

Telephone Utilities of Alaska and Telephone Utilities of the Northland, Inc., d/b/a PTI Communications and International Brotherhood of Electrical Workers, Local 1547, AFL-CIO, CLC. Case 19-RC-12558

September 21, 1992

ORDER DENYING REVIEW

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

The Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent portions are attached). The request for review is denied as it raises no substantial issues warranting review.

MEMBER OVIATT, dissenting.

I would grant the Employer's request for review.

APPENDIX

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Electrical Workers, Local 1547, AFL-CIO, CLC.

The Employer provides local telephone exchange service throughout most of Alaska. Its headquarters are in Vancouver, Washington, where the offices of President Ted Burns, Vice President for Human Resources Wes Carson and Labor Relations Manager Joe Osa are. The highest ranking official in Alaska is Bernadette Murray, Vice President, whose office is in Anchorage. Reporting directly to Murray are Acting General Plant Superintendent Dave Bennett, Personnel Manager Gladys Jenkins, Customer Service Manager Jan Williams, Tariffs and Access Supervisor Susan Armstrong, and three Area Superintendents—James Collard (Ju-

neau), Bill Thompson (Renai) and George Godfrey (North Pole). Reporting to Thompson is Kodiak Area Supervisor Chuck Stauffer and reporting to Collard is Sitka Area Supervisor Wayne Stott.

The Petitioner, which already represents a unit of installation and service employees, warehousemen and customer service representatives, now seeks a separate unit of office clerical employees located throughout the Employer's operations in Alaska. There is no bargaining history involving these employees. The parties are in agreement as to the appropriateness of the unit with the exception of nine individuals the Employer would exclude as confidential employees and the Petitioner would include.

KATHY KING:

King's title is Secretary II and she works for Jan Williams, the Employer's Customer Service Manager. This department, located in Anchorage, employs approximately 70 individuals and is responsible for marketing, repairs, advertising, public relations and the business office. Williams reports to Murray. Williams' role in labor relations is virtually identical to that of Bennett. That is, he serves on the contract negotiating team, participates in formulation of the Employer's negotiation strategy, drafts Murray's grievance responses and makes recommendations thereon and, on his own initiative, decides and administers discipline to employees within his large department.

King works with one other clerical, a support specialist, Bill Mayo.¹ Williams does not include Ring in actual contract negotiation activity nor does he discuss these matters with her. She is called upon to compile the memoranda generated at his earlier contract strategy meetings held with his lower-level supervisors, not the negotiation team or higher-level strategy team. With regard to the administration of labor relations policy, Ring types the written reprimands prepared by Williams that are placed in employee files. She also typed at least one work correction plan for Williams, but that incident appears to have involved a supervisor, not an employee. Ring types both the draft grievance response to go to Murray as well as the final response for Williams' signature. She types all division performance evaluations. Williams proposed an upgrade in the status of service representatives and an unspecified change in their duties recently; King typed the document. King has substituted for Fleming in managers' meetings, but no details were given concerning the frequency of such substitutions or whether labor relations, as opposed to purely business matters, were discussed.

As in the case of Bennett, I find Jan Williams formulates, determines and effectuates the Employer's labor relations policy. *B. F. Goodrich Co.*, supra [115 NLRB 722 (1956)]. However, I do not find record evidence concerning King's responsibilities to warrant excluding her from the unit. She has no role in investigating grievances, which would demonstrably affect their merit, or any other stated substantive input in the handling of grievances. *Weyerhaeuser Co.*, 173 NLRB 1170 (1968); *ITT Grinnell Corp.*, supra. The typing of evaluations and similar documents is not sufficient. *RCA Communications, Inc.*, supra [154 NLRB 34 (1965)]; *John*

¹ King was on temporary assignment to the Vancouver headquarters for several months, including the time of hearing. Mayo substituted for her in Anchorage. No party asserted Mayo should be excluded from the unit on this or any other basis.

