

**UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD**

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**TEAMSTERS LOCAL 667,**

**Employer,**

**And**

**Case No. 26-RC-092292**

**UNITED STEELWORKERS  
INTERNATIONAL UNION,**

**Petitioner.**

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**EMPLOYER'S REQUEST FOR REVIEW**

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**EMPLOYER'S REQUEST FOR REVIEW**

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**I. STATEMENT OF THE ISSUE PRESENTED**

Whether the Regional Director erred in determining that Carrie Cross is a confidential employee under the Act when the record reflects that she was the sole clerical employee in charge of all bookkeeping, including payroll checks and incoming bills, attended monthly Executive Board meetings, and processed grievances for Teamsters Local 667 members and sent out warning letters and grievances to proper companies?

**II. INTRODUCTION AND SUMMARY OF THE ARGUMENT**

The Employer, Teamsters Local 667, is a labor organization with its offices in Memphis, Tennessee. The Employer represents a variety of employees in collective bargaining with various companies in the geographical area. A Petition was filed by the Petitioner, United Steelworkers International Union, with the National Labor Relation Board under Section 9 of the National Labor Relation Act ("NLRA"). The Petitioner sought to represent a two person unit

consisting of two office clerical employees: Carrie Cross ("Ms. Cross") and Marion Carson ("Ms. Carson").

The Employer contends that Ms. Cross should be excluded from the bargaining unit because she is a confidential employee. Further, the Petition should have been dismissed because a one-person bargaining unit consisting of the remaining clerical employee, Ms. Carson, is not appropriate. A hearing was held before the Board on November 14, 2012, and the Employer filed a post-hearing brief.

Following the hearing and post-hearing briefs, the Regional Director determined that Ms. Cross was not a confidential employee and that the petitioned-for unit was appropriate. The Employer asserts that the Regional Director's decision was erroneous based on evidence in the record and that such error prejudicially affects the rights of the parties. Further, in failing to find Ms. Cross to be a confidential employee who would be excluded from the appropriate unit, the Regional Director's decision departed from Board precedent. Pursuant to §102.67 of the NLRB's Rules and Regulations, the Employer hereby submits this timely Request for Review.

### III. FACTS

Ms. Cross and Ms. Carson work with four other employees in the Memphis Office. The parties stipulated that those four other employees would be excluded from the bargained-for unit because those employees did not share the same responsibilities and interests of the clerical employees Ms. Cross and Ms. Carson.

Ms. Cross is the bookkeeper, insurance and pension clerk, secretary, and receptionist. Hearing Transcript p. 20. Her responsibilities include secretarial work such as managing ingoing and outgoing mail and answering the telephones. (Hearing Transcript, p. 39). She also processes grievances for Local 667 members, and sends out warning letters and grievances to the

proper companies within the required contractual time limits. (Hearing Transcript, p. 21). While Ms. Cross does not physically attend bargaining sessions, the record reveals that there are times she may be required to type up contracts for the business agents who negotiate with companies that are under contract. (Hearing Transcript, p. 78). Further, she responds to concerns from individual employees regarding pension and insurance issues and contacts the insurance providers on behalf of the employees. (Hearing Transcript, p. 22).

Ms. Cross handles all the bookkeeping duties because she is the only clerical employee in the office trained on the bookkeeping system. (See Hearing Transcript, pp. 25-27, 74). Her responsibilities as a bookkeeper include taking care of the payroll, incoming bills, and preparing the payroll checks for employees. (Hearing Transcript, p. 20). The bookkeeping system used by Ms. Cross requires a password that she does not share with anyone, including the other clerical employee Ms. Carson. (Hearing Transcript, pp. 23-24).

Further, Ms. Cross attends monthly Executive Board meetings, where all the financial affairs of the Employer are discussed, and approved, per the local union by-laws and IBT constitution. (Hearing Transcript, pp. 23, 51-52). Ms. Cross testified that the information discussed at the Executive Board meetings is confidential. (Hearing Transcript, p. 51). At the meetings, Ms. Cross reviews the Employer's accounts with the Employer's Executive Board, and answers all questions regarding any specific items on the accounts. (Hearing Transcript, pp. 51-52). Once the Executive Board approves the account, Ms. Cross sends the final monthly financial report to the IBT. (Hearing Transcript, p. 52).

Ms. Carson, the other clerical employee, is the dues clerk. (Hearing Transcript, p. 58). Her responsibilities include mainly secretarial work for the agents. (Hearing Transcript, pp. 58-59). Ms. Carson posts dues checks that come to the office and generates billing for membership

dues. Further, she also assists members with insurance and pension issues. (Hearing Transcript, p. 59). Ms. Carson does not perform any bookkeeping work.

Ms. Cross's job title entails more responsibility than Ms. Carson. As Ms. Cross explained, she handles numerous pieces of confidential information on a daily basis that no other clerical employee in the office handles. (Hearing Transcript, p. 22). In fact, Ms. Cross has special training that is necessary to perform bookkeeping duties. (Hearing Transcript, p. 24). Ms. Carson does not have the training to perform some of the tasks that Ms. Cross handles, and declined bookkeeping training on the current system. (Hearing Transcript, p. 59). Ms. Cross is the only one of the two clerical employees that attends Executive Board meetings, and process grievances for Local 667, the Employer.

#### IV. ARGUMENT

##### **A. Carrie Cross is a confidential employee within the meaning of the Act, and therefore it was error for her to be included in the bargaining unit.**

The Board has long found that there is an implied exclusion from NLRA coverage for confidential employees. The purpose behind this rule is that "an employee should not be placed in a position involving a potential conflict of interest" between the employer and the union. *See Westinghouse Elec. Corp. v. NLRB*, 398 F.2d 669, 670 (6th Cir. 1968).

The key to determining whether an employee is confidential is whether the employee assists and acts in a confidential capacity to persons who formulate, determine, or effectuate management policies. In *NLRB v. Hendricks Rural Electric Corp.*, 454 U.S. 170 (1981), the Supreme Court affirmed the use of a "labor nexus" test to determine which employees are considered "confidential." Under this test, those employees who act in a confidential capacity to persons exercising managerial functions in labor relations matters are confidential employees. *Id.* at 188-89.

The Supreme Court also approved an alternative test to the "labor nexus" test where employees who have "regular" access to confidential information concerning anticipated changes that may result from collective-bargaining negotiations are confidential employees. *Id.*

Thus, the NLRA requires that two main categories of confidential employees be excluded from the bargaining unit: (1) employees who "assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies," *B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956), and (2) "employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes which may result from collective-bargaining negotiations." *Pullman Standard Division, Inc.*, 214 NLRB 762, 762-63 (1974). The record in this case clearly reveals that Ms. Cross is a confidential employee.

**1. The Regional Director ignored or minimized substantial record evidence, which clearly shows that Ms. Cross is a confidential employee.**

By determining that Ms. Cross was not a confidential employee, the Regional Director ignored or minimized substantial record evidence that shows Ms. Cross had regular access to confidential information that would exclude her from the bargaining unit. The Regional Director acknowledged that the record reflects that Ms. Cross manages confidential information for the Employer, and that she attends monthly Executive Board meetings where Employer policies are discussed. However, even with this information, the Regional Director dismissed any idea that Ms. Cross was a confidential employee.

The record establishes that Ms. Cross has access to sensitive information which should exclude her from the bargaining unit. Ms. Cross is the only employee that accesses the bookkeeping system for the Employer. This responsibility requires Ms. Cross to access information that contains wages and salaries of the employees, and the Employer's budget in relation to the salaries of the employees. Having access to this type of confidential information

would be the equivalent of handing over the Employer's books to the Petitioner before beginning negotiations. The Regional Director erred by overlooking the significance of Ms. Cross's access to this highly sensitive wage and salary information when it concluded that she was not a confidential employee.

Further, as the Regional Director acknowledged, Ms. Cross attends the monthly Executive Board meetings where the Employer's Executive Board discusses confidential information regarding the Employer's personnel strategies and policies. The Executive Board consists of three Trustees, the Recording Secretary, James Sproles, and the Vice President, James Shipp. While Ms. Cross is not on the Executive Board, she attends the meetings in order to review the Employer's accounts with the Executive Board. Ms. Cross prepares documents that reflect the Employer's financial status for approval of the Executive Board at these monthly meetings. During the meetings, the Executive Board discusses confidential information. As a regular attendant of the Executive Board meetings, Ms. Cross could have access to confidential information regarding the Employer's personnel strategies or information that would be used in contract negotiations. *See, Associated Day Care Servs.*, 269 NLRB. 178, 181 (1984)(indicating that having regular access to policy information can establish confidential status). The Regional Director dismissed this point as being speculative. However, the record reveals that she is a regular attendant at the Board meetings, and makes monthly reports to the Executive Board during the meetings, where this type of confidential information is discussed. *See, Mega Can & Storage, Inc.*, 294 NLRB 975, 975 n.1 (1989)(finding that an employee who regularly attended private meetings where labor relations was discussed was confidential).

The Regional Director also discounted evidence of Ms. Cross's involvement in the Employer's response to employee grievances. As the record reflects, Ms. Cross processes

grievances for Local 667. Ms. Cross indicated that if a member is discharged, he comes in and fills out a grievance, and she processes the grievances and handles all correspondence between the company and Local 667. Having access to this type of information allows Ms. Cross to have intimate knowledge of the Employer's strategies for defending grievance arbitrations. Further, the record reflects that there are times Ms. Cross may be required to type up contracts for the business agents who negotiate with companies that are under contract. (Hearing Transcript p. 78); *see also* Regional Director Decision pp. 7-8 (recognizing that Ms. Cross anticipates being assigned to type contract proposals, but dismissing this as speculative); *Reymond Baking Co.*, 249 NLRB 1100, 1100 (1980)(finding that a secretary who typed contract proposals was a confidential employee). This again indicates Ms. Cross's confidential status.

The Regional Director's conclusion that Ms. Cross is not a confidential employee overlooks many aspects of Ms. Cross's job that create a potential conflict of interest between the Employer and the union, which affects the rights of the Employer. The Board rationale behind the confidential employee rule is that neither management nor the employee should "be placed in a position involving a potential conflict of interest" between the employer and the union. *Westinghouse Elec. Corp.*, 398 F.2d at 670. As the foregoing demonstrates, an unbiased review of the Record makes clear that Ms. Cross will have access to sensitive information regarding the bargaining process. Her access to this information creates a conflict of interest between the Employer's need to keep the information secret for the benefit of management and a desire to disclose the information to the Petitioner for the benefit of the employees represented by the bargaining unit. Therefore, Ms. Cross should have been excluded from the bargaining unit as a confidential employee, and it was error for the Regional Director to conclude otherwise.

**2. The Regional Director's Ruling, based on the record evidence, departs from official board precedent.**

The Regional Director's decision departs from official board precedent that recognizes employees with responsibilities similar to Ms. Cross as confidential employees. In *National Cement Co., Inc.*, 228 NLRB 1039, 1039 (1977), for example, the Board over turned a Regional Director's decision, and found a secretary of a plant manager to be a confidential employee. In that case, the Board concluded that the secretary's duties that included typing daily and monthly production reports, answering phones, distributing mail, and typing correspondences regarding reprimands, grievances, and discharges made her a confidential employee. *Id*; *see also*, *Springhill & Trust Co.*, 238 NLRB 127, 127 (1978)(finding that a secretary who types employee evaluations and disciplinary reports is a confidential employee); *Siemens Corp.*, 224 NLRB 1579, 1579 (1976)(finding that a secretary who typed disciplinary warnings for a district manager is a confidential employee).

In this case, as explained above, Ms. Cross performs the same types of duties as the secretary in *National Cement*. She answers phones, distributes mail, processes grievances, and she attends monthly Executive Board meetings where confidential information is discussed. Further, there is record evidence that at times Ms. Cross may be required to type contracts for the business agents who negotiate with companies that are under contract. (Hearing Transcript, p. 78); *see also*, *Wes Chem. Prods.*, 221 NLRB 250 (finding that a secretary to a branch manager who typed contract proposals for use during negotiations was a confidential employee). The Regional Director's decision departs from the above cited board precedent which supports the conclusion that Ms. Cross is a confidential employee. The Board should grant review and overturn the Regional Director's decision that Ms. Cross is not a confidential employee.

**B. The Petition should have been dismissed by the Regional Director because, absent Ms. Cross, the unit consists of only one member, and the Board does not recognize one-person units.**

It is well-established law that the NLRB does not recognize no-person or one person bargaining units. Instead, the Board's decisions allow an employer to discontinue its duties under an agreement where it employs no more than one employee in the relevant unit. *See, e.g., Sunray Ltd.*, 258 NLRB 517, 518 (1981)(finding that "the Board will not enforce a contract covering a single-person unit."); *SAC Constr. Co., Inc.*, 235 NLRB 1211, 1220 (1978)(finding that an employer who had a unit consisting of only employee "did not violate Section 8(a)(1) and (5) of the Act by discontinuing payments to the health and welfare, apprenticeship, and pension fringe benefit plans"), enforcement denied on other grounds, *NLRB v. SAC Constr. Co. Inc.*, 603 F.2d 1155 (5th Cir. 1979).

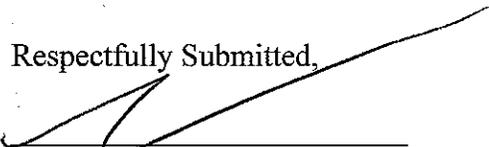
In this case, the bargaining unit consists of two employees: Carrie Cross and Marion Carson. If the Regional Director had correctly concluded that Ms. Cross was a confidential employee, then she would have been excluded from the bargaining unit. If Ms. Cross had been excluded from the bargaining unit, the unit would have been left with one-person, Ms. Carson. Since the Board does not recognize one-person bargaining units, the Regional Director should have found that the Petition did not present a question concerning representation, and should it should have been dismissed.

## V. CONCLUSION

For these reasons, the Employer's Request for Review should be GRANTED, and the decision of Region 26 should be REVERSED. Upon review, the Board should find that Carrie Cross is a confidential employee who is excluded from the bargaining unit. Further, as the

remaining one-person unit does not present a question concerning representation, the Petition should be dismissed.

Respectfully Submitted,



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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 12, 2012, copies of the aforesaid Employer's Request for Review have been served by e-file and was mailed, U.S.P.S., upon the following parties:

M. Kathleen McKinney  
Regional Director  
National Labor Relations Board, Region 15  
600 South Maestri Place, 7<sup>th</sup> Floor  
New Orleans, LA 70130

Kim Smith  
Staff Representative  
United Steel, Paper & Forestry, Rubber,  
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UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 26

In the Matter of:

**TEAMSTERS LOCAL 667,**

Employer,

and

**UNITED STEELWORKERS INTERNATIONAL  
UNION,**

Petitioner.

Case No. 26-RC-092292

The above-entitled matter came on for hearing pursuant to notice, before **DAVID W. GLISSENDORF**, Hearing Officer, at the National Labor Relations Board, Suite 350, The Brinkley Plaza Building, 80 Monroe Avenue, Memphis, Tennessee, on Wednesday, November 14, 2012, at 9:00 a.m.

Free State Reporting, Inc.  
1378 Cape St. Claire Road  
Annapolis, MD 21409  
(410) 974-0947



A P P E A R A N C E S

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**On Behalf of the Employer:**

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**On behalf of the Petitioner:**

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2874 Price Drive, Suite 1  
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I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Carrie Cross	20	26	44 56	51	--
Marion Carson	58	74	--	--	--

E X H I B I T S

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EXHIBITS

FOR IDENTIFICATION

IN EVIDENCE

BOARD'S

B-1(a) through 1(g)	6	7
B-2	7	7
B-3	15	15
B-4	65	65

P R O C E E D I N G S

(Time Noted: 9:39 a.m.)

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HEARING OFFICER GLISSENDORF: This is a formal hearing in the matter of Case 26-RC-092292 -- Teamsters Local 667 is the Employer -- before the National Labor Relations Board. The Hearing Officer appearing for the National Labor Relations Board is David W. Glissendorf.

All parties have been informed of the procedures of formal hearing before the Board by service of a Statement of Standard Procedures with the Notice of Hearing. I have additional copies of this statement for distribution to any -- if any party wishes more.

