

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 15**

CROFT METALS, INC.

Employer,

and

**INTERNATIONAL BROTHERHOOD
OF BOILERMAKERS, IRON SHIP
BUILDERS, BLACKSMITHS,
FORGERS & HELPERS, AFL-CIO**

Petitioner,

Case No. 15-RC-8389

**BEVERLY ENTERPRISES-MINNESOTA,
INC, D/B/A GOLDEN CREST HEALTHCARE
CENTER**

Employer,

and

**UNITED STEELWORKERS OF AMERICA,
INC.**

Petitioner,

**Cases 18-RC-16415
18-RC-16416**

OAKWOOD HEALTHCARE, INC.

Employer,

and

Case 7-RC-22141

**INTERNATIONAL UNION, UNITED
AUTOMOBILE AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW), AFL-CIO**

Petitioner

**BRIEF ON BEHALF OF THE
INTERNATIONAL BROTHERHOOD OF BOILERMAKERS,
IRON SHIP BUILDERS, BLACKSMITHS, FORGERS & HELPERS, AFL-CIO**

The International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO, Petitioner in *Croft Metals, Inc.*, 15-CA-8389, submits the following in response to the July 24, 2003, notice and invitation of the National Labor Relations Board to file additional briefs. The Boilermakers brief will be limited to the facts and issues raised by the *Croft Metals, Inc.* case. The lead persons at issue in this case, like the nurses at issue in the two companion cases, are exactly the type of “minor supervisory employees,” expressly including “leadmen” that the AFL-CIO demonstrates in its Amicus Brief Congress did not intend to subsume under the statutory definition of supervisor. We believe the AFL-CIO has ably analyzed the statutory language, its legislative history, and the supervisor jurisprudence. We write separately only to explain why that law, applied to the facts of this case, clearly leads to the conclusion that the lead persons at issue are not supervisors.

FACTS

The Regional Director (RD) has fully set forth the facts of this case. The Employer manufactures doors and windows. While the disputed employees are all designated lead persons, they actually fall into three distinct categories. One category are the speciality lead persons. Some of the speciality lead persons have special expertise in the operation and repair of complex equipment. These speciality lead persons work in the tool room and Extrusion Department. As the RD correctly found there is a total absence of evidence that these individuals possess any form of arguably supervisory authority, Supp.D&D at 10. Thus, they are not discussed further below.

The only group of specialty lead persons discussed below are those in the Maintenance Department who work on small repair or maintenance projects with a crew of employees. A second category are the lead supervisors who work in the shipping department loading trucks with finished products along-side a small crew. The third category can be called line lead persons. They work on a single assembly line along with a small crew of employees assembling a single product.

The Employer has failed to carry its burden of proving that any of these types of lead persons are supervisors.

ARGUMENT

The only indicia of supervisory status that are placed at issue in this case are the authority to assign and to responsibly direct. We urge the Board to construe those terms in the manner fully explained in the brief of the Amicus AFL-CIO. Such a construction is consistent with the Board's extensive jurisprudence holding that lead persons like those at issue in this case are not excluded supervisors. Applying these proper constructions of the statutory terms makes it clear that the lead persons neither assign or responsibly direct employees. Moreover, even if they did, the Employer has failed to carry its burden of proving that they exercise independent judgment in so doing.

I. The Employer Failed to Carry Its Burden of Proving Assignment

None of employees in the three categories of lead persons assign other employees within the meaning intended by Congress in § 2(11) of the Act. There is no evidence that they assign employees to classifications, to shifts, to departments, to lines or to crews. There is no evidence that the lead persons assign employees on any on-going basis.

Even more temporary changes in duties falling below the level of the assignment contemplated by Congress are the responsibility of Department Supervisors. Asked, "You don't take a glazier and make them a screen roller," one line lead person answered, "Well, no, not me. Maybe supervisor do." Tr. at 107. A glazier testified similarly that she had never "been transferred on a temporary basis by a lead man." Tr. at 129. Neither can a lead person transfer employees to another department when they are not needed in their regular location due to lack of work or select employees from another department when they are needed away from their regular location. Tr. at 211, 214. If an employee is missing from a line, one lead person explained, "the supervisor will go and get somebody for me to put in that spot." Tr. at 102. The lead persons make no assignment of duties that lasts beyond a single shift. Any "switches" that the lead persons make are "temporary adjustments." Tr. at 45.

The employees call the personnel office if they are going to be late or they are sick. Tr. at 50. Similarly, if an employee needs to leave early, the lead person would "need to check with the supervisor before allowing that person to leave." Tr. at 50, 229. This is true even if the employee is sick. Tr. at 108, 197.¹ Lead persons cannot ask an employee to work overtime. Tr. at 51, 146, 198.

Thus, the Employer failed to carry its burden of proving that lead persons assign other employees.

¹In fact, the lead persons cannot even sign a pass authorizing an employee to use the phone during the workday. Tr. at 228.