Sexton & Co., supra [224 NLRB 1341 (1976)]. The evidence concerning substituting for Fleming, without a clear demonstration that the substitution has some frequency and regularity and that it exposes Ring to confidential labor relations policy, does not make her a confidential employee. *Bechtel Inc.*, 215 NLRB 906 (1974). Nor would a single stated instance of typing the service representatives' upgrades. Accordingly, I find Kathy King not to be a confidential employee and I shall include her in the unit.

MARLENE PORTER:

Porter, a Senior Support Specialist, is supervised by Gladys Jenkins, Industrial Relations Administrator, and works with one other clerical, a receptionist. The three comprise the Anchorage personnel office, which is responsible for processing all personnel forms for Alaska employees; maintaining their personnel files; processing job vacancies; and monitoring EEO, pay and benefits programs within the Employer's guidelines. Jenkins reports to Murray.

Jenkins serves on the negotiating team and participates in the pre-negotiation strategy sessions. Unlike Bennett and Williams, however, she is not empowered to administer discipline on her own but must seek Murray's approval, according to Murray's testimony. She participates in the processing of grievances by gathering information, drafting some responses for Murray and making recommendations thereon, and, in management meetings, reporting on and coordinating the various grievance situations around the state. Murray testified generally that Jenkins helps interpret the contract for supervisory personnel. In evidence, however, is a 1989 letter from the Employer to Petitioner stating that Jenkins is not authorized to interpret the contract, resolve grievances or make policy decisions. That letter has apparently never been rescinded.

Occasionally, Porter performs some work for Murray. For the 1991 contract negotiations she was asked to compile some statistics on overtime usage going back to 1985. She also has substituted for Fleming. The frequency was not noted, but the cited task was that of typing Murray's evaluations of the three area superintendents. Finally, Porter has typed Murray's annual staffing plan which projects the anticipated total number of employees for the coming year.

The greatest part of Porter's effort is directed toward the workings of the personnel office. She maintains the personnel files for Alaska employees, generating much of the routine documentation needed to effect pay raises, promotions or other status changes. She monitors a tickler system to ensure that evaluations for Anchorage employees are timely prepared. When she receives the evaluations and notices the employee being cited for an attendance problem, she brings it to the attention of Jenkins or Murray. She has no part in typing reprimand memoranda. She checks time sheets and expense records for proper coding and enters the information on the computer. When the Employer is hiring new employees, Porter sets up the interviews and prepares the necessary paperwork. Interviews and hiring recommendations are done by committee. The record shows that at least once Porter was asked to serve on such a committee in Jenkins' absence. The three members of the committee functioned by individually scoring the applicants, with the highest-scoring applicant receiving the committee's hiring recommendation. This action took place two years before the hearing, and the position in-

involved was that of receptionist. Once a new employee is hired or the Employer's janitorial service has a new hire, Porter enters the individual's "eyeprint" into the Employer's security system. She also deletes eyeprints of terminated employees. Porter types Jenkins' grievance memoranda and her draft responses for Murray's use and, at Jenkins' direction, has researched time usage by employees. Porter testified that she types about five such documents annually.

I do not find Gladys Jenkins' authority to be sufficient to meet the Board's test for managers in labor relations matters. While she has a hand in formulating and determining labor relations policy by participating in negotiations, her authority in effectuating that policy is seriously limited. She is reduced to the status of an advisor only and one who must act strictly within established guidelines. She cannot discipline employees on her own authority or issue written grievance resolutions over her signature. Clearly, she has not been accorded the same level of authority as Bennett or Williams, her department-head counterparts.

Based upon the foregoing and the record in its entirety, I find Marlene Porter not to be a confidential employee. While Murray clearly is a person who formulates, determines and effectuates labor policy, the nature of the relationship between Murray and Porter, as well as the nature and infrequency of the work Porter has performed for Murray, is insufficient to warrant Porter's exclusion from the unit. The overtime study done by Porter is not confidential; the Union is given overtime statistics monthly. Typing area superintendents' evaluations is not deemed confidential inasmuch as they do not involve rank-and-file employees. *RCA Communications*, supra. The record does not demonstrate that Porter is privy to the labor costs the Employer would be willing to agree to in negotiations through her access to Murray's staffing plan or other budgetary information. *Pullman Inc.*, 214 NLRB 762 (1974). And Porter's occasional substitution for Fleming is insufficient to cause her exclusion from the unit. *Bechtel Incorporated*, supra.