Will the counsel and representative please state their name for the record?

For the Petitioner?

MS. SMITH: Kim Smith.

HEARING OFFICER GLISSENDORF: Title?

MS. SMITH: I'm Staff Rep with the United Steelworkers.

HEARING OFFICER GLISSENDORF: For the Employer?

MR. MORRIS: Samuel Morris; Godwin, Morris, Laurenzi & Bloomfield, 50 North Front Street, Memphis, Tennessee 38103.

HEARING OFFICER GLISSENDORF: Are there any other appearances?

(No response.)

HEARING OFFICER GLISSENDORF: Let the record show no

1 further response.

2 Are there any persons, parties, or labor organizations  
3 in the hearing room at this time who claim an interest in  
4 this proceeding?

5 MS. SMITH: Yes. The two young ladies, right?

6 HEARING OFFICER GLISSENDORF: Let the record show no  
7 response.

8 MS. SMITH: Oh, okay, excuse me.

9 HEARING OFFICER GLISSENDORF: They're the employees in  
10 the unit, and they may be potential witnesses.

11 MS. SMITH: Okay.

12 HEARING OFFICER GLISSENDORF: Okay, I now propose to  
13 receive the formal papers that have been marked for  
14 identification as Board Exhibits 1(a) through (g) inclusive,  
15 Exhibit 1(g) being an Index and Description of the entire  
16 exhibit. The exhibit has already been shown to the parties.  
17 **(Board's Exhibit 1(a) through 1(g) marked for**  
18 **identification.)**

19 HEARING OFFICER GLISSENDORF: Are there any objections  
20 to receiving Board Exhibit 1 into the record?

21 MS. SMITH: No.

22 MR. MORRIS: No.

23 HEARING OFFICER GLISSENDORF: Petitioner?

24 MS. SMITH: No.

25 HEARING OFFICER GLISSENDORF: Employer?

1 MR. MORRIS: No.

2 HEARING OFFICER GLISSENDORF: Board Exhibit 1 is  
3 received, hearing no objections.

4 **(Board's Exhibit 1(a) through 1(g) received in evidence.)**

5 HEARING OFFICER GLISSENDORF: Okay, at this point in  
6 time I'd like to receive what had been marked as Board  
7 Exhibit 2. Board Exhibit 2 is a stipulation signed by the  
8 parties stipulating to the labor organization status of the  
9 Steelworkers and the jurisdictional commerce language as it  
10 relates to Teamsters 667 -- Teamsters Local 667, the  
11 Employer.

12 **(Board's Exhibit 2 marked for identification.)**

13 HEARING OFFICER GLISSENDORF: Do either of you have any  
14 objections to receiving Board Exhibit 2 into the record?

15 MS. SMITH: No.

16 MR. MORRIS: Employer has none.

17 HEARING OFFICER GLISSENDORF: No objection being heard,  
18 Board Exhibit 2 is received.

19 **(Board's Exhibit 2 received in evidence.)**

20 HEARING OFFICER GLISSENDORF: Just for the record I  
21 would like to stipulate, if possible, to one other commerce  
22 fact which is that Teamsters Local 667 receives -- and this  
23 is for, Mr. Morris, if you can stipulate to this on the  
24 record -- goods and products at the Brooks Road location in  
25 the past 12 months, a representative period, from points

1 located outside the state of Tennessee valued in excess of  
2 \$5,000.

3 MR. MORRIS: I'm sure that's true, Mr. Hearing Officer.

4 HEARING OFFICER GLISSENDORF: Okay, for the record.

5 Now, during our off-the-record discussions, we've  
6 discussed the petition, and I believe that Ms. Kim Smith, the  
7 United Steelworker Staff Representative, wishes to amend her  
8 petition; is that correct?

9 MS. SMITH: That's correct.

10 HEARING OFFICER GLISSENDORF: Okay. And you correct me  
11 if I'm wrong. The correct legal name of the Employer is  
12 Teamsters Local 667?

13 MR. MORRIS: Correct.

14 MS. SMITH: Uh-huh.

15 HEARING OFFICER GLISSENDORF: If the Director were to  
16 direct an election, that is the name that would appear on the  
17 ballot?

18 MR. MORRIS: Yes, sir.

19 MS. SMITH: Yes.

20 HEARING OFFICER GLISSENDORF: Okay. Teamsters Local 667  
21 is the name on the petition as it stands now. However, the  
22 name of the Union, the Petitioner, on the petition that was  
23 filed is the long Forestry, Rubber, Manufacturing, Energy,  
24 Allied Industrial name?

25 MS. SMITH: Right.

1 HEARING OFFICER GLISSENDORF: And the Petitioner, as I  
2 understand it, would like to amend the name of the Union, the  
3 Petitioner, to United Steelworkers International Union?

4 MS. SMITH: Correct.

5 HEARING OFFICER GLISSENDORF: Four words. Do you have  
6 any objection, Mr. Morris?

7 MR. MORRIS: No.

8 HEARING OFFICER GLISSENDORF: Okay, so the name of the  
9 Petitioner for the purposes of the petition is amended to  
10 United Steelworkers International Union.

11 Finally this petition was filed by a local  
12 steelworker --

13 MS. SMITH: Union officer.

14 HEARING OFFICER GLISSENDORF: -- officer.

15 MS. SMITH: Yes, it is.

16 HEARING OFFICER GLISSENDORF: And I believe that to the  
17 extent that it needs to be discussed on the record, Ms. Kim  
18 Smith is the actual steelworker Staff Representative of  
19 record for the purposes of this petition?

20 MS. SMITH: Correct.

21 HEARING OFFICER GLISSENDORF: And her correct business  
22 mailing address is on the Notice of Appearance she signed  
23 which the Court Reporter has. And that's where the  
24 transcript will be mailed.

25 MS. SMITH: Correct.

1 HEARING OFFICER GLISSENDORF: Okay. And, Mr. Morris,  
2 your transcript will be mailed to 50 North Front Street.

3 MR. MORRIS: Mr. Hearing Officer, we wanted to be sure  
4 the Region satisfies itself that the showing of interest  
5 comports with this amendment as to the Petitioner. And I  
6 know you'll do that. But if you're saying now the Petitioner  
7 is the USW International Union, we'd ask that the showing of  
8 interest be checked to make sure it reflects that --

9 HEARING OFFICER GLISSENDORF: And you're asking for an  
10 administrative showing of interest check?

11 MR. MORRIS: Yes.

12 HEARING OFFICER GLISSENDORF: Technically I believe that  
13 the names -- this long name is still the United Steelworkers.  
14 Some locals may still use the long eight or nine word name.  
15 Is that correct, Mr. Morris?

16 MR. MORRIS: Any time we refer to a local, we always use  
17 this United Steelworkers and then the particular local. But  
18 it is commonly known that the United Steelworkers stands for  
19 that long name that you have.

20 HEARING OFFICER GLISSENDORF: Okay.

21 MR. MORRIS: We don't have any problem with that. We  
22 just want to make sure you --

23 HEARING OFFICER GLISSENDORF: Okay. Now, one final  
24 matter I'd like to take up before I allow the parties to make  
25 a statement for the record, the petitioned for unit, as it is

1 on the petition that was filed, is to include all  
2 professional, office, and clerical employees. As I  
3 understand it, the Petitioner wishes to amend the unit to  
4 read, "All office clerical" -- included would be all office  
5 clerical employees employed by the Employer, by Teamsters 667  
6 at its 796 East Brooks Road offices in Memphis, Tennessee.  
7 Is that correct?

8 MS. SMITH: That's correct.

9 HEARING OFFICER GLISSENDORF: So the inclusion would be  
10 all office clerical employees only.

11 MS. SMITH: That's correct.

12 HEARING OFFICER GLISSENDORF: Employed by Teamsters 667  
13 at its Brooks Road offices -- 796 East Brooks Road offices in  
14 Memphis, Tennessee.

15 Mr. Morris, do you have any objection to that?

16 MR. MORRIS: No.

17 HEARING OFFICER GLISSENDORF: Excluded would be all  
18 other employees of Teamsters Local 667.

19 MR. MORRIS: We don't have any objection to the  
20 amendment, if that's what you're asking.

21 HEARING OFFICER GLISSENDORF: Right. You're not  
22 stipulating to the unit?

23 MR. MORRIS: Correct.

24 HEARING OFFICER GLISSENDORF: Excluded would be all  
25 other employees, guards, and supervisors as defined in the

1 Act.

2 MS. SMITH: Okay.

3 HEARING OFFICER GLISSENDORF: So we will consider that  
4 the petition has been amended, okay?

5 As I understand it, we're here today because the parties  
6 have been unable to reach a stipulated or consent election  
7 agreement on the terms of an election. And there are two  
8 employees in the bargaining unit apparently. That's what I  
9 understand from our off-the-record discussions.

10 And I'm not aware of any real unit issues at this time,  
11 so therefore, I'm going to let Ms. Kim Smith, Union first,  
12 state your position for the record as to any issues or what  
13 we are here today to litigate or develop what kind of a  
14 record.

15 **OPENING STATEMENT**

16 MS. SMITH: The position of the Petitioner, which is  
17 myself, the Steelworkers, is that the issues that we're  
18 bringing before the hearing today is that the young ladies  
19 that we are asking to be recognized as a unit, in the past  
20 the practice has been they've been recognized as a unit. And  
21 I can't really give you all the history around that, but  
22 there's some things that took place in August that hasn't  
23 happened.

24 I don't know if I'm doing this right or whatever. But  
25 so, therefore, we're asking that they be officially

1 recognized as a unit and have all rights to bargain a  
2 contract, be covered under that contract, and that they be  
3 handled as a union under the United Steelworkers in the  
4 future.

5 Is that what you wanted to hear?

6 HEARING OFFICER GLISSENDORF: Okay, and as it relates to  
7 any other employees that are working at Teamsters Local 667?

8 MS. SMITH: Well, initially there were three young  
9 ladies that -- when this first happened, we were requesting  
10 for three young ladies, but one young lady is no longer  
11 there. So it's the work that these ladies entail we're  
12 asking that's covered under the bargaining unit.

13 HEARING OFFICER GLISSENDORF: And the other people that  
14 are at the Union Hall that work there, they're not office  
15 clericals?

16 MS. SMITH: They're not office clerical.

17 HEARING OFFICER GLISSENDORF: Do you know their jobs or  
18 their titles?

19 MS. SMITH: One is a business agent. Others hold office  
20 like the secretary, the vice president, president, so on and  
21 so forth.

22 HEARING OFFICER GLISSENDORF: Okay. Can I ask has the  
23 Union, the Petitioner, made a request for voluntary  
24 recognition?

25 MS. SMITH: They made a request in 2010 and another

1 request was made on last Friday.

2 HEARING OFFICER GLISSENDORF: Okay. I should have made  
3 copies of this, but I'll show this to the parties. This is  
4 dated November 9th, 2012. It's a letter to  
5 Mr. Wayne Pairemore, the President of Teamsters Local 667,  
6 from the Steelworker District 9 Director, Daniel Flippo.

7 Do you recognize that letter?

8 MS. SMITH: I do. But I realize that this still had the  
9 three cards because that's what at the International, but  
10 it's really just two.

11 HEARING OFFICER GLISSENDORF: Would you show that to  
12 Mr. Morris?

13 MS. SMITH: Uh-huh.

14 HEARING OFFICER GLISSENDORF: Have you seen that letter,  
15 Mr. Morris, or do you recognize it?

16 MR. MORRIS: I haven't seen it. If we can go off the  
17 record, I can see if I can --

18 HEARING OFFICER GLISSENDORF: Okay, let's go off the  
19 record for a moment.

20 **(Off the record from 9:50 a.m. to 9:56 a.m.)**

21 HEARING OFFICER GLISSENDORF: Okay, I've shown both  
22 parties a copy of the November 9, 2012 letter from USW  
23 District 9 Director, Daniel Flippo, to Local 667  
24 President Wayne Pairemore, which constitutes a written request  
25 for voluntary recognition. And the parties I am proposing to

1 receive this as Board Exhibit 3 into the record for what it's  
2 worth.

3 **(Board's Exhibit 3 marked for identification.)**

4 HEARING OFFICER GLISSENDORF: Are there any objections  
5 to this?

6 MR. MORRIS: No, sir.

7 MS. SMITH: No.

8 HEARING OFFICER GLISSENDORF: For Mr. Morris, no?

9 Okay, so this is Board 3.

10 **(Board's Exhibit 3 received in evidence.)**

11 HEARING OFFICER GLISSENDORF: And, Ms. Kim Smith, has  
12 the Union received any response from the Teamsters Local 667?

13 MS. SMITH: No, we haven't.

14 HEARING OFFICER GLISSENDORF: Okay. Mr. Morris, are you  
15 aware of any response or any intentions?

16 MR. MORRIS: My understanding is we just received it.  
17 So I doubt there's been a response.

18 HEARING OFFICER GLISSENDORF: Okay. All right, with  
19 that I'll let Mr. Morris make his opening statement and state  
20 your position for the record.

21 **OPENING STATEMENT**

22 MR. MORRIS: Mr. Hearing Officer, we have some concern  
23 here about the unit in that there's no reference in  
24 exclusions to confidential employees, and one of the two  
25 employees in the proposed unit does payroll, has complete

1 access to all the local Union's financial records, pays  
2 bills, writes checks. And, you know, we're not really taking  
3 a position on that, but we think it's possible we might have  
4 to develop a bit of a record on that. Otherwise we don't  
5 know of any other issues.

6 HEARING OFFICER GLISSENDORF: And which of the two  
7 employees in the unit that are here today? Do you happen to  
8 know which of those two is --

9 MR. MORRIS: Yeah, it's Carrie Rhodes.

10 MS. CROSS: I am Carrie Cross.

11 MR. MORRIS: Okay.

12 HEARING OFFICER GLISSENDORF: So that's a potential  
13 issue that you would raise as confidential?

14 MR. MORRIS: Possibly. We'd at least like the reason  
15 they want to look at that.

16 HEARING OFFICER GLISSENDORF: Keep showing?

17 MR. MORRIS: They're not doing anything wrong there.

18 HEARING OFFICER GLISSENDORF: Okay, any other issues?

19 MR. MORRIS: No.

20 HEARING OFFICER GLISSENDORF: Okay. Would you be  
21 willing to stipulate that as to the other four employees that  
22 are employed and working out at the Teamsters 667 Hall, that  
23 they would not share a community of interest with the two  
24 office clericals that are --

25 MR. MORRIS: Yes.

1 HEARING OFFICER GLISSENDORF: -- petitioned for?

2 MR. MORRIS: Yes.

3 HEARING OFFICER GLISSENDORF: Okay, Mr. Morris, would  
4 you mind just stating for the record the names of those four  
5 individuals and their titles?

6 MR. MORRIS: I won't probably get this exactly correct,  
7 but it's Wayne Paimore is the President. That's  
8 P-a-i-r-m-o-r-e. Secretary-Treasurer is Ronnie Parkinson.  
9 And the Recording Secretary is James Sproles, S-p-r-o-l-e-s.  
10 And the other employee who is not an officer is Michael  
11 McGowan; that's M-c-G-o-w-a-n.

12 HEARING OFFICER GLISSENDORF: Okay. And not -- I'll not  
13 ask you too many questions as the counsel of record as  
14 opposed to a witness. But Mr. McGowan, is his title  
15 Assistant Business Manager? What is his title?

16 MR. MORRIS: It's just Business Agent as far as I know.

17 HEARING OFFICER GLISSENDORF: Business Agent. And he is  
18 actually responsible for, among other things, servicing  
19 employees of the United Parcel Service bargaining unit; is  
20 that correct?

21 MR. MORRIS: That's correct.

22 HEARING OFFICER GLISSENDORF: And so he processes  
23 grievances and represents employees for purposes of  
24 collective bargaining and goes out to the site and meets with  
25 the employees and Employer's representative. Is that an

1 accurate --

2 MR. MORRIS: Yes, sir.

3 HEARING OFFICER GLISSENDORF: Okay. Well, at this time  
4 I suppose we should probably call -- what is your name, young  
5 lady?

