assurance, and CAE/CAM changes the composition of the unit specifically sought, the Petitioner may not wish to proceed to an election in this unit, or, desiring to do so, may have an inadequate showing of interest. In these circumstances, we direct the Petitioner to notify the Regional Director within 10 days of this Decision whether it wishes to proceed to elections, and, if so, to submit within such time any additional showing of interest that may be required to support its petition.

(1) Do you desire to be included in the same unit as technical employees of Western Electric Company, Incorporated, for the purpose of collective bargaining?

(2) Do you desire to be represented for the purpose of collective bargaining by Association of Engineers and Associates/Communications Workers of America, AFL-CIO?

If a majority of the employees in voting group (b) vote "yes" to the first question, indicating a choice to be included in a unit with the technical employees, the group will be so included. The votes on the second question will then be counted with the votes of the technical voting group (a) to decide the representative for the entire unit. If, on the other hand, a majority of the professional employees in voting group (b) do not vote for inclusion, these employees will not be included with the technical employees, and their votes on the second question will be separately counted to decide whether they want to be represented in a separate professional unit.

We make the following findings with regard to the appropriate unit:

(1) If a majority of the professional employees vote for inclusion in a unit with technical employees, we find that the following employees will constitute a unit appropriate for the purpose of collec-

tive bargaining within the meaning of Section 9(a) of the Act:

All full-time and regular part-time technical and professional employees employed by the Employer at its Merrimack Valley Works facility in North Andover, Massachusetts, but excluding all guards and supervisors as defined in the Act.

(2) If a majority of the professional employees do not vote for inclusion in the unit with technical employees, we find that the following two groups of employees will constitute separate units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time technical employees employed by the Employer at its Merrimack Valley Works facility in North Andover, Massachusetts, but excluding all professional employees, guards, and supervisors as defined in the Act.

All full-time and regular part-time professional employees employed by the Employer at its Merrimack Valley Works facility in North Andover, Massachusetts, but excluding all technical employees, guards, and supervisors as defined in the Act.

[Direction of Elections omitted from publication.]