Nor would Porter's work for Jenkins serve to find confidential status. While the Tass she performs may well allow her to learn of personnel matters prior to their being revealed to employees affected by them, absent a confidential relationship with a person who formulates, determines and effectuates the Employer's labor policy, she cannot be found to be a confidential employee. *California Inspection Rating Bureau*, 215 NLRB 780 (1974); *Carolina Telephone & Telegraph Co.*, 258 NLRB 1387 (1981).²

Clericals to the Area Superintendents

The three area superintendents are Collard, Godfrey and Thompson. Until a January 1992 reorganization, they reported to the general plant superintendent, but now report directly to Murray. Each of the three is held responsible, with-

²With regard to Porter's role in an interview situation, this issue was dealt with by the Board in *Chico Community Memorial Hospital*, 215 NLRB 821 (1974), in which the personnel clerk was found to be confidential. I note that *Chico* has never been cited in later cases for this proposition and, further, the *Chico* clerk was much more active in interviewing applicants than was Porter. Indeed, the *Chico* clerk regularly participated in screening applicants and it was anticipated that in the future would do more than 50 percent of interviewing. Accordingly, I do not find Porter's situation to be governed by *Chico*.

in his own geographic sphere, for service and installation work, public relations, and administering the current IBEW contract. None of the three serves on the Employer's labor contract negotiating team. Prior to contract negotiations each area superintendent meets with subordinate supervisors to discuss possible changes in the next contract. A meeting of these managers is also held in Anchorage for further discussion of the preferred changes. As noted earlier, Murray decides between competing opinions and, only after she has conferred directly with Vancouver, is the strategy finalized. Insofar as the administration of the current contract is concerned, each of the three is empowered to handle only the lowest level grievances, i.e., grievances in the oral stage. Murray testified that they can only make recommendations once grievances have reached the written stage. They are not authorized to sign written grievances as resolved. Their authority to administer discipline on their own initiative is similarly circumscribed. Murray testified that if, for example, Collard wanted to suspend an employee for three days, he would need the approval of both Murray and Vancouver.

KATHY BUZZELL:

Buzzell is Sr. Support Specialist to Juneau Area Superintendent Jim Collard. Collard supervises approximately 45 employees in southeast Alaska communities. Buzzell appears to work with a support specialist, although that position was vacant at the time of hearing. Buzzell is responsible for performing the tasks one normally associates with clerical work such as receiving, distributing and typing correspondence and handling telephone calls. She maintains personnel files and types employee evaluations. Most of the testimony beyond this point is in dispute.

Collard testified that either before or after his discussing contract negotiation ideas with his subordinate supervisory staff, he has discussed some of these ideas with Buzzell, including "her areas of expertise," time and expense accounting, and that Buzzell has gathered such statistical information for and from the supervisors. Buzzell denies this, stating specifically that she has never been solicited to gather such information and has made no recommendations. She stated further that she has never attended any staff meeting at which labor relations was discussed.

Collard testified Buzzell opens all mail, including that marked "confidential." Buzzell testified she has been instructed by Collard not to open such mail and that she does not.

Collard stated Buzzell types letters of reprimand and that this occurs before the employee to whom the reprimand is addressed knows of it. He gave no examples. Collard has been in his present position two years. Buzzell testified she recalled typing at least one such letter, but only prior to Collard's becoming area superintendent. Buzzell also refutes Collard's assertion that she types merit increase recommendations made by supervisors for unrepresented employees.