6 MS. CROSS: Carrie Cross.

7 MR. MORRIS: Mr. Hearing Officer, can we -- if we want  
8 to clear up that issue, do we have a stipulation on that,  
9 that those four are excluded because we're willing to agree  
10 to it.

11 HEARING OFFICER GLISSENDORF: Okay.

12 MR. MORRIS: I didn't hear from Petitioner whether they  
13 were willing to.

14 MS. SMITH: Oh, I'm in full agreement.

15 HEARING OFFICER GLISSENDORF: Okay, those four  
16 individuals, which is the only other four employees at the  
17 Local Hall, would constitute the other employees that are  
18 excluded. So we have a stipulation on the record that on  
19 those other four individuals, employees, are excluded  
20 appropriately.

21 Ms. Smith, correct?

22 MS. SMITH: I'm in agreement.

23 HEARING OFFICER GLISSENDORF: Mr. Morris, correct?

24 MR. MORRIS: Yes, Mr. Hearing Officer.

25 HEARING OFFICER GLISSENDORF: Okay. Let's go off the

1 record for 10 seconds or more.

2 (Off the record from 10:01 a.m. to 10:02 a.m.)

3 HEARING OFFICER GLISSENDORF: Ms. Smith, you indicated  
4 you'd like to respond to Mr. Morris' issue regarding the  
5 confidential nature of one of the employees.

6 MS. SMITH: Well, based on the conversation he just had,  
7 I believe the witnesses will testify to the fact that neither  
8 of them would be considered confidential employees under the  
9 definition because they do have interests and share  
10 responsibilities within the work.

11 HEARING OFFICER GLISSENDORF: Okay. Well, let's call  
12 our first witness. What is your name again?

13 MS. CROSS: Carrie Cross.

14 HEARING OFFICER GLISSENDORF: Carrie Cross.

15 Ms. Cross, if you would come up and have a seat here in  
16 the witness chair and I'll put you under oath.

17 (Whereupon,

18 **CARRIE CROSS**

19 was called as witness by and on behalf of the Petitioner and,  
20 after having been first duly sworn, was examined and  
21 testified on her oath as follows:)

22 HEARING OFFICER GLISSENDORF: Could you please state  
23 your name for the record?

24 THE WITNESS: Carrie Cross.

25 HEARING OFFICER GLISSENDORF: C-a-r-r-i-e?

1 THE WITNESS: C-a-r-r-i-e C-r-o-s-s.

2 HEARING OFFICER GLISSENDORF: Okay. And your title at  
3 the Teamsters 667?

4 THE WITNESS: Bookkeeper, insurance and pension clerk,  
5 secretary, and receptionist.

6 HEARING OFFICER GLISSENDORF: I'll let you start.

7 **DIRECT EXAMINATION**

8 Q. BY MS. SMITH: That's your title for your job?

9 A. Yes.

10 Q. And what does that entail?

11 A. Bookkeeping, I take care of the payroll, incoming bills,  
12 cutting the payroll checks for all the employees.

13 Secretarial duties, sending out warning letters, grievances.

14 Let's see.

15 HEARING OFFICER GLISSENDORF: When you -- could you  
16 elaborate? What do you mean sending out warning letters?

17 THE WITNESS: When our members are discharged or if the  
18 Employer sends out warning letters on the members, I have to  
19 send out letters to the companies, you know, letting them  
20 know the reason why they're receiving a warning letter. As  
21 far as the discharges, the grievant has to come in and fill  
22 out a grievance, and I have to send that in in a timely  
23 manner in order for it to be settled. They can do it  
24 locally, or they can take it to the Panel. But we do have to  
25 send out documentations to the Employer, so I have to get

1 that paperwork prepared and mail it out to the companies.

2 Q. BY MS. SMITH: So once the member wants to file a  
3 grievance, you take care of processing the grievance?

4 A. I process it, yes.

5 Q. Okay.

6 A. I process the grievance for the member.

7 Q. Okay.

8 A. If they're discharged, they have to come in and fill out  
9 a grievance, and I have to process that grievance and send it  
10 out to the company within 10 business days.

11 Q. And then you handle all the correspondence back and  
12 forth?

13 A. Right.

14 Q. Okay.

15 A. And I handle the mail.

16 Q. All mail?

17 A. All the mail that comes in. I have to date stamp the  
18 mail and give it to the right officer.

19 Q. So when you handle the mail when it comes in, you  
20 actually open the mail?

21 A. I open the mail.

22 Q. And then you --

23 A. Distribute it to the person who handles that.

24 Q. And what else do your roles?

25 A. Receptionist, answering the phone.

1 Q. All right.

2 A. Transferring the calls to the designated person.

3 Q. You don't have to be nervous. I mean you can tell this  
4 is really very laid back. Take a breath.

5 A. Okay. I handle the insurance and pension also.

6 Q. Okay, and what does that include?

7 A. That includes when a member calls in and want to check  
8 their insurance status, if they're having problems with their  
9 insurance. And members call in about their pension. They  
10 want to know -- check the status of their pension. So I find  
11 that information out in the system for them. So I deal with  
12 the members in reference to that.

13 Q. Okay.

14 A. I can also contact Central State in reference to their  
15 insurance if they're having problems with their insurance.  
16 Let them know when their insurance is established if they're  
17 a new hire.

18 Q. Uh-huh.

19 A. And again like I say, if they have problems with their  
20 insurance, want to know why they don't have coverage.

21 Q. So let me ask you. You heard Mr. Morris talk about  
22 confidential employees. Is there any of your work  
23 responsibilities that entails confidential information?

24 A. It does.

25 Q. Okay. And how do you handle that?

1 HEARING OFFICER GLISSENDORF: Could we just perhaps  
2 maybe elaborate and identify what you mean by what specific  
3 information you consider confidential?

4 THE WITNESS: Well, actually the information that's  
5 going to the IBT, the per capita, the Executive Board Meeting  
6 that we have on every second Sunday, all that information is  
7 confidential. But some of the agents they share all of that  
8 amongst each other, and they may share it amongst people  
9 outside the office. But I keep it confidential, and I try  
10 not to let them see in the system even though they do see  
11 what I'm doing.

12 For instance, like James Sproles, he's the recording  
13 secretary, and he does come in the office quite a bit wanting  
14 to know about how much money we have earned.

15 Q. BY MS. SMITH: Uh-huh.

16 A. And I have spoken with the President, Wayne Pairemore, in  
17 reference to this. And he said, "Well, he doesn't need to  
18 know this." But when we have the Executive Board Meeting, he  
19 still have access to it because I have to print out this  
20 information and provide it to them. So he still know how  
21 much the company has gained or lost.

22 Q. Well, let me ask you a question with the work. Does  
23 Ms. Marion, is she able to perform the duties that you just  
24 explained as well?

25 A. She can.

1 Q. She can?

2 A. But as far as bookkeeping, she doesn't because she  
3 doesn't have the training on that.

4 Q. Okay.

5 A. And she doesn't have the password. I'm the one who has  
6 the password.

7 Q. Okay. But as far as the confidential work, does she  
8 have access to any of that?

9 A. No.

10 Q. She does not?

11 A. No.

12 Q. So there is work that you know about that she doesn't  
13 know about?

14 A. Right, there is.

15 Q. Okay. So when you take vacation, does she fill in for  
16 you?

17 A. What I do, I process that work before I go on vacation.

18 Q. You process all your work?

19 A. Right.

20 Q. Especially the confidential work?

21 A. Yes. Just like the payroll, if I know I'm going out of  
22 town, I'll do it a week in advance. And I can already -- I  
23 can print out the payroll checks, so they'll be locked up in  
24 the safe.

25 Q. So she has no access to any of that?

- 1 A. No.
- 2 Q. Okay.
- 3 A. None.
- 4 Q. And when she's out of work, you backfill for her?
- 5 A. Right, because I'm still doing insurance and pension.
- 6 Q. Okay.
- 7 A. And that's what I was hired to do. And since Debra has  
8 retired, I'm the bookkeeper now. So I still do those duties  
9 when she's out on vacation, or if she is in the office and  
10 she's tied up, I answer the line and assist also.
- 11 Q. So as far as the confidential work is concerned, because  
12 that seems to be the issue in question, when you assumed your  
13 job, did you have a meeting with somebody that specifically  
14 told you these particular issues you weren't to discuss with  
15 anybody?
- 16 A. No.
- 17 Q. So you never were informed they were --
- 18 A. Never was informed.
- 19 Q. How did you know -- how do you know it's confidential  
20 then?
- 21 A. Just by knowing certain things that you do, like I just  
22 feel like everyone should not be a part of what I'm doing.
- 23 Q. So have you --
- 24 A. Know about what I'm doing. So I just take it upon  
25 myself to know right from wrong and what should be

1 confidential and what's not.

2 Q. And automatically you never shared any of that with  
3 Ms. Marion?

4 A. No.

5 Q. Okay.

6 MS. SMITH: All right, I don't have any further  
7 questions.

8 HEARING OFFICER GLISSENDORF: Okay, Mr. Morris. Do you  
9 need a minute?

10 MR. MORRIS: No, could we go off the record for just a  
11 second?

12 HEARING OFFICER GLISSENDORF: Okay, off the record.

13 (Off the record from 10:12 a.m. to 10:13 a.m.)

14 HEARING OFFICER GLISSENDORF: Mr. Morris.

15 **CROSS-EXAMINATION**

16 Q. BY MR. MORRIS: Now, Carrie, in terms of the bookkeeping  
17 program you use, is it something that's provided to Teamster  
18 Locals by the International, or are you aware of that?

19 A. It is.

20 Q. And is there a name for it? Or is it just the Teamster  
21 bookkeeping program, or what is it?

22 A. It has never been brought to my attention the name of  
23 it.

24 Q. Okay. And you're the one that operates that, right?

25 A. Yes.

1 Q. And that has the Union's financial records on it?

2 A. Yes.

3 Q. Okay. And you received training on that?

4 A. I did.

5 Q. From who?

6 A. Renee Pescey (ph.), she's with the International  
7 Brotherhood of Teamsters. And also Debra Cleveland that was  
8 the person who had just retired; she was the bookkeeper.

9 Q. Right, okay. And you sit in an office, the same office  
10 area as Marion or a separate office area?

11 A. It's a separate office.

12 Q. And you have a -- obviously you have a different  
13 computer. Is there also a different copy machine in there  
14 with you?

15 A. The computers are all the same and the copier is the  
16 same.

17 Q. Right, it's the same type. But you have your own?

18 A. Yes.

19 Q. And both computer and copier, right?

20 A. Yes.

21 Q. And in terms of the program, let's talk about what it  
22 does. You input receipts in there from the various companies  
23 of how much money you're getting in?

24 A. Receipts?

25 HEARING OFFICER GLISSENDORF: From the employers?

- 1 Q. BY MR. MORRIS: You get money in when a check comes in  
2 the door, what do you do with it? Like for dues?
- 3 A. I don't normally don't get checks from employers.
- 4 Q. Okay, most of it's automatic deduct now?
- 5 A. Yes.
- 6 HEARING OFFICER GLISSENDORF: Direct deposit?
- 7 THE WITNESS: Uh-huh.
- 8 Q. BY MR. MORRIS: And how do you account for that, or how  
9 is it accounted for in the program, if you know?
- 10 A. Repeat that.
- 11 Q. Okay. Do you --
- 12 A. The check that comes in to me from the companies?
- 13 Q. Yes. What happens to them?
- 14 A. I normally send checks out to the companies. They send  
15 me invoices. So what I do, I process the checks by the  
16 invoice that I receive.
- 17 Q. Okay.
- 18 A. But I don't receive checks coming in. I'm sending out.
- 19 Q. You're sending out a statement of how much the dues that  
20 the companies owe you?
- 21 A. The dues?
- 22 Q. Yes.
- 23 A. Yes, uh, that --
- 24 Q. Don't let me mislead you.
- 25 A. Okay.

1 Q. I'm just trying to find out what the program does.

2 A. I don't handle the dues. Now, what I do as far as the  
3 bookkeeping, I send out the checks from the invoices that  
4 comes into me that --

5 Q. Now, we're talking about --

6 A. -- need to be paid, like telephone bill --

7 Q. Right.

8 A. -- light bill.

9 Q. That's fine.

10 A. Invoices. And I just cut checks for them.

11 Q. Okay.

12 A. And like our payroll, I'll do our payroll checks and I  
13 send that out. And the dues clerk at the end of the month,  
14 she provides me with the information for the IBT for the per  
15 capita, so I send that to the IBT.

16 Q. And that's Marion?

17 A. That's Marion.

18 Q. Marion Carson.

19 A. Yeah, she handles the dues. And which I am training to  
20 do Titans also, so when she's not there, I can do it.

21 Q. Does the program you have, the bookkeeping program, tie  
22 in with your bank account, Teamsters Local's bank account?

23 A. Yes.

24 Q. And where is that bank account held?

25 A. First Tennessee Bank, yes. And we get the return checks

1 in. I do not open up that envelope. I date stamp it and  
2 give it to Ronnie Parkinson, the Secretary-Treasurer. Him  
3 and James go over the checks. Normally it would just be  
4 clarenced [sic] by itself, but Ronnie has James to help him  
5 out to go over the checks to make sure everything is correct.

6 And then he turns it back to me and then I process it in  
7 the system. And then I process a check and forward it to  
8 First Tennessee. Then I keep that in an envelope, and I put  
9 it in the office, in the Titans' office, and which we keep  
10 that door locked.

11 Q. Okay. And so where are the bank statements kept?

12 A. In the Titans' office in a locked door -- behind a  
13 locked door.

14 Q. And you have a key to that?

15 A. Yes. And everyone has access to getting those keys  
16 because they have the combination to the safe. So it's just  
17 not only me that has access to it. Everyone there knows the  
18 safe, and they know the key because I had asked which key go  
19 to which drawer.

20 Q. So there's a key and a safe? There's a key to the door?

21 A. Yes, uh-huh. In the Titans' office.

22 Q. And there's a combo to the safe?

23 A. Well, they can't -- yes, there's a -- yes.

24 Q. Okay.

25 A. The safe is in a different office. The safe is in the

1 office towards the bathroom. And everyone has the  
2 combination to the safe. So if they open up the safe, they  
3 can get the key, and they can go into all the offices and get  
4 whatever they choose to because we also keep petty cash also,  
5 and we keep cash in the Titans' office from the resales of  
6 the T-shirts that we sell. So they have access to going in  
7 to there to get that.

8 Q. Okay. And you write the payroll checks, right?

9 A. Yes.

10 Q. And you prepare deposits for the bank?

11 A. I do.

12 Q. Who actually takes them to the bank?

13 A. Ronnie takes the deposits to the bank.

14 Q. That's Ronnie Parkinson, the Secretary-Treasurer?

15 A. Ronnie Parkinson, Secretary-Treasurer. James has taken  
16 it before. Wayne has taken it before. And I have taken it  
17 before.

18 Q. Now, are your books reviewed by an accountant  
19 ultimately?

20 A. Yes. At the end of the year, our certified public  
21 accountant, Gary Purdy.

22 Q. Do you send anything during the year to the accountant  
23 or just at the end of the year?

24 A. Just the end of the year.

25 Q. And who does that?

1 A. Gary Purdy and I.

2 Q. Who do you normally get to sign the checks to vendors  
3 and suppliers and that kind of thing?

4 A. We have to have two signatures, and it's Ronnie  
5 Parkinson and Wayne Pairmore. And we do have a third  
6 signature that Ronnie added James Sproles just in case one of  
7 them are out.

8 Q. When they came and did the training on this computer  
9 program that does your finances, did they train Marion or  
10 just you?

11 A. The young lady from the IBT just only trained I.

12 MR. MORRIS: Dave, I may have a few more questions, but  
13 I'm sure you've got plenty. So I'm going to let you go  
14 ahead.

15 HEARING OFFICER GLISSENDORF: Okay. I'm going to ask  
16 you -- it's Carrie Cross, is it?

17 THE WITNESS: Yes, sir.

18 HEARING OFFICER GLISSENDORF: Ms. Cross, I'm going to  
19 ask you some questions straight out of our little manual  
20 about confidential employees. I think Mr. Morris has covered  
21 the nature of the "confidential" material you handle, which  
22 is mainly financial records information.