II. The Employer Failed to Carry Its Burden of Proving Responsible Direction

It is the construction of the term “responsibly to direct” that is critical to a decision in this case that is both consistent with Congress’ intent and long-standing Board precedent. The specialty lead persons in the Maintenance Department,² the lead supervisors, and the line leads do not responsibly direct other employees as that term is used in § 2(11). The briefs of the Amici AFL-CIO and Building and Construction Trades Department set forth the appropriate construction of the term “responsibly to direct.” The Employer failed to present any evidence of the requisite type of responsible direction.

First, the lead persons do not direct employees in an entire department. The employees who are akin to the foreman Congress sought to exclude through the Taft-Hartley Amendments are the Department Supervisors who do not work with their hands but rather supervise the work of all employees in a department. Rather, the leads work with a small crew. The lead supervisors work with a few other employees to load a particular truck. The leads in maintenance are assigned a project and a crew to work with in accomplishing the task. Tr. at 22. The projects assigned to them are “the smaller construction projects and repairs.” Tr. at 24. The line leads are assigned to a single assembly line.

Second, the Lead Persons do not “direct[] other employees” on an on-going basis, but merely occasionally “directs the manner of others’ performance of discrete tasks.” The leads are experienced workers who operate as problem solvers in the truck, on a repair project, or on the

²These was no evidence about the interaction between the maintenance leads and the crew they work with. Not one specific instance of any form of direction by these leads is described in the record. Thus, the discussion below is largely about the other categories of leads because it is clear that the Employer failed to carry its burden of proving that the maintenance leads responsibly direction other employees.

line. In the words of the Vice President for Human Resources, “Their job is to keep that line moving.” Tr. at 18. They give sporadic direction to perform discrete tasks in order, for example, how to operate a particular piece of equipment on the line.

Third, lead persons work at their trade. They are simply experienced workers, selected based largely on their seniority. Tr. at 69-70; 109.³ All the lead persons who testified had extended lengths of employment with the Employer. Lead Person Michael Lewis, for example, had worked for the Employer for 25 years and was the most senior employee on his line. Tr. at 222.

All the lead persons who testified made clear that what they do primarily is work with their own hands. The lead supervisors first count and scan the merchandise. Supp.D&D at 8; tr. at 141. Load Supervisor James Martin “spends a normal day working with his hands loading trucks.” Supp.D&D at 9. Asked, “In a normal workday, how much of the time are you working with your hands, actually loading trucks,” he answered, “All day.” Tr. at 262-63. Load Supervisor Leo Holmes explained, “While they’re doing something in the truck, then I’m doing something else to – just like chess, one move ahead.” Tr. at 139. Holmes further explained, “once I get all the stuff that I need for [the first customer] and they’re loading stuff for [that customer], then I’m getting stuff that [the next customer] need. . . . And so forth and so on.” Tr. at 140. Asked, “What percentage of time would you say in a normal workday you spend directing the work of the three people you work with, as opposed to actually working yourself,” Holmes answered, “I’m working all day.” Tr. at 145.

³Department Supervisors, in contrast, are not selected pursuant to a bidding process or based on seniority. Tr. at 70.

Asked how many hours he spends “doing work on the line,” Line lead person Charles Coleman testified that “90 to 98 percent of the time, I’m always helping on the line.” Tr. at 106. He further explained that “most of [his] day is spent performing manual labor.” Tr. at 108. He described the start of his working day as follows: he gets a list of what doors need to be run from his supervisor, he gives the list to the materials handler, he obtains a portion of the materials needed for the production. Tr. at 100-02. After obtaining the necessary material for the line, he explained, “I’m mostly doing a job, too, on the line. . . I roll screen and help glaze, Z-bar. . . . I gets the glass; I gets the vinyl; and I gets the Z-bar here.” Tr. at 104. He summarized, “I’ve got to run from here to there. Put this bar on; put this on there.” Tr. at 105. Similarly line lead person Nolan Carmel explained, “I have to go out there and run the saw, fabricate, run the welder, then come on the other side and help them.” Tr. at 180. Asked, “Is there any time you spend during the day when you are watching what your three people are doing and you’re not touching the product? You’re just looking over them,” Carmel answered, “Very seldom.” Tr. at 208. Michael Lewis testified he spends five hours per day performing set-up work for his line. Tr. at 220. He cuts the materials for the other employees to run on the line. Tr. at 226. Even the Human Relations Vice President acknowledged in his testimony that line leads go and get the materials needed on the line. Tr. at 33. He further indicated, if there is a “new slow person on the line or something, then they might kick in themselves to eliminate the slowdown or bottleneck.” Tr. at 34.

The Department Supervisors, in contrast, do not work on the line or loading trucks. Tr. at 152.

Finally, there are a number of admitted supervisors – the Department Supervisors -- who exercise supervisory authority over the leads and the other employees. While they are not always physically present at the lines, they are in the facility and if they are needed they are paged to come to the line. Tr. at 262, 143, 136.

The Employer failed to carry its burden of proving that the lead persons responsibly direct other employees.

III. The Employer failed to Carry Its Burden of Proving the Exercise of Independent Judgment

Even if the record contained evidence that the lead persons assign or responsibly direct employees as those terms are used in § 2(