As to the handling of grievances, Collard testified Buzzell is used by Collard as a "sounding board" in discussing grievances and that she give an opinion as to their merits or resolution. He stated she gathers statistical information concerning grievances and gives it to Collard in written form. No examples of either activity were cited. Collard testified that he once had her type a draft grievance response. He had

been filling in for Bennett when the grievance arose in that office but had returned to his own office when it had to be typed and assigned it to Buzzell. To the contrary, she testified that she has never investigated any grievances for Collard and, further, the only one that has arisen to her knowledge in the past two years occurred within a month of the hearing and that she not only was not consulted about it or asked to type it but knew nothing about it until after it was resolved.

Part of Buzzell's responsibilities, as is true with most of the other individuals at issue, is the analysis and audit of employee expense accounts and time and attendance records. When questions arise as to their accuracy or which contractual payment code is to be used, Buzzell is sometimes called by employees. Buzzell, if she is not absolutely sure which code is correct, sends the employee back to his supervisor to work it out between them.

Collard annually anticipates the coming year's manpower needs based on workload, gives the number and classifications of employees to Buzzell to compute operating costs. The Anchorage office has already supplied a computer disk containing percentage cost increases and Buzzell combines the two sets of information. She has no substantive input.

DEBORAH KITCHENS:

Kitchens is Sr. Support Specialist to North Pole Area Superintendent George Godfrey. Their operation is near Fairbanks. Godfrey, who had held his post just six weeks at the time of hearing, is charged with overseeing approximately 22 employees. He did not testify, and the record contains evidence that his labor relations authority is certainly no greater than that of Collard or Thompson.

Kitchens is the only clerical in the North Pole office. She performs the normal clerical functions of handling correspondence and telephone calls. She also performs the same analysis/audit of employee expenses and time and attendance records as the other clericals involved herein; types employee evaluations; maintains personnel files; and types the office budget, which includes payroll information.

Kitchens has not been involved with any labor pre-negotiation meeting or discussions with management. She is sometimes called upon by employees to give them the correct contractual expense codes. As to the processing of grievances, at most, Kitchens appears to have typed a draft response from a supervisor to the area superintendent sometime between 1985-1989. She does not investigate grievances or make recommendations thereon. It appears she also typed a disciplinary letter during the 1985-1989 period.

DAWN LOVETT:

Lovett is Sr. Support Specialist to Kenai Area Superintendent Bill Thompson, who directs approximately 45 employees throughout the Kenai Peninsula and the Aleutian Chain. Their office is located in Kenai. Lovett works with Support Specialist Curtis, Lovett did not testify. Lovett performs the same general clerical tasks attributed to Buzzell and Kitchens with regard to handling correspondence and telephone calls, monitoring time and expense sheets, typing evaluations and maintaining personnel files. Like them, she is at times called upon by employees to determine correct contractual coding for their expense accounts and she assists to the extent she is able by virtue of her expense account expertise. She also types annual manpower projections from in-

formation generated by Thompson's assessment of anticipated future work and Anchorage's set increased percentage costs. This projection must be approved by Murray. Thompson testified that Lovett attends his meeting with his subordinate supervisors to discuss their contract change preferences and that she takes notes of their discussion. She also has been called upon to type letters of reprimand to be placed in employees' files or memoranda, presumably to Murray, recommending that certain actions be taken. Lovett once substituted for Anne Fleming two years before the hearing but at the hearing, no evidence was adduced to show she dealt with confidential labor relations material at that time.

CONCLUSION: BUZZELL, KITCHENS, LOVETT:

I do not find the Employer's area superintendents to be persons who formulate, determine and effectuate management policies with regard to labor relations. *Holly Sugar Corp.*, 193 NLRB 1024 (1971); *Carolina Telephone & Telegraph Co.*, supra; *Greyhound Lines*, 257 NLRB 477 (1981). The record as a whole makes it clear that the Employer's overall approach to labor relations' formulation and determination, and to a lesser extent its effectuation, is very centralized, resulting in the area superintendents being utilized as advisors only and even limiting their role in contract administration. Thus, they may give recommendations as to perceived needed labor contract changes, and thus have some role in policy formulation, but they have no authority to decide the matters. Additionally, they must have the approval of Murray and Vancouver before they may act on disciplinary or grievance issues of any import. Such limitations do not meet the Board's test.