23 Does any of this alleged confidential material that  
24 you've been discovering relate to labor relations? In other  
25 words, do you have any access to the formulation of the

1 policies of the Teamsters Local 667 vis-à-vis its own  
2 employees?

3 THE WITNESS: (No response.)

4 HEARING OFFICER GLISSENDORF: In other words do you work  
5 under a policies and procedures manual or any kind of  
6 employee handbook? Are there rules?

7 THE WITNESS: No.

8 HEARING OFFICER GLISSENDORF: Does Teamsters Local 667  
9 have any workplace rules?

10 THE WITNESS: No.

11 HEARING OFFICER GLISSENDORF: Like you have to be on  
12 time, and if you're late, you might get a written warning  
13 or --

14 THE WITNESS: No.

15 HEARING OFFICER GLISSENDORF: So there's really no labor  
16 relations policy per se that you're aware of?

17 THE WITNESS: No, sir.

18 HEARING OFFICER GLISSENDORF: It's not like a  
19 traditional production facility where the managers have  
20 confidential information about employees that might be  
21 disciplined or written up or suspended that you would have  
22 access to?

23 THE WITNESS: No, sir.

24 HEARING OFFICER GLISSENDORF: And I mean obviously you  
25 probably deal with some medical records and social security

1 numbers that just under law is a matter of confidentiality.  
2 You have to be careful about that.

3 THE WITNESS: Well, we actually have a lot of members,  
4 you know, files is filed away, but they're not locked, so --

5 HEARING OFFICER GLISSENDORF: Okay.

6 THE WITNESS: The file cabinets are not locked. They  
7 don't have a key to them. So all of those social security  
8 numbers are open.

9 HEARING OFFICER GLISSENDORF: When you talk about "the  
10 Executive Board" -- did you use the word "Executive Board"?

11 THE WITNESS: Yes.

12 HEARING OFFICER GLISSENDORF: What is the Executive  
13 Board exactly?

14 THE WITNESS: We have that's when we go over -- well,  
15 it's the second Sunday of each month, and the Executive Board  
16 has to go over all the end of the month that I prepare for  
17 them, the books.

18 HEARING OFFICER GLISSENDORF: So who is the Executive  
19 Board?

20 THE WITNESS: We have James Sproles, Recording  
21 Secretary. We have Annette Bell; she's one of the Trustees.  
22 We have Troy Harris; he's a Trustee. Harvey Summers is a  
23 Trustee. And James Shipp is the Vice President.

24 So at the end of the month --

25 HEARING OFFICER GLISSENDORF: And you're not on the

1 Executive Board?

2 THE WITNESS: No, sir.

3 HEARING OFFICER GLISSENDORF: But are you present during  
4 those meetings?

5 THE WITNESS: I do come to the meetings.

6 HEARING OFFICER GLISSENDORF: To present your materials?

7 THE WITNESS: Yes.

8 HEARING OFFICER GLISSENDORF: Okay. I'd like to ask you  
9 a couple of questions about your community of interest  
10 with -- is it Mary Ann?

11 THE WITNESS: Marion.

12 MS. CARSON: Marion.

13 HEARING OFFICER GLISSENDORF: Marion. Last name again?

14 MS. CARSON: Carson.

15 HEARING OFFICER GLISSENDORF: Carson. You both have  
16 separate offices?

17 THE WITNESS: We do.

18 HEARING OFFICER GLISSENDORF: And does either of you  
19 share your office with anybody else?

20 THE WITNESS: No.

21 HEARING OFFICER GLISSENDORF: And in terms of the hall,  
22 when you walk in the front door, as I recall there used to be  
23 a little lobby area with a glass window and then an open area  
24 where ladies sat at desks. Is that area now vacant and you  
25 have separate offices off to the side? Are your offices in

1 the front of the hall?

2 THE WITNESS: I work out of both offices because, as the  
3 cutback, Ronnie has changed as far as our technician for the  
4 computer. So I still have access to the one in the front  
5 because it has not been changed over to the one in the -- on  
6 the bookkeeping side, so I use both computers. I do the  
7 bookkeeping on this side and insurance and pension also. But  
8 when she's on vacation, I come to the front. So I use both  
9 offices.

10 HEARING OFFICER GLISSENDORF: Okay. And --

11 THE WITNESS: But I only perform the bookkeeping on one  
12 side.

13 HEARING OFFICER GLISSENDORF: And Ms. Carson's office  
14 is --

15 THE WITNESS: In the front.

16 HEARING OFFICER GLISSENDORF: So is it that front open  
17 area that I'm speaking of?

18 THE WITNESS: Yes.

19 HEARING OFFICER GLISSENDORF: Okay. And then these  
20 other four individuals, the officers and Mr. McGowan?

21 THE WITNESS: Uh-huh.

22 HEARING OFFICER GLISSENDORF: Are their offices down the  
23 hall?

24 THE WITNESS: James' office is right across from the  
25 bookkeeping office. Then there's the bathroom and then

1 Wayne's office. And Wayne's office is directly in front of  
2 Ronnie's office. And then Mike McGowan is on farther down.

3 HEARING OFFICER GLISSENDORF: Okay. And do you have an  
4 assigned shift time to report to work generally?

5 THE WITNESS: Eight to 5:00.

6 HEARING OFFICER GLISSENDORF: Eight to 5:00. And what  
7 about Ms. Carson? Are you aware of her?

8 THE WITNESS: Eight to 5:00.

9 HEARING OFFICER GLISSENDORF: Eight to 5:00. What about  
10 the other four individuals at the hall? Do they have an  
11 assigned shift of 8:00 to 5:00?

12 THE WITNESS: Yes, but they don't come -- I don't think  
13 it's an assigned shift for them.

14 HEARING OFFICER GLISSENDORF: Okay.

15 THE WITNESS: In the past, past practice they would come  
16 in at 8 o'clock, the people before them. But the new  
17 electors they come in -- per se Ronnie and Wayne come around  
18 10:00, 10:30. James will come in about 8:00, 8:30.

19 HEARING OFFICER GLISSENDORF: And do you get breaks, or  
20 do you just take a break whenever you feel like it?

21 THE WITNESS: We just take a break whenever we feel like  
22 it.

23 HEARING OFFICER GLISSENDORF: So there's no assigned  
24 breaks?

25 THE WITNESS: No.

1 HEARING OFFICER GLISSENDORF: Everybody use the same  
2 break room? You have a break room?

3 THE WITNESS: Yes, we do.

4 HEARING OFFICER GLISSENDORF: With a coffee pot and --

5 THE WITNESS: Yes.

6 HEARING OFFICER GLISSENDORF: -- little refrigerator?

7 THE WITNESS: Uh-huh.

8 HEARING OFFICER GLISSENDORF: A sink?

9 THE WITNESS: Uh-huh.

10 HEARING OFFICER GLISSENDORF: So everybody there uses  
11 the same break room probably, right?

12 THE WITNESS: Yeah, we do.

13 HEARING OFFICER GLISSENDORF: Okay, all right.

14 THE WITNESS: I'm just saying sometimes we break at our  
15 desk.

16 HEARING OFFICER GLISSENDORF: Do you have an assigned  
17 lunch period, or do you just eat whenever?

18 THE WITNESS: I just eat whenever.

19 HEARING OFFICER GLISSENDORF: Okay. And can I ask you  
20 how you would describe the differences in the duties of  
21 yourself and the other four individuals that work out at the  
22 Local 667 Hall in terms of what they do, how you would be  
23 distinguished from them, and perhaps how you might be  
24 distinguished from Ms. Carson, or how you and Ms. Carson do  
25 similar functions in terms of using typewriters and answering

1 telephones? Just to the best of your ability.

2 THE WITNESS: Well, that is the similarity of Marion  
3 and I. We use typewriters. We answer the phone. We do  
4 receptionist work. We both do insurance and pension. I'm in  
5 the process of training in the Titans, and that's what she  
6 does, the Titans, which deals with the dues from the members.

7 The difference in my job and the business agents, they  
8 process the grievance as far as writing it up. And then they  
9 give it to me, and then I process it and send out the cover  
10 sheet with it and send it to the company. They deal locally  
11 with the members that come in with complaints, so they deal  
12 one-on-one with the business agents. I just meet and greet  
13 the members and let them let go and speak with the business  
14 agents.

15 HEARING OFFICER GLISSENDORF: And Ms. Carson does the  
16 same thing?

17 THE WITNESS: Yes, she does.

18 HEARING OFFICER GLISSENDORF: She's what you might call  
19 a receptionist, so to speak? You receive people?

20 THE WITNESS: Yes.

21 HEARING OFFICER GLISSENDORF: Even if it's a traveling  
22 salesman that wants to sell you on a new computer system or  
23 something?

24 THE WITNESS: No, we let them speak with the Secretary-  
25 Treasurer.

1 HEARING OFFICER GLISSENDORF: Right, but you would  
2 though say, "Who are you?"

3 THE WITNESS: We would meet and greet.

4 HEARING OFFICER GLISSENDORF: I'm here to sell  
5 something. And you would go get one of the business agents?

6 And do you ever go out and negotiate contracts with  
7 employers?

8 THE WITNESS: No.

9 HEARING OFFICER GLISSENDORF: Do you ever attend NLRB  
10 elections where employees are voting to --

11 THE WITNESS: No.

12 HEARING OFFICER GLISSENDORF: Does Ms. Carson do either  
13 of those to your knowledge?

14 THE WITNESS: No.

15 HEARING OFFICER GLISSENDORF: But do the business agents  
16 perform those functions?

17 THE WITNESS: They do.

18 HEARING OFFICER GLISSENDORF: Are you paid on a salary  
19 or an hourly basis?

20 THE WITNESS: Hourly.

21 HEARING OFFICER GLISSENDORF: And are you aware of  
22 what -- how Ms. Carson is paid, hourly or salary?

23 THE WITNESS: Hourly.

24 HEARING OFFICER GLISSENDORF: And how about the  
25 Business -- the other four gentlemen that work there?

1 THE WITNESS: They're salary.

2 HEARING OFFICER GLISSENDORF: They're on salary. Is  
3 there any distinction between the benefits that you and  
4 Ms. Carson -- do you and Ms. Carson pretty much receive the  
5 same benefits?

6 THE WITNESS: Same benefits.

7 HEARING OFFICER GLISSENDORF: Health insurance?

8 THE WITNESS: Yes --

9 HEARING OFFICER GLISSENDORF: Pension, Teamsters'  
10 pension?

11 THE WITNESS: Yes.

12 HEARING OFFICER GLISSENDORF: And I assume the other  
13 four get -- are participating in a Teamsters' pension?

14 THE WITNESS: They are, right.

15 HEARING OFFICER GLISSENDORF: Is there anything that  
16 distinguishes you and Mr. Carson's benefits --

17 THE WITNESS: No.

18 HEARING OFFICER GLISSENDORF: -- from the other four in  
19 terms of dental insurance or sick days or vacation?

20 THE WITNESS: Sick days, we have 12 a year. The  
21 business agents, they don't have a limit on their sick days.

22 HEARING OFFICER GLISSENDORF: No limit on the --

23 THE WITNESS: No limit on theirs.

24 HEARING OFFICER GLISSENDORF: -- other four. But you  
25 and Ms. Carson both get 12 sick days a year?

1 THE WITNESS: Right, 12 sick days a year.

2 HEARING OFFICER GLISSENDORF: Probably no need for  
3 assigned parking spaces, right?

4 THE WITNESS: No.

5 HEARING OFFICER GLISSENDORF: Okay.

6 Do you have a supervisor per se, or is it just any of  
7 those four gentlemen? Or do you actually have somebody  
8 that's assigned as your supervisor?

9 THE WITNESS: I have always went by the president and  
10 secretary-treasurer as my supervisors. I was never told I  
11 was being assigned.

12 HEARING OFFICER GLISSENDORF: Okay. Have you ever been  
13 counseled or disciplined or issued any sort of counseling or  
14 verbal warnings?

15 THE WITNESS: No, never had any.

16 HEARING OFFICER GLISSENDORF: This payroll system you  
17 use, is that an Excel program?

18 THE WITNESS: It is.

19 HEARING OFFICER GLISSENDORF: So you're proficient in  
20 Excel?

21 THE WITNESS: No, let's go back.

22 HEARING OFFICER GLISSENDORF: Access?

23 THE WITNESS: Intuit.

24 HEARING OFFICER GLISSENDORF: Oh, Intuit?

25 THE WITNESS: Intuit, yes.

1 HEARING OFFICER GLISSENDORF: Okay. Do the other four  
2 gentlemen that are at the hall working, are they also  
3 proficient in this particular Intuit program?

4 THE WITNESS: No, they're not even proficient with the  
5 computer. But no.

6 HEARING OFFICER GLISSENDORF: Well, I'm not going to go  
7 into the computer proficiency.

8 And so do you happen to know -- I mean Ms. Carson is  
9 here to testify on her own behalf. But do happen to know  
10 whether she is also proficient on these computer systems?

11 THE WITNESS: She is.

12 HEARING OFFICER GLISSENDORF: And you know that from  
13 personal experience?

14 THE WITNESS: Yes.

15 HEARING OFFICER GLISSENDORF: Observation?

16 THE WITNESS: Yes.

17 HEARING OFFICER GLISSENDORF: You don't punch a time  
18 clock or anything, do you?

19 THE WITNESS: No.

20 HEARING OFFICER GLISSENDORF: Sign a sign-in sheet, time  
21 sheet, or anything like that?

22 THE WITNESS: No.

23 HEARING OFFICER GLISSENDORF: Okay. I don't have any  
24 further questions at this time.

25 Ms. Smith, do you have any follow-up questions?

1 MS. SMITH: I do.

2

**REDIRECT EXAMINATION**

3 Q. BY MS. SMITH: How long have you been employed there?

4 A. Four years.

5 Q. Four years?

6 A. Uh-huh.

7 Q. And in your four years of employment, has anybody ever  
8 told you that you were a confidential employee?

9 A. No.

10 Q. Have you ever heard that term used before today?

11 A. No.

12 Q. In your four years of working, has anybody ever treated  
13 you -- let me say -- you've never signed a document stating  
14 you were a confidential employee?

15 A. No.

16 Q. Okay. And you talked about the board meeting. That  
17 every second Sunday they have this board meeting that goes  
18 over the finances. Those confidential items are discussed in  
19 that board meeting?

20 A. Yes. And then they also have copies of it. I do a  
21 printout, and each Executive Board member receives a copy for  
22 their records.

23 Q. So that wouldn't be considered confidential, would it?

24 A. I wouldn't think so.

25 Q. Based on the activities in the last, I guess, few

1 months, can you explain why we're here? I mean because  
2 you've pretty much been practicing under the rules of a  
3 contract; is that correct?

4 A. Yes.

5 MR. MORRIS: I'll have to object to that. I mean that's  
6 not a proper subject for the hearing. That doesn't go to the  
7 issue whether she's a confidential employee or not. We're  
8 not here to litigate whether they need a Union or not.

9 MS. SMITH: But it does explain the fact that they've  
10 been treated as one group before today.

11 HEARING OFFICER GLISSENDORF: Well, to the extent that  
12 we should maybe just brush on to the subject of collective  
13 bargaining history, Mr. Morris?

14 MR. MORRIS: Sure.

15 HEARING OFFICER GLISSENDORF: Standing objection.

16 MR. MORRIS: Okay.

17 HEARING OFFICER GLISSENDORF: I'm inclined to agree, but  
18 I think that it's relevant. Because in any R case hearing  
19 like this where we're discussing a unit issue, I think that  
20 we should probably at least brush on the collective  
21 bargaining history. So to the extent there is any.

22 MR. MORRIS: Sure.

23 HEARING OFFICER GLISSENDORF: But if it starts getting  
24 too lengthy, you can intercede at any time and object.

25 But I'll allow you to continue, Ms. Smith.

1 Q. BY MS. SMITH: The practice in your workplace has been  
2 that you've worked together collectively, correct?

3 A. Yes.

4 Q. And I understand that there was a practice that you --  
5 even though there wasn't official agreement, you all worked  
6 by the work rules of a specific document; is that correct?

7 A. There's what?

8 Q. What were your work -- Court Reporter was questioning  
9 about work rules --

10 HEARING OFFICER GLISSENDORF: Hearing Officer.

11 Q. BY MS. SMITH: -- policies, procedures, and things like  
12 that, correct? Whether there was policies and procedures  
13 that you work by?

14 A. Right.

15 Q. Don't get nervous. Don't worry him over there.

16 A. Okay.

17 HEARING OFFICER GLISSENDORF: I notice you have a  
18 document in front of you there.

19 THE WITNESS: Yeah, that's --

20 HEARING OFFICER GLISSENDORF: I'm not going, you know,  
21 I'm not going to ask it to be introduced or anything.

22 THE WITNESS: Oh, this is just our proposals.

23 HEARING OFFICER GLISSENDORF: Okay, so --

24 Q. BY MS. SMITH: So my question is have you been working  
25 by what you're considering the proposal here today?

1 A. Yes.

2 Q. You have?

3 HEARING OFFICER GLISSENDORF: Okay, let's just -- I  
4 think for the record for historical context -- and,  
5 Mr. Morris, you can correct me if I'm wrong. I believe that  
6 back in late from the documents I've received and reviewed  
7 off the record, that apparently there was a written request  
8 for voluntary recognition made. And along with that back in  
9 2010 and 2011, there was a contract that was apparently  
10 submitted with the voluntary recognition request.

11 And you can answer this. Was that a document that you  
12 helped prepare?

13 THE WITNESS: I did not.

14 HEARING OFFICER GLISSENDORF: Okay.

15 THE WITNESS: Debra Cleveland prepared this proposal for  
16 us.

17 HEARING OFFICER GLISSENDORF: The lady that trained you  
18 and has since retired?

19 THE WITNESS: Yes.

20 HEARING OFFICER GLISSENDORF: But she was the third --

21 THE WITNESS: Yes, she was the third person.

22 HEARING OFFICER GLISSENDORF: -- person in your  
23 "department"?

24 Does your department have a name, by the way?

25 THE WITNESS: No.

1 HEARING OFFICER GLISSENDORF: And I believe that's what  
2 Ms. Smith is alluding to.

3 MS. SMITH: That's what I'm trying to understand.

4 HEARING OFFICER GLISSENDORF: And I don't know, I mean  
5 are you saying that tacitly the officers at the hall have  
6 been sort of going by this proposed?

7 THE WITNESS: They have.

8 HEARING OFFICER GLISSENDORF: But it's never been  
9 signed?

10 THE WITNESS: That's correct.

11 HEARING OFFICER GLISSENDORF: So it's not actually an  
12 executed collective bargaining agreement.

13 Sam, do you have something to say?

14 MR. MORRIS: I'll wait till my opportunity to question  
15 the witness.

16 HEARING OFFICER GLISSENDORF: Let me -- if you want, you  
17 can produce the document and show it to Mr. Morris and ask  
18 that it be entered in as an exhibit. It's up to you. He may  
19 object.

20 MS. SMITH: I have a feeling he's going to object.

21 MR. MORRIS: Yeah, I mean my understanding is that  
22 there's no contract. There never was a contract.

23 THE WITNESS: Right.

24 MR. MORRIS: There was a proposal back at the first date  
25 you mentioned, and that's all it was.

1           And also my understanding is that generally the office  
2 clericals are paid according to -- in line with a Teamster  
3 collective bargaining agreement. And Carrie can disagree,  
4 but when I questioned her, that is, you know, one of the  
5 national agreements.

6           There is no history of collective bargaining. I can get  
7 to that, too, by testimony if you want.

8           THE WITNESS: Well, let me say this for the record as  
9 far as bookkeeping as far as the confidentiality. You have  
10 to have a password in order to get on the system and that's  
11 something that I do not share with anyone. Now, the IBT has  
12 access to tapping into it, you know, they can get into it.  
13 But anyone here locally in order to get on it, you have to  
14 have a password, and I have a password that I don't share  
15 with anyone.

16 Q.   BY MS. SMITH: But you wouldn't share a password whether  
17 it was confidential work or not, right?

18 A.   Right.

19 Q.   I mean when you're assigned a password within the  
20 workplace, that's your assigned password whether it's  
21 confidential work or not?

22 A.   Right.

23           HEARING OFFICER GLISSENDORF: Could I just ask -- are  
24 you done, Ms. Smith?

25           MS. SMITH: Yes.

1 HEARING OFFICER GLISSENDORF: How is your -- you said  
2 you were paid hourly?

3 THE WITNESS: Yes.

4 HEARING OFFICER GLISSENDORF: And Ms. Carson as well?

5 THE WITNESS: Yes.

6 HEARING OFFICER GLISSENDORF: Who keeps track of the  
7 time? How is the time captured? You just assume it's 40  
8 hours a week? Or do you ever work overtime?

9 THE WITNESS: We don't get paid for overtime, but we  
10 work overtime. I come in early every day, every day 30 to 45  
11 minutes every day. And I leave sometimes 30 minutes after my  
12 end time. And I go by the calendar. I mark on the calendar  
13 if somebody is taking a vacation day. Or if they're out  
14 sick, I mark it on the calendar and then I note it in the  
15 system when I do the payroll. It's on their check.

16 HEARING OFFICER GLISSENDORF: So you're the timekeeper?

17 THE WITNESS: Yes.

18 HEARING OFFICER GLISSENDORF: So to speak. Do you keep  
19 track of Ms. Carson's time?

20 THE WITNESS: I keep track of everyone that's in the  
21 office time.

22 HEARING OFFICER GLISSENDORF: But you don't record when  
23 Mr. Sproles comes to work and when he leaves? You're talking  
24 about --

25 THE WITNESS: No.

1 HEARING OFFICER GLISSENDORF: -- days off, vacation  
2 days.

3 THE WITNESS: Right, uh-huh.

4 HEARING OFFICER GLISSENDORF: And you all, of course,  
5 share the same holidays, correct?

6 THE WITNESS: Yes.

7 HEARING OFFICER GLISSENDORF: Mr. Morris, any other  
8 questions?

9 MR. MORRIS: Yes.

10 **RECROSS-EXAMINATION**

11 Q. BY MR. MORRIS: The Executive Board meetings, you said  
12 you attend, Carrie; is that --

13 A. Uh-huh.

14 Q. -- right?

15 A. On Sundays.

16 Q. On Sundays, that's the second Sunday of every month?

17 A. Right.

18 Q. And they're held when about what time?

19 A. We have to be there by 12:00, so they can look over the  
20 books before the meeting starts at 2:00.

21 Q. When you say look over the books, is that something you  
22 print out from the program, or what is it you prepare for  
23 them?

24 A. The end of the month, it gives you the details of  
25 everything, all the checks that have come -- have gone out,

1 all the payroll checks, the capita, all the invoices that I  
2 received, everything.

3 Q. And generally while there's a president and secretary-  
4 treasurer, does the Executive Board have to approve the  
5 finances? Is that their function under your working bylaws?

6 A. Right, they have the final upon it before I send it to  
7 the IBT to the Secretary.

8 Q. In those meetings is there occasionally a question about  
9 a bill or a vendor or a phone bill --

10 A. Yes.

11 Q. -- or that kind of thing?

12 A. Yes.

13 Q. And some of them might be directed at you?

14 A. Well, no, because the ones that have --

15 Q. Yeah, not why you paid it, but just how much or  
16 whatever?

17 A. No, one of the questions was they wanted to know why we  
18 had a check for union dues. They didn't know we have to  
19 pay -- we pay union dues.

20 Q. Right.

21 A. So it was a question like that. Then another issue we  
22 had like Mike McGowan, you know, why his bill was so high,  
23 you know.

24 Q. His travel?

25 A. His travel, yes, and his lunch meals, stuff like that.

1 And we have to address that actually with the person that  
2 made that bill --

3 Q. Well, would you say --

4 A. -- not my end.

5 Q. You pay union dues? You and Marion pay Teamster union  
6 dues?

7 A. Yes.

8 Q. And you just have a Teamster membership card; is that  
9 right?

10 A. I do, yes.

11 Q. Right.

12 A. But the Executive Board, they just said -- they  
13 questioned that bill. Why is -- these dues, what is this  
14 for? And they didn't know we pay union dues.

15 Q. Sure. If -- assuming the Union is certified, if the  
16 Union wanted to prepare a proposal to make to the  
17 Steelworkers, you said none of them are very fast with the  
18 computer. Who would they seek out to prepare the proposal  
19 and type it up, for instance, or to deal with it?

20 A. Marion or I.

21 Q. And who would they -- do you know who would present  
22 those issues to you to prepare the proposal in the event  
23 there is collective bargaining with an appropriate unit at  
24 the Union?

25 A. Probably Wayne.

1 Q. And if they needed -- if they had payroll issues to  
2 discuss as to who was paid what and how much they should be  
3 paid, if there was a raise contemplated, different benefits  
4 contemplated, would you be the one that has that information?

5 A. Yes, because they have to sign off on it -- Wayne and  
6 Ronnie -- on our payroll raises.

7 Q. And in terms of the benefits, you are, in addition to  
8 your salary, which you said you just routinely pay yourself  
9 40 hours a week regardless if you work overtime. But there's  
10 health insurance through Central States?

11 A. Central States, yes.

12 Q. And there's pension through Central States?

13 A. Yes.

14 Q. And that's another -- is there another pension or 401(k)  
15 or something?

16 A. SRT.

17 Q. What's SRT?

18 A. Southern Region pension.

19 Q. And are you the one that makes -- writes the checks that  
20 go to those outfits?

21 A. Yes.

22 MR. MORRIS: I think that's all I have.

23 HEARING OFFICER GLISSENDORF: For record I would like to  
24 state that in the state of Tennessee, Mississippi, Arkansas,  
25 pretty much these states that Teamsters 667 represents in

1 place, it's not just members whose materials you're  
2 processing, but it's everyone in the bargaining unit. But  
3 that's just a technical thing.

4 MR. MORRIS: Dave, that's really not true.

5 THE WITNESS: I don't think so.

6 MR. MORRIS: We can clear that out through testimony, if  
7 you want to.

8 HEARING OFFICER GLISSENDORF: Well, in terms of union  
9 dues, it's members.

10 MR. MORRIS: They don't handle the -- they handle  
11 questions --

12 HEARING OFFICER GLISSENDORF: But grievances and --  
13 okay. Well, I'll retract that statement.

14 MR. MORRIS: Okay.

15 HEARING OFFICER GLISSENDORF: I would like to also state  
16 that we did start the hearing at 9:40 a.m. or so.

17 MS. SMITH: Nine thirty-nine.

18 HEARING OFFICER GLISSENDORF: Do you receive any bonuses  
19 or any kind of incentive pay?

20 THE WITNESS: No.

21 HEARING OFFICER GLISSENDORF: Are you aware of whether  
22 any of the other -- does Ms. Carson? Are you aware of  
23 whether Ms. Carson?

24 THE WITNESS: No, she doesn't receive any bonuses.

25 HEARING OFFICER GLISSENDORF: Are you aware of whether

1 any of these other four individuals that work at the hall  
2 receive bonuses or any kind of incentive pay? Or do you  
3 know?

4 THE WITNESS: No, sir, I'm not aware.

5 HEARING OFFICER GLISSENDORF: Okay. Any other questions  
6 for Ms. --

7 **FURTHER REDIRECT EXAMINATION**

8 Q. BY MS. SMITH: I just have one last question. And that  
9 is with your membership, if anybody challenges the finances  
10 based on whatever their reports are, do they have a right to  
11 assess the paperwork to see or addressing of their concerns?  
12 For example, if I'm a member and I'm challenging some of the  
13 finances, how would I proceed to find out if that is being  
14 handled correctly? If I came to you, would you go over it?

15 A. Yes, I assume the Secretary-Treasurer, Ronnie  
16 Parkinson --

17 Q. Okay.

18 A. -- for assistance on that. Because I wouldn't do it  
19 one-on-one with that person if they're just coming to me in  
20 reference to that.

21 Q. Okay, but you --

22 A. I will go to upper management and include them on that.

23 Q. And then they will go over whatever questions or  
24 concerns the member has in reference to -- in relation to the  
25 finances?

1 A. Yes.

2 Q. Now, as far as the confidential, of course you don't  
3 want all your documentation just floating all over the  
4 membership and workplace. So you don't allow them to take  
5 any copies out, correct?

6 A. The Executive Board has copies.

7 Q. But as far as the member, they couldn't?

8 A. Oh, no, not the members.

9 Q. Okay.

10 **HEARING OFFICER GLISSENDORF:** Okay, you're released and  
11 we're going to go off the record momentarily.

12 (Witness excused.)

13 (Off the record from 10:47 a.m. to 11:09 a.m.)

14 **HEARING OFFICER GLISSENDORF:** Ms. Carson, I'd like you  
15 to please come up and take the witness chair, and I'll put  
16 you under oath.

17 (Whereupon,

18 **MARION CARSON**

19 was called as a witness by and on behalf of the Petitioner  
20 and, after having been first duly sworn, was examined and  
21 testified on her oath as follows:)

22 **HEARING OFFICER GLISSENDORF:** Okay, thank you. You may  
23 have a seat, and please state your name for the record and  
24 spell it?

25 **THE WITNESS:** Marion, M-a-r-i-o-n, Carson, C-a-r-s-o-n.

1 HEARING OFFICER GLISSENDORF: And your title,  
2 Ms. Carson?

3 THE WITNESS: We sometimes call ourselves Administrative  
4 Assistants.

5 HEARING OFFICER GLISSENDORF: And when you say we, who's  
6 we?

7 THE WITNESS: Carrie and I and when Debra was there.

8 HEARING OFFICER GLISSENDORF: And that would be Debra --

9 THE WITNESS: Cleveland.

10 HEARING OFFICER GLISSENDORF: -- Cleveland. And when  
11 did she retire?

12 THE WITNESS: The end of June last year, 2012.

13 HEARING OFFICER GLISSENDORF: Of this year?

14 THE WITNESS: Eleven.

15 HEARING OFFICER GLISSENDORF: Eleven, last year?

16 THE WITNESS: Last year.

17 HEARING OFFICER GLISSENDORF: And I'm going to let  
18 Ms. Smith start. Does that stand with you, Mr. Morris?

19 MR. MORRIS: Of course.

20 **DIRECT EXAMINATION**

21 Q. BY MS. SMITH: Ms. Marion, how long have you been  
22 working in your position?

23 A. I've been there full time for 13 years.

24 Q. Okay, and what does your responsibilities entail?

25 A. I'm the dues clerk. I do secretarial work for the

1 agents. I help the membership with their insurance and  
2 pensions.

3 Q. And as far as the testimony you heard this morning in  
4 reference to the accounting and bookkeeping, do you ever  
5 access that?

6 A. I was trained when Debra retired. She first trained me  
7 and I refused the job as a full-time job because I knew that  
8 I was going to be retiring in a couple of years. I knew that  
9 Carrie was going to be there for a while. So I asked that  
10 Carrie take over the job and let me continue what I have been  
11 doing.

12 Q. Okay, so Carrie assumed the job, not because of  
13 confidentiality but because you knew you were going to  
14 retire?

15 A. Right.

16 HEARING OFFICER GLISSENDORF: I'd like the record to  
17 reflect that Ms. Carson was present in the hearing room  
18 during Ms. Carrie's testimony --

19 MS. SMITH: Okay.

20 HEARING OFFICER GLISSENDORF: -- for the entire  
21 duration. Okay. Any objection?

22 MR. MORRIS: No, that's fine.

23 Q. BY MS. SMITH: And when do you plan to retire?

24 A. I'm planning on retiring the end of next year.

25 Q. Okay.

1 A. Provided everything goes well. If not, I don't know.

2 Q. And when you talk about Ms. Debra, correct, are you  
3 aware of her putting any documentation together -- proposal  
4 together for workplace practices?

5 A. As far as doing a contract for us?

6 Q. Yes, ma'am.

7 A. Yes. Yes, that was done in 2010.

8 Q. 2010? And how did that all come about?

9 A. We had been talking about going under a collective  
10 bargaining agreement for some time. Because the election was  
11 coming up that year and we've always known that should new  
12 officers come in, we could be replaced. It's never happened  
13 since I've been there or known about the Union. But it's  
14 always a possibility that the new regime that comes in can  
15 fire you and hire whoever they want. So we decided we wanted  
16 a collective bargaining agreement to protect our job.