Additionally, record evidence concerning the three clericals is not such that I would declare them to be confidential employees. Maintaining personnel files, typing evaluations, and having advance access to other forms of confidential labor relations information is not sufficient to exclude an individual from the unit absent the clear demonstration of a confidential relationship with a person who formulates, determines and effectuates the Employer labor relations policy. It is the confidentiality of such a relationship, not the confidentiality of information, that is determinative. *Greyhound Lines, Inc.*, supra; *Ernst & Ernst National Warehouse*, 228 NLRB 590 (1977); *John Sexton & Co.*, supra. Similarly, their work on budgetary and manpower studies, particularly at their relatively low organizational level, is not the type of information contemplated by the Board in *Pullman Standard Division of Pullman, Incorporated*, supra, as justifying a confidential finding. And their assisting employees in correctly coding expense and attendance claims is clearly insufficient. As to Buzzell, the record contains too little undisputed evidence to make a determination had I found Collard's status to be different.

Based upon the foregoing and the record as a whole, I find Kathy Buzzell, Deborah Kitchens and Dawn Lovett not to be confidential employees.

Clericals to the Area Supervisors

TERRI JOHNSON:

Johnson is Sr. Specialist to Chuck Stauffer, Kodiak Area Supervisor. Their work location is Kodiak and approximately nine employees work there. Neither Johnson nor Stauffer testified. In fact, testimony concerning Johnson was very brief

and general in nature, as was that concerning Stauffer's responsibilities and status. At the very most, Stauffer has made what Murray termed "effective recommendations" concerning unspecified grievances and collective bargaining agreement proposals. No evidence was adduced to show his role in these important areas to be more than [sic] that of a minor advisor. In his daily supervision of the Kodiak operation, Stauffer is in contact with the Petitioner's steward and he administers the contract in the installation and service unit. Johnson serves as the sole office clerical employee in Kodiak and, as such, performs the normal clerical functions such as handling correspondence and telephone calls. She reviews attendance and expense records in the same manner as other clericals. Thompson testified that her duties were the same as those performed by Lovett, whom I have found not to be a confidential employee, and Ann Curtis, an undisputed unit member.

Based upon the foregoing and the record as a whole I find that Terri Johnson is not a confidential employee. It is clear that the position of Kodiak Area Supervisor is not that of one who formulates, determines and effectuates the Employer's labor relations policy. *Holly Sugar Corp.*, supra. Even if it were, Johnson's responsibilities fall far short of the standard necessary to warrant her exclusion as a confidential employee. Accordingly, I shall include Terri Johnson in the unit.

ELAINE CRONE:

Elaine Crone is Sr. Support Specialist to Sitka Area Supervisor Wayne Stott. Approximately 12 employees work in this operation, of whom Crone is the only clerical. As in the case of Johnson, testimony concerning Crone and Stott was brief and general; neither Crone nor Stott testified. Murray testified that Stott has made "effective recommendations" concerning unspecified grievances and contract proposals, but there was no evidence that his role exceeded this level of activity. He may attend the contract negotiating strategy meeting to give his views of desired contract changes, but there was no evidence to show he shared this information with Crone upon his return to Sitka or that he was part of the Employer's negotiating team. Stott administers the contract for the currently represented employees, including processing verbal grievances. As the Sitka operation's only clerical, Crone handles all correspondence; maintains employee files; types evaluations; checks travel, expense and attendance sheets and types the Sitka budget.

Record evidence fails to demonstrate that Elaine Crone is a confidential employee. Rather, it shows that Wayne Stott's position is not that of one who formulates, determines and effectuates labor relations policy. *Holly Sugar*, supra. While he plays a limited role in effectuating the Employer's policy through administration of the current contract, he has not been given the responsibility of formulating or determining that policy. Moreover, Crone's own responsibilities are not sufficient to find her a confidential employee even if Stott's status were different. Accordingly, I find Elaine Crone not to be a confidential employee and I shall include her in the unit.