17 Q. Okay. And what was the result of that?

18 A. I don't know exactly what happened, but we know that  
19 Henry Perry, who was the President at the time --

20 MR. MORRIS: Okay, I'm going to object to any further  
21 testimony on this. First of all, we're getting far afield  
22 from the unit issue.

23 Secondly, if we're going to be talking about what  
24 Mr. Perry did or said, I realize we're loose on hearsay  
25 rules. But he's not here. He's not going to be here to

1 testify. And I don't know that what he might have said back  
2 then is really relevant to what we're doing here today  
3 anyway. So I think we've probably had enough of this.

4 HEARING OFFICER GLISSENDORF: Okay, --

5 MR. MORRIS: I received the documents. I probably will  
6 object to them because I don't know again what they have to  
7 do with the unit issue.

8 HEARING OFFICER GLISSENDORF: Right, well, she's going  
9 to -- I think I'm going to --

10 MR. MORRIS: Can we get to that?

11 HEARING OFFICER GLISSENDORF: As far as what Mr. Perry  
12 may or may not have said, that's fine. I'll sustain that  
13 objection.

14 As far as her knowledge of the documents that she  
15 reviewed and that Ms. Debra prepared for her review and  
16 input, I'll going to allow that because that goes to the  
17 issue of the history of collective bargaining and the  
18 traditional perception of the unit as being a unit of these  
19 front office employees, as I'll call them, for what it's  
20 worth, you know. For what it's worth.

21 Q. BY MS. SMITH: So that document was generated to create  
22 protection for what we're now questioning is a unit; is that  
23 correct?

24 A. Right.

25 Q. And inclusive in that was who?

1 MR. MORRIS: Again, Mr. Hearing Officer, I'm going to  
2 object.

3 HEARING OFFICER GLISSENDORF: Okay.

4 MR. MORRIS: We're talking about a proposal with some  
5 stuff that was in it that was never agreed to. So what does  
6 that have to with what the appropriate unit is?

7 MR. MORRIS: I'm going to --

8 MS. SMITH: I think that --

9 HEARING OFFICER GLISSENDORF: I'm going to present to  
10 the parties a document that has been provided by the  
11 Petitioner to the Labor Board. And I'm going to allow  
12 Ms. Smith to review it. And I'm going to allow Mr. Morris to  
13 review it. And I'm going to give a copy to Ms. Carson. And  
14 to the extent that Ms. Carson has personal knowledge of this  
15 document, I'm going to allow her to testify as to her  
16 personal knowledge of it.

17 MR. MORRIS: And I'm going to object because -- and I  
18 don't to continue to interrupt. But what we've got here is  
19 at the same time that -- my understanding of the fact -- same  
20 time the Union demanded recognition in 2010 and threw this at  
21 the Employer and it was never agreed to. So that doesn't  
22 have any bearing on bargaining history or anything else to do  
23 with the facts of what the appropriate unit is, Mr. Hearing  
24 Officer.

25 And I really don't -- I don't think this is properly

1 admitted. And if you somehow think it might tangentially be  
2 relevant to your determination, that's fine. But I don't  
3 have any idea how.

4 MS. SMITH: But I would question if it was agreed to  
5 because we have a document that the former president --

6 MR. MORRIS: That's a different hearing.

7 HEARING OFFICER GLISSENDORF: To the extent -- let me  
8 just ask her --

9 MR. MORRIS: That's not a subject for an R case here.

10 HEARING OFFICER GLISSENDORF: Can we stipulate for the  
11 record that a written request for voluntary recognition was  
12 made back when Henry Perry was president?

13 MR. MORRIS: I don't have a problem with submitting that  
14 letter into evidence if that's what you want to do.

15 HEARING OFFICER GLISSENDORF: Okay, Ms. Smith, this was  
16 a letter that you had in your possession and to the extent  
17 that it was sent in December from Mr. Flippo, the District 9  
18 Director, to the then President, Mr. Perry, for what it's  
19 worth --

20 MR. MORRIS: Mr. Hearing Officer, there's two sides to  
21 this.

22 HEARING OFFICER GLISSENDORF: Right, there's a back side  
23 which is a subsequent letter three weeks later after --  
24 Ms. Smith, correct me if I'm wrong, Ms. Carson. Mr. Pairemore  
25 was then elected President of the Local during that election

1 that you referred to as the election. Is that not correct?

2 THE WITNESS: Right.

3 HEARING OFFICER GLISSENDORF: And so another letter was  
4 then sent to the new president.

5 MR. MORRIS: Yeah, I'm not in a position to --

6 HEARING OFFICER GLISSENDORF: Authenticate or?

7 MR. MORRIS: -- to agree to this.

8 HEARING OFFICER GLISSENDORF: Okay.

9 MR. MORRIS: I will to this. I will object to this.

10 HEARING OFFICER GLISSENDORF: You object?

11 MR. MORRIS: I don't object to the December 30 demand  
12 letter.

13 HEARING OFFICER GLISSENDORF: What about the January?

14 MR. MORRIS: I object to that. I don't have any -- I'm  
15 not in a position to stipulate to it because I don't know if  
16 it was received.

17 HEARING OFFICER GLISSENDORF: Well, to the extent --

18 MR. MORRIS: I don't know the extent of these contents.

19 HEARING OFFICER GLISSENDORF: -- that I will make a  
20 single copy of the December 23rd letter. Can we mark that as  
21 Board Exhibit --

22 MR. MORRIS: Is that a sneaky thing you did putting one  
23 on the back of the other, or is that the normal Board  
24 practice?

25 HEARING OFFICER GLISSENDORF: We try to conserve paper

1 at the Labor Board.

2 **(Laughter.)**

3 HEARING OFFICER GLISSENDORF: To the extent that we'll  
4 make a single copy of the December 23rd letter, 2010 from  
5 Mr. Flippo to Mr. Perry and mark it as Board Exhibit 4.

6 **(Board's Exhibit 4 marked for identification.)**

7 HEARING OFFICER GLISSENDORF: Do you have any objection  
8 to receiving that into evidence?

9 MS. SMITH: I don't.

10 HEARING OFFICER GLISSENDORF: Into the record.  
11 Mr. Morris?

12 MR. MORRIS: No.

13 HEARING OFFICER GLISSENDORF: Okay.

14 **(Board's Exhibit 4 received in evidence.)**

15 HEARING OFFICER GLISSENDORF: Mr. Law Clerk, would you  
16 mind making four copies of this single sided, please? Thank  
17 you. I apologize.

18 And I'm going to allow you to continue with the  
19 questioning of Ms. Carson regarding this other document.

20 MS. SMITH: Which brings me to where I was trying to go  
21 with this document dated the 23rd of December 2010. It was  
22 never addressed or brought up. I presume that this  
23 particular unit that we're trying --

24 HEARING OFFICER GLISSENDORF: Sam, do you still have an  
25 objection standing?

1 MR. MORRIS: Sure.

2 HEARING OFFICER GLISSENDORF: Okay, I'm going to  
3 overrule it, the objection, to the extent that I --

4 MS. SMITH: On the --

5 HEARING OFFICER GLISSENDORF: No, on the --

6 MR. MORRIS: Questioning.

7 HEARING OFFICER GLISSENDORF: This questioning.

8 MS. SMITH: Oh, okay.

9 HEARING OFFICER GLISSENDORF: And I'm going to allow you  
10 to continue. But let's try to wrap this up and make it  
11 quick.

12 MS. SMITH: I am. I'm just trying to present to the  
13 court this morning that this has never been a question before  
14 about a unit, especially pertaining to confidential, any of  
15 the --

16 HEARING OFFICER GLISSENDORF: That's fine. They have  
17 the right. I mean it's an issue now.

18 MS. SMITH: Right.

19 HEARING OFFICER GLISSENDORF: More to the point, this  
20 document -- is this a document you've seen before, this  
21 document which it's called an agreement, and apparently it's  
22 a draft collective bargaining agreement?

23 THE WITNESS: Yes.

24 HEARING OFFICER GLISSENDORF: Can you testify as to your  
25 experience, your direct experience, of that: when it was

1 formulated, who created it, and what your input was and what  
2 the effect of it was, if any?

3 THE WITNESS: Debra is the one that formulated it. She  
4 got with William Jones, who was an agent at the time and --

5 HEARING OFFICER GLISSENDORF: Of the Steelworkers?

6 THE WITNESS: No, of our Local.

7 HEARING OFFICER GLISSENDORF: Oh, okay.

8 THE WITNESS: And with I believe it was the Mobile  
9 Local, whose office is under contract, and got information  
10 from them. And they made this contract, and she gave it to  
11 me and Carrie for us to go over it and see if we had any  
12 changes we wanted to make in it.

13 HEARING OFFICER GLISSENDORF: So --

14 MR. MORRIS: Mr. Hearing Officer, sorry. I still don't  
15 understand how this is relevant in any way to unit  
16 determination. If you want to --

17 HEARING OFFICER GLISSENDORF: Well, because I think that  
18 traditionally --

19 MR. MORRIS: There's never been a collective bargaining  
20 meeting. There's never been a recognition as far as I know.  
21 If there's a contention that there already was recognition,  
22 that's not a matter for this proceeding. So what proposal  
23 that was made and given to the Union at some time has no  
24 bearing on the facts of the unit.

25 HEARING OFFICER GLISSENDORF: And is this document in

1 front of you --

2 THE WITNESS: Uh-huh.

3 HEARING OFFICER GLISSENDORF: -- do you recognize that?  
4 You've looked through it?

5 THE WITNESS: Yeah.

6 HEARING OFFICER GLISSENDORF: That's the document that  
7 Debra drafted --

8 THE WITNESS: Yes.

9 HEARING OFFICER GLISSENDORF: -- and presented to you  
10 and Ms. Carrie?

11 THE WITNESS: Yes.

12 HEARING OFFICER GLISSENDORF: To review and have input  
13 and suggestions?

14 THE WITNESS: Yes.

15 HEARING OFFICER GLISSENDORF: And so if you could, just  
16 state for the record to the best of your ability what impact  
17 has that had on your terms and conditions of employment?

18 THE WITNESS: Nothing.

19 HEARING OFFICER GLISSENDORF: Since then?

20 THE WITNESS: Nothing since then.

21 HEARING OFFICER GLISSENDORF: So you haven't been  
22 working under any of these terms and conditions as they  
23 relate to --

24 THE WITNESS: What we work under at our Local is -- it  
25 has always been that the Local women are under the National

1 Master Freight contract clerical part of the contract. We  
2 have more or less assumed that that's how we are guided  
3 by. But we do not have a contract ourselves. We've just  
4 gone under the Master Freight contract.

5 HEARING OFFICER GLISSENDORF: Okay, so these conditions,  
6 you say though, were drafted from a unit of clerical  
7 employees in the Mobile Teamster?

8 MR. MORRIS: I'm going to object to that because that  
9 doesn't come from her. That comes from her conversation with  
10 somebody else who talked to somebody else, Mr. Hearing  
11 Officer.

12 HEARING OFFICER GLISSENDORF: Okay. Ms. Smith, do you  
13 want to continue?

14 MS. SMITH: Yes.

15 Q. BY MS. SMITH: Okay, back to the unit and the  
16 confidentiality. You stated that you initially were offered  
17 the job that Carrie has. And at any time have you ever  
18 had -- and you also stated you were trained or started  
19 training on that job. At any time have you ever had the  
20 passwords to -

21 A. I have the passwords. I know what the passwords are,  
22 yes.

23 Q. You know the passwords today?

24 A. Unless she's changed them.

25 Q. Okay.

1 A. If she's changed them, I'm not aware of that. But I do  
2 have the passwords.

3 Q. So you do have access to that? Okay.

4 As far as the board meetings, do you participate in the  
5 board meeting?

6 A. No, nobody is in the Executive Board meeting except the  
7 Executive Board.

8 Q. And Ms. Carrie testified that she's not a part of the  
9 Executive Board, correct?

10 A. She does the paperwork for the Executive Board, but  
11 she's not in the Executive Board meeting.

12 Q. Okay.

13 A. She is in the union meeting at 2 o'clock. And if she's  
14 there and the Executive Board has questions, they will  
15 question her. But she's not in the Executive Board meeting.

16 Q. So would you testify that members, if they challenge or  
17 have any question about the financials which may be  
18 confidential, that that is shared with the membership?

19 A. The Executive Board, when they're holding their regular  
20 union meeting, will read the financial status for that month.  
21 If there's any questions about the financial statement, the  
22 member will raise his hand, question that, and the president  
23 or the secretary-treasurer or whoever will answer their  
24 question as far as any of the finances that's on the  
25 statement. And the statement is what's been approved by the

1 Executive Board.

2 Q. And in your position, do you access the mail when it  
3 comes into the office?

4 A. If Carrie's not there, I'll get the mail and open it and  
5 distribute it.

6 Q. So that's all mail?

7 A. Uh-huh.

8 Q. And if it's anything pertaining to the bank statements  
9 or finances, how do you handle that?

10 A. I give it to Ronnie if it's a bank statement. I stamp  
11 it and give it to Ronnie.

12 Q. Okay.

13 A. If Ronnie's not there, I'll put it in the safe.

14 Q. So you have access to the safe?

15 A. Uh-huh. I have the combination to the safe, and I get  
16 the keys and go in all the offices.

17 Q. Okay. And in the way the offices are geographically  
18 located, do you have access to Carrie's office?

19 A. Everybody has access to Carrie's office.

20 Q. Do you often go in her office?

21 A. I have to go through her office to get to the Titan.  
22 The Titan is where we record the dues postings. That's where  
23 I post the dues checks that comes in. That's where I do the  
24 billing that goes out for the dues.

25 Q. And the correspondence that is communicated between the

1 companies and the Union, are you ever involved in any of  
2 that?

3 A. Yes, as far as warning letters and grievances, yes,  
4 because they all go to the agents. When the agents want it  
5 protested, they give it to us and we protest the warning  
6 letters or we process the grievances and mail those out.

7 If there's -- like James Sproles is our organizer. I  
8 type contracts for him, anything that's got to do with  
9 letters that go to the companies that they're trying to  
10 organize, I do those letters.

11 Q. And you also heard testimony about a filing cabinet that  
12 exists that has members' information in it?

13 A. Well, all our filing cabinets, because we do the health  
14 insurance and pensions, we have filing cabinets with a file  
15 on each one of our members that it has Central States health  
16 insurance or Central States pension because we have to answer  
17 their questions. If they get bills from doctors or  
18 something, they call us. And we have to go through Central  
19 States to help them get their bills resolved.

20 That is a HIPAA law which is considered confidential.  
21 And we're not supposed to share that information with anybody  
22 else.

23 Q. And that confidential information, you receive also?

24 A. Yes.

25 Q. And when Carrie is out, do you perform or backfill in

1 any of her duties?

2 A. Mostly just if it's something that needs to be typed.  
3 If there's a check that needs to be processed, I do have  
4 access to the checks, and I can type one on the typewriter.  
5 But I do not go into her system and type one.

6 Q. Is there a reason for that, once again? Because you  
7 just -- that's not the job that you had wanted?

8 A. That's not my job. That's her job. But if something  
9 comes up that has to be done, I will get a check and manually  
10 type it and make copies of it for her. And then she can fix  
11 it in the system however.

12 Q. So you process it manually and then let her go in and do  
13 it. Okay.

14 MS. SMITH: I don't have any further questions.

15 HEARING OFFICER GLISSENDORF: Mr. Morris, can I just ask  
16 you --

17 MR. MORRIS: Absolutely. Feel free.

18 HEARING OFFICER GLISSENDORF: Is it your position that  
19 Ms. Carson is also a confidential employee?

20 MR. MORRIS: No.

21 HEARING OFFICER GLISSENDORF: Okay. So to the extent  
22 that there's an appropriate unit, it would be an appropriate  
23 unit of one? Is that accurate?

24 MR. MORRIS: Yes.

25 HEARING OFFICER GLISSENDORF: The witness is yours for

1 questions.

2 MR. MORRIS: Thanks.

3

**CROSS-EXAMINATION**

4 Q. BY MR. MORRIS: Marion, just a couple of questions. The  
5 recent training that Carrie had on the billing program, you  
6 didn't participate in that, did you?

7 A. On the recent one when Renee was here last?

8 Q. Yes.

9 A. No.

10 Q. And though you declined the work, you don't do the work  
11 on that program anymore, do you?

12 A. No.

13 Q. And now Carrie does go to the -- she's not on the  
14 Executive Board, but she does go to the board meeting every  
15 month, right?

16 A. Not that I'm aware of.

17 Q. If she makes financial reports to the E Board, you don't  
18 do that, do you?

19 A. No. Carrie does the financial reports.

20 Q. Okay. So you're not aware whether or not she goes to  
21 the Sunday meetings?

22 A. No.

23 Q. Do you usually go?

24 A. I don't go to the union meetings, no.

25 Q. Okay.

1 A. But I used to be on the Executive Board. And I know  
2 that the secretary was not in the meeting at that time when I  
3 was on the Board.

4 Q. And though you deal with dues, as far as writing checks  
5 to vendors and to employees, you don't do that?

6 A. No.

7 Q. Okay.

8 MR. MORRIS: That's all I have.

9 HEARING OFFICER GLISSENDORF: I wanted to ask you,  
10 Ms. Carson, you said that you were working under what's known  
11 as the clerical provisions of the --

12 THE WITNESS: National Master Freight contract.

13 HEARING OFFICER GLISSENDORF: National Master Freight  
14 Agreement? And so do you participate -- and what are  
15 those -- and what's an example of some of those conditions?  
16 Does that have your rates of pay?

17 THE WITNESS: The rates of pay.

18 HEARING OFFICER GLISSENDORF: Does it have --

19 THE WITNESS: Mainly our rate of pay is based on the  
20 clerical part of the contract. We've always been paid what  
21 the top rate of pay was under the clerical contract.

22 HEARING OFFICER GLISSENDORF: So the National Master  
23 Freight Agreement of the International Brotherhood of  
24 Teamsters negotiates on a national level, also provides pay  
25 for its own clerical staff, wages in that agreement. Is that

1 what you're saying?

2 THE WITNESS: That our Local does. I don't know about  
3 the International.

4 MR. MORRIS: I want to go off the record for just a  
5 minute.

6 HEARING OFFICER GLISSENDORF: Okay, off the record.

7 (Off the record from 11:30 a.m. to 11:31 a.m.)

8 HEARING OFFICER GLISSENDORF: Off the record, Mr. Morris  
9 clarified that it's actually the National Master Freight  
10 Agreement specifies wage rates for clericals of the employers  
11 that are entering into the collective bargaining agreement  
12 with the Teamsters. And that the Local models your pay rates  
13 after those rates --

14 THE WITNESS: Right.

15 HEARING OFFICER GLISSENDORF: -- for those employers.

16 Do you have any participation in negotiating those  
17 contracts?

18 THE WITNESS: No. Yes, we do. Well, no, we don't.

19 HEARING OFFICER GLISSENDORF: Substantively?

20 THE WITNESS: We don't. When we worked -- I used to  
21 work for Yellow Freight. And we did have input as to what we  
22 would like to see in the bargaining unit changes. But as far  
23 as our Local office, Carrie and I, we do not.

24 HEARING OFFICER GLISSENDORF: Okay. And you're paid on  
25 an hourly basis?

1 THE WITNESS: Yes.

2 HEARING OFFICER GLISSENDORF: And you -- can you testify  
3 that the other four employees of Teamsters 667, the officers  
4 and Mr. McGowan, are paid a salary?

5 THE WITNESS: Their salary is based on 60 hours.

6 HEARING OFFICER GLISSENDORF: Sixty hours a week?

7 THE WITNESS: Uh-huh.

8 HEARING OFFICER GLISSENDORF: And how many hours a week  
9 do you average, would you say?

10 THE WITNESS: Well, I would say I average 8:00 to 5:00  
11 every day.

12 HEARING OFFICER GLISSENDORF: And that's your schedule?

13 THE WITNESS: Yeah. Our Local Union Hall hours are 8:00  
14 to 5:00.

15 HEARING OFFICER GLISSENDORF: And you and Ms. Cross are  
16 both -- that's your schedule as you've heard her testify.  
17 And you would agree with them?

18 THE WITNESS: Right.

19 HEARING OFFICER GLISSENDORF: Do you have any further  
20 questions, Ms. Smith?

21 MS. SMITH: I do not.

22 HEARING OFFICER GLISSENDORF: Anything from you,  
23 Mr. Morris?

24 MR. MORRIS: No, sir.

25 HEARING OFFICER GLISSENDORF: I would like to ask you,

1 Ms. Carson, just for the record -- and I asked Ms. Cross --  
2 that is correct, Ms. Cross? -- the same question. Do you  
3 distinguish -- could you just briefly for the record  
4 distinguish the work you and Ms. Cross do from the work of  
5 the other four gentlemen that are working at the hall?

6 THE WITNESS: Basically we're their secretaries. We do  
7 their secretarial work. They are the business agents and  
8 they -- anything that has to do with contract, they're the  
9 ones that handle that with the members. But we type their  
10 letters and type their grievances and things of that nature.

11 HEARING OFFICER GLISSENDORF: And so they physically go  
12 outside the hall to the facilities and negotiate --

13 THE WITNESS: Right.

14 HEARING OFFICER GLISSENDORF: -- contracts with  
15 employers?

16 THE WITNESS: Right, but we don't do that. We might  
17 type the contracts, but we don't go --

18 HEARING OFFICER GLISSENDORF: You don't physically  
19 attend bargaining sessions --

20 THE WITNESS: No.

21 HEARING OFFICER GLISSENDORF: -- and take notes?

22 You don't go to facilities of employers that are under  
23 contract and process grievances --

24 THE WITNESS: No.

25 HEARING OFFICER GLISSENDORF: -- or participate in

1 grievance meetings at various steps?

2 THE WITNESS: No.

3 HEARING OFFICER GLISSENDORF: Do you ever attend  
4 arbitration hearings or multi-states panels --

5 THE WITNESS: No.

6 HEARING OFFICER GLISSENDORF: -- for the Teamsters?

7 THE WITNESS: But do the other four gentlemen?

8 THE WITNESS: Yes, they do the arbitration and stuff.

9 HEARING OFFICER GLISSENDORF: Do the other four  
10 gentlemen, do they have a travel allowance?

11 THE WITNESS: Yes.

12 MR. MORRIS: I object. We've got a stipulation on this.  
13 Are you just trying to shore that up with a little on record  
14 testimony?

15 HEARING OFFICER GLISSENDORF: You've got a stipulation  
16 that the other four are excluded?

17 MR. MORRIS: Yeah.

18 HEARING OFFICER GLISSENDORF: Okay, but I just want to  
19 establish the community of interest between these two.

20 Do you and Ms. Cross have a travel allowance?

21 THE WITNESS: No.

22 HEARING OFFICER GLISSENDORF: Do any of these other  
23 gentlemen get a car or any kind of a personal Teamster  
24 vehicle? Or do they just use their personal vehicle?

25 THE WITNESS: They use their personal vehicle.

1 HEARING OFFICER GLISSENDORF: And then they get  
2 reimbursed for mileage or per diem or whatever?

3 THE WITNESS: Right.

4 HEARING OFFICER GLISSENDORF: If they have to go out of  
5 town?

6 THE WITNESS: Right.

7 HEARING OFFICER GLISSENDORF: Do you and Ms. Cross ever  
8 travel out of town?

9 THE WITNESS: No.

10 HEARING OFFICER GLISSENDORF: For business?

11 THE WITNESS: Only twice I have, and that was to go to  
12 Central States for training in insurance.

13 HEARING OFFICER GLISSENDORF: And that would be in how  
14 many years?

15 THE WITNESS: Thirteen.

16 HEARING OFFICER GLISSENDORF: Thirteen years.

17 Well, I don't think I have anything further. It's an  
18 interesting issue.

19 Mr. Morris, do you have anything further?

20 MR. MORRIS: No.

21 MS. SMITH: No, I don't.

22 HEARING OFFICER GLISSENDORF: Okay, Ms. Carson, you're  
23 released.

24 At this point I'd like to ask -- and thank you,  
25 Ms. Carson, for coming and testifying.

1 (Witness excused.)

2 HEARING OFFICER GLISSENDORF: I'd like to ask,  
3 Ms. Smith, if you have any other witnesses that you want to  
4 present.

5 MS. SMITH: No further witness.

6 HEARING OFFICER GLISSENDORF: And now it's Mr. Morris'  
7 turn to present witnesses.

8 MR. MORRIS: We don't have any witnesses.

9 HEARING OFFICER GLISSENDORF: No witnesses to present?

10 MR. MORRIS: No.

11 HEARING OFFICER GLISSENDORF: Okay, at this time I'd  
12 like to ask for your closing statements, number one, to  
13 see -- obviously there's no agreement today. It's the  
14 Teamster's position that you would like the Regional Director  
15 to sort this out and issue a decision?

16 MR. MORRIS: Yes.

17 HEARING OFFICER GLISSENDORF: A decision?

18 MR. MORRIS: We'd like the right to file a brief, too.  
19 I have to determine if I'm, in fact, going to file one or  
20 not.

21 HEARING OFFICER GLISSENDORF: Okay, so both parties will  
22 have the right to file a brief if you want to. You don't  
23 have to. And the briefs will be due seven days from the  
24 close of the hearing today, unless you need an extension of  
25 time in which case you'd make a written request to the

1 Regional Director for an extension.

2 In the meantime I'm going to let Ms. Smith make any  
3 closing statement you want to make.

4 We've amended the petition to reflect that you're  
5 seeking a unit of office clerical employees and excluding all  
6 other employees.

7 And, Mr. Morris, you wanted to also add in the  
8 exclusions --

9 MR. MORRIS: Confidential which is normally an  
10 exclusion --

11 HEARING OFFICER GLISSENDORF: Confidential employees.

12 MR. MORRIS: -- guards and supervisors as defined in the  
13 Act.

14 Can I look at the Board exhibit, please -- petition.

15 It's their petition. I can't amend it.

16 HEARING OFFICER GLISSENDORF: Right, right.

17 MR. MORRIS: But you're asking what I think should be  
18 amended in exclusions.

19 HEARING OFFICER GLISSENDORF: I mean you're just wanting  
20 to leave it as is? All other employees?

21 MS. SMITH: Uh-huh.

22 HEARING OFFICER GLISSENDORF: Okay. So I guess to the  
23 extent --

24 MR. MORRIS: It reads, "All other employees including  
25 supervisors." The normal language would be all other --

1 HEARING OFFICER GLISSENDORF: Well, you would --

2 MR. MORRIS: All confidential employees, all guard and  
3 supervisors -- but that's up to the Regional Director.

4 HEARING OFFICER GLISSENDORF: All supervisors are  
5 statutory, number one.

6 MR. MORRIS: Yeah.

7 HEARING OFFICER GLISSENDORF: It could also say  
8 professional employees. Several things we could add. But I  
9 think that's the whole point of the hearing today is to  
10 determine whether confidential -- whether Ms. Cross is --  
11 there's not a confidential employee within the meaning of the  
12 Act and whether she should or should not be included in the  
13 unit.

14 But to the extent that traditionally confidential  
15 employees as they're traditionally defined by Board case law  
16 are excluded from a unit of -- from the requested unit, then  
17 your comment is noted for the record.

18 MR. MORRIS: Thank you.

19 HEARING OFFICER GLISSENDORF: But that Ms. Smith is not  
20 willing to amend the petition any further to put confidential  
21 employees in the exclusion; is that accurate?

22 MS. SMITH: That's correct. I wouldn't agree that  
23 they're confidential.

24 HEARING OFFICER GLISSENDORF: Okay. Anything else from  
25 Ms. Smith?

**CLOSING ARGUMENT**

1  
2 MS. SMITH: No, I would just ask that the court consider  
3 the testimony that you've heard here today and that the work  
4 is very intermingled. And as you heard the testimony of  
5 Ms. Marion, even when we talk about what's been presented  
6 here as far as confidential, she has the access to the  
7 password even today to these files. She may not access them  
8 or whatever. And that's not because she thinks it's  
9 confidential. But it's clearly because she doesn't believe  
10 that it's her job responsibility. And I'd like the court to  
11 take that into consideration.

12 HEARING OFFICER GLISSENDORF: Mr. Morris, closing  
13 argument?

14 MR. MORRIS: We would reserve our argument for brief,  
15 Mr. Hearing Officer. Appreciate your indulgence today.

16 HEARING OFFICER GLISSENDORF: I would -- I do need to  
17 ask Mr. Court Reporter, Steve, the estimated length of the  
18 transcript?

19 COURT REPORTER: Forty pages.

20 HEARING OFFICER GLISSENDORF: That's not too bad, is it?  
21 Okay, are there any motions that are outstanding?

22 MR. MORRIS: No, sir, not from Employer.

23 HEARING OFFICER GLISSENDORF: Okay, if there's nothing  
24 further, then the hearing will be closed. And it is now  
25 closed.

1 (Whereupon, at 11:40 a.m., the hearing in the above-entitled  
2 matter was closed.)

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CERTIFICATION

This is to certify that the attached proceedings before the National Labor Relations Board (NLRB), Region 26, in the matter of **TEAMSTERS LOCAL 667**, Case No. 26-RC-092292, at Memphis, Tennessee, on November 14, 2012, were held according to the record, and that this is the original, complete, and true and accurate transcript that has been compared to the reporting or recording accomplished at the hearing, that the exhibit files have been checked for completeness and no exhibits received in evidence or in the rejected exhibit files are missing.

---

Stephen P. Anderson  
Official Reporter

**UNITED STATES OF AMERICA  
BEFORE NATIONAL LABOR RELATIONS BOARD  
REGION 26**

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**TEAMSTER LOCAL 667**

**Employer,**

**And**

**Case No. 26-RC-092292**

**UNITED STEELWORKERS INTERNATIONAL  
UNION,**

**Petitioner.**

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**POST HEARING BRIEF OF THE EMPLOYER**

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**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
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---

**TEAMSTER LOCAL 667**

**Employer,**

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**UNITED STEELWORKERS INTERNATIONAL  
UNION,**

**Petitioner.**

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**POST-HEARING BRIEF OF THE EMPLOYER**

---

**I. INTRODUCTION**

Teamsters Local 667 has offices in Memphis TN, and represents a variety of employees in that geographical area. There are two office clerical employees and the parties stipulated that all other employees, including business agents, were excluded from the unit. A petition for representation by the USWA was filed on October 30, 2012. The instant hearing was held on November 14, 2012. This case concerns the existence of a bargaining unit involving two secretarial employees: Carrie Cross ("Ms. Cross") or Marion Carson ("Ms. Carson"). The sole issue for determination was the unit placement of Ms. Cross, a confidential employee.

## II. ARGUMENT

### A. Ms. Cross should be excluded from the bargaining unit because she is a confidential employee.

The Board has long found that there is an implied exclusion from NLRA coverage for confidential employees. The purpose behind this rule is that "an employee should not be placed in a position involving a potential conflict of interest" between the employer and the union. See *Westinghouse Elec. Corp. v. NLRB*, 398 F.2d 669, 670 (6th Cir. 1968).

The key to determining whether an employee is confidential is whether the employee assists and acts in a confidential capacity to persons who formulate, determine, or effectuate management policies. In *NLRB v. Hendricks Rural Electric Corp.*, 454 U.S. 170 (1981), the Supreme Court affirmed the use of a "labor nexus" test to determine which employees are considered "confidential." Under this test, those employees who act in a confidential capacity to persons exercising managerial functions in labor relations matters are confidential employees. *Id.* at 188-89.

The Supreme Court also approved an alternative test to the "labor nexus" test where employees who have "regular" access to confidential information concerning anticipated changes that may result from collective-bargaining negotiations are confidential employees. *Id.*

Thus, the NLRA requires that two main categories of confidential employees be excluded from the bargaining unit: (1) employees who "assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies," *B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956), and (2) "employees who, in the course of their duties, regularly have access to confidential information concerning anticipated changes which may result from collective-bargaining negotiations." *Pullman Standard Division, Inc.*, 214 NLRB 762, 762-63 (1974). In this case, that would clearly be Ms. Cross.

The trier of fact must determine whether the employee has a sufficient "labor nexus" to be considered a confidential employee, or whether she has sufficient access to confidential materials to warrant exclusion. A party asserting the confidential status of an employee has the burden of providing evidence to support this assertion. See *St. Barnabas Medical Center*, 343 NLRB 1125, 1139 (2004).

In *Firestone Synthetic Latex Co.*, 201 NLRB 347 (1973), the Board found that certain employees who were involved in labor relations matters were "confidential employees." The two employees in *Firestone* were found to have a "labor nexus" sufficient to qualify as "confidential employees" because they were regularly assigned to assist in a secretarial capacity with their duties including typing, processing, and filing reports, assisting in the preparation of, or having access to, confidential labor relations information such as the employers' data in preparation for contract negotiations, minutes of negotiating sessions, and grievance investigation reports. *Id.* at 347-48. These employees were responsible for maintain departmental files containing labor relations information and their initials had appeared as typists on labor relations documents. *Id.* at 348.

Similarly, in *National Cash Register Co.*, 168 NLRB 910 (1967), the Board found certain private secretaries of division managers to be confidential employees. The secretaries worked for division managers who participated in contract negotiations and grievance procedures. *Id.* at 912. The secretaries also had custody of grievance files and prepared notes from which the employers' contract proposals are made. *Id.* The Board found that it was clear that, in their capacity, the secretaries acted as confidential employees who assist persons who formulate, determine, and effectuate management policies. *Id.*

In this case, Secretary Carrie Cross is a confidential employee and should be excluded from the bargaining unit because she assists persons who formulate, determine and effectuate management policies and has regular access to information related to the collective bargaining process, as well as *all* the financial records of the local union. Ms. Cross's responsibilities consist of taking care of payroll; writing checks; preparing bank deposits; handling incoming bills; collecting data from employees, clients and other outside sources; and sending out grievances and warning letters to members. Hearing Transcript p. 20. As Ms. Cross explained, she processes grievances for Local 667. Hearing Transcript p. 24. She indicated that if a member is discharged, he comes in and fills out a grievance, and she processes the grievances and handles all correspondence between the Company and local 667. Hearing Transcript p. 21.

Further, Ms. Cross attends monthly Executive Board meetings, where all the financial affairs of the union are discussed, and approved, per the local union by-laws and IBT Constitution. *See* Hearing Transcript p. 23, 51. Since the Executive Board is the governing body for financial purposes of the local union, Ms. Cross's responsibilities would clearly relate to the collective bargaining process if this unit were certified.

Ms. Cross's job title entails more responsibility than the other secretary in the office. As Ms. Cross explained, she handles numerous pieces of confidential information on a daily basis that no other secretary in the office handles. Hearing Transcript p. 22. In fact, Ms. Cross has special training that is necessary to perform bookkeeping duties. Hearing Transcript p. 24. The only other secretary in the office, Ms. Carson, explained that she does not have the training to perform some of the tasks that Ms. Cross handles, and declined bookkeeping training on the current system. Hearing transcript p. 58-59. Ms. Cross is the only one of the two secretaries that attends the Executive Board meetings, and processes grievances for Local 667.

Since Ms. Cross plays a role in the processing of members' grievances and has not only access to confidential employee data but prepares regular reports from it and supplies it to the leadership of the local union, Ms. Cross is a confidential employee and thus excluded from the bargaining unit, as she would necessarily have a role in the bargaining process were this unit certified.

**B. The Petition should be dismissed because, absent Ms. Cross, the Unit consists of only one member, and the Board does not recognize one-person units.**

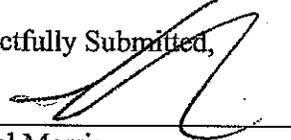
It is well-established law that the NLRB does not recognize no-person or one person bargaining units. Instead, the Board's decisions allow an employer to discontinue its duties under an agreement where it employs no more than one employee in the relevant unit. *See, e.g., Sunray Ltd.*, 258 BLRB 517, 518 (1981)(finding that "the Board will not enforce a contract covering a single-person unit."); *SAC Constr. Co., Inc.*, 235 BLRB 1211, 1220 (1978)(finding that an employer who had a unit consisting of only employee "did not violate Section 8(a)(1) and (5) of the Act by discontinuing payments to the health and welfare, apprenticeship, and pension fringe benefit plans"), enforcement denied on other grounds, *NLRB v. SAC Constr. Co. Inc.*, 603 F.2d 1155 (5th Cir. 1979).

In this case, the bargaining unit consists of two employees: Carrie Cross and Marion Carson. If the Board finds Ms. Cross to be a confidential employee, then she is excluded from the bargaining unit. If Ms. Cross is excluded from the bargaining unit, the unit is left with one-person, Ms. Carson. Since the Board does not recognize one-person bargaining units, the Board should find that this Petition does not present a question concerning representation and should be dismissed.

### III. CONCLUSION

For the foregoing reasons, the Board should find that Carrie Cross is a confidential employee and should be excluded from the bargaining unit. As the remaining one-person unit does not present a question concerning representation, the Petition should be dismissed.

Respectfully Submitted,



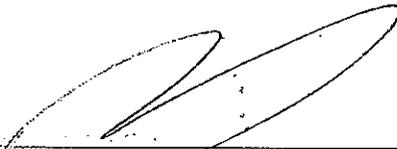
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed, U.S.P.S., to the following the 21st day of November, 2012.

William Yarbrough  
Acting Regional Director  
National Labor Relations Board, Region 26  
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**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 26**

**TEAMSTERS LOCAL 667**

Employer

and

Case 26-RC-092292

**UNITED STEELWORKERS INTERNATIONAL UNION<sup>1</sup>**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

The Employer, Teamsters Local 667, is a labor organization based in Memphis, Tennessee. The Employer engages in labor organizing and representing employees in collective bargaining with various employers. It employs two employees who perform clerical tasks at its office. The Petitioner, United Steelworkers International Union, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. Based on an amendment to the petition at the hearing, the Petitioner seeks to represent a unit of the two office clerical employees employed at the Employer's Memphis office. A hearing was conducted before a hearing officer of the Board and the Employer filed a post-hearing brief.

In its brief, the Employer takes the position that one of the two office clerical employees, Carrie Cross, is a confidential employee and should be excluded from the petitioned-for unit. The Employer also asserts that the petition should be dismissed because a one-person bargaining unit consisting of the other office

<sup>1</sup> The Union's name is shown as amended at the hearing.



clerical employee, Marion Carson, is not appropriate. The Petitioner asserts that neither clerical employee is a confidential employee and that the petitioned-for unit, as amended, is appropriate.

At the hearing, the Petitioner called Cross and Carson to testify regarding their duties as clerical employees. The Employer called no witnesses. I have considered the evidence presented at the hearing, the Employer's brief, the relevant case law, and the positions of the parties. As discussed below, I find that Carrie Cross is not a confidential employee and the petitioned-for unit is appropriate. To provide a context for my decision and discussion of the issue, I will first present the facts of the case, set forth the applicable legal standards for determining whether an employee is a confidential employee, and then provide my legal analysis and conclusion.

### **I. FACTS**

Clerical employees Cross and Carson work with four other employees in the Employer's Memphis office. The parties stipulated to the exclusion of those four employees from the petitioned-for unit because they do not share a community of interest with the office clerical employees. Wayne Paimore is the local president, Ronnie Parkinson is the local secretary-treasurer, James Sproles is the recording secretary, and Michael McGowan is the business agent. Paimore, Parkinson, Sproles and McGowan participate in contract negotiations, process grievances and attend grievance hearings on behalf of the Employer. Cross and Carson do not participate in contract negotiations or discuss grievances with employers.

Cross is the Employer's bookkeeper, insurance and pension clerk, secretary and receptionist. Her responsibilities include answering the telephone, and managing the Employer's incoming and outgoing mail. She receives correspondence at the Employer's office which includes copies of discipline issued to individual employees. If employees meet with a business agent and the Employer decides to file a grievance, Cross forwards the completed grievance forms to employers within the required contractual time limits. Cross also responds to inquiries from individual employees regarding insurance and pension issues and contacts the insurance provider on behalf of the employee.

Cross' bookkeeping duties include preparing payroll checks for the Employer's employees and handling its accounts payable for items such as telephone and utility services. The bookkeeping system Cross uses requires a password for access which she does not share. At monthly meetings, Cross reviews the Employer's accounts with the Employer's executive board, which includes three trustees, the local vice-president, and Recording Secretary Sproles. Cross is not a member of the executive board, but prepares the documents that reflect the Employer's financial status for approval by the executive board. Cross attends executive board meetings in order to answer questions about specific items. Once the executive board approves the monthly financial report, Cross sends the records to the International Union.

Carson (the other office clerical) is the dues clerk and in that capacity generates the billing for membership dues and posts dues checks that come to the office. Carson also assists members with insurance and pension issues and

performs secretarial work such as typing letters and contract proposals. Carson does not perform bookkeeping work. Before Cross goes on vacation, she prints payroll checks and puts them in the safe. Carson does not have access to those checks.

Cross and Carson are hourly employees and work from 8:00 a.m. to 5:00 p.m., Monday through Friday. Their pay rate is modeled after the pay rates for clerical employees who are represented by the Teamsters Union, and outlined in contracts between the Teamsters Union and other employers. Pairmore, Parkinson, Sproles and McGowan are paid a salary and work flexible schedules. Cross keeps track of attendance for all six employees. She and Carson are allotted 12 sick days each year. The four salaried employees do not have a limit on their sick leave days. All six employees are provided with a separate office, as well as the same health insurance and pension benefits from the Employer. There are no assigned lunch times or break times and there is no employee handbook.

Cross is proficient with the Employer's computer and payroll systems, while the Employer's salaried employees are not proficient with either system. For that reason, Cross testified that if the Petitioner was certified as the bargaining representative of the clerical employees, and the parties entered into contract negotiations, either she or Carson would be assigned to type the Employer's contract proposals to the Petitioner. She also testified that those proposals would probably be prepared by Local President Pairmore. The Employer

provided no evidence which would describe the role Pairmore, or any other individual, plays in determining the Employer's labor relations policies.

## **II. APPLICABLE LEGAL STANDARD FOR CONFIDENTIAL EMPLOYEES**

Confidential employees are not specifically defined in the Act, but are excluded from bargaining units pursuant to Board policy. Over 50 years ago, the Board designated confidential employees as those who "assist, and act in a confidential capacity to persons who formulate, determine, and effectuate management policies with regard to labor relations." *B.F. Goodrich Co.*, 115 NLRB 722, 724 (1956). Later, the Board set forth an alternative analysis, finding confidential employees maintained access to confidential information about anticipated changes that might result from collective bargaining. *Pullman Standard Division of Pullman, Inc.*, 214 NLRB 762, 762-763 (1974) (access to labor rates). The Supreme Court approved both the initial "labor nexus test" and the alternative test in *NLRB v. Hendricks Country Electrical Membership Corp.*, 454 U.S. 170, 188-189 (1981). In order to determine whether an employee is confidential, the appropriate analysis considers whether the employee closely works with an individual who decides and effectuates an employer's labor policy or whether the employee would acquire confidential information about potential bargaining matters.

The burden of establishing that an employee is a confidential employee rests with the party asserting that status. *Intermountain Electric Association*, 277 NLRB 1 (1985); *Crest Mark Packing*, 283 NLRB 999 (1987). The standard is

construed narrowly and the relevant factors are applied in the conjunctive. *Weyerhaeuser Co.*, 173 NLRB 1170 (1969), *B.F. Goodrich Co.*, supra.

### III. ANALYSIS

There is insufficient evidence to find that Carrie Cross is a confidential employee. In order for Cross to be a confidential employee pursuant to the labor nexus test, she must assist individuals who "formulate, determine and effectuate management policies with respect to labor relations." *Hendricks Country Electrical Membership Corp.*, 454 U.S. at 188-189. Cross performs clerical tasks for the Employer, but there is no evidence that she acts in a confidential capacity to any individual who creates or effectuates the Employer's labor policies. In fact, the record fails to identify which Employer official is responsible for the Employer's personnel matters or formulating the Employer's bargaining proposals or management strategy in bargaining. Based on the lack of evidence that Cross assists the Employer's decision-maker for labor relations, Cross is not a confidential employee pursuant to the labor nexus test. Cf. *C & L Transport Co.*, 327 NLRB 408, 409 (1998) (confidential employee worked for manager who engaged in contract negotiations and suggested contract changes).

Even if Cross assisted a manager who formulated the Employer's labor policies, she does not handle the type of confidential material that would exclude her from the bargaining unit. Cross handles the Employer's mail and accounts payable, prepares its payroll checks, and forwards completed grievance forms to employers. While this general financial and business material may be private, it is unrelated to the Employer's labor policies and her access to this information is not

relevant to the determination of whether she is a confidential employee. *Bakersfield Californian*, 316 NLRB 1211 (1995) (no labor nexus where secretary processed payroll, disciplinary and grievance matters).

Under the alternative analysis, the record reflects that Cross manages confidential financial information for the Employer. Cross attends monthly executive board meetings, but she does so in a ministerial capacity, in order to provide data and respond to inquiries. Although the Employer's executive board may discuss policies at these meetings, there is no evidence that Cross has access to confidential information regarding the Employer's personnel strategies or information that would be used in contract negotiations. *KOWB Radio*, 222 NLRB 530, 530-531 (1976) (bookkeeper with access to pay rates not confidential). The fact that an employee administers confidential financial information for an employer, without more, does not establish that the employee has access to information regarding its negotiating positions. *Dinkler-St. Charles Hotel*, 124 NLRB 1302 (1959); *Washington Post Company*, 254 NLRB 168, 197-198 (1981) (senior budget analyst, operating statements clerk, both found not confidential).

Also, even though Cross anticipates being assigned to type contract proposals that the Employer will submit to the Union if the Union is certified to represent the clerical employees, this task would not render her a confidential employee. The Board will not exclude an employee from a bargaining unit based on speculation as to what tasks they will perform in the future. *Southwestern Bell Telephone*, 222 NLRB 407 (1976). Furthermore, employees who merely type

contract proposals will not be excluded from the bargaining unit as confidential. *Bakersfield Californian*, supra.

In its post-hearing brief, the Employer relies on *Firestone Synthetic Latex Co.*, 201 NLRB 347 (1973) and *National Cash Register Co.*, 168 NLRB 910 (1967) to support its contention that Cross is a confidential employee. However, these cases are distinguishable from the instant matter and fail to compel such a finding. Collectively, the alleged confidential employees in those cases, among other things, had access to employer data in preparation for contract negotiations, maintained files containing labor relations information, and prepared notes from which the employer's contract proposals were made. The record in this case is void of any of these facts.

Based on the above, there is insufficient evidence to support a finding that Carrie Cross is a confidential employee. Therefore, she will not be excluded from the unit.

#### **IV. CONCLUSIONS AND FINDINGS**

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. 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.
3. The Petitioner claims to represent certain employees of the Employer.

4. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

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

6. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All office clerical employees employed by the Employer at its Memphis, Tennessee office located at 796 East Brooks Road.

**EXCLUDED:** All other employees, guards and supervisors as defined in the Act.

#### **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Steelworkers International Union. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

#### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who

have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of

sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **December 5, 2012**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website [www.nlr.gov](http://www.nlr.gov),<sup>2</sup> by mail, by hand or courier delivery, or by facsimile transmission at 901-544-0008. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

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<sup>2</sup> To file the eligibility list electronically, go to the Board's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **VI. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by 5 p.m. EDT **December 12, 2012.**

November 28, 2012

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The request may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov),<sup>3</sup> but may not be filed by facsimile.

**DATED:** November 28, 2012



William R. Yarbrough, Acting Regional Director  
National Labor Relations Board  
Region 26  
80 Monroe Avenue - Suite 350  
Memphis, TN 38103-2416

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<sup>3</sup> To file the request for review electronically, go to the Board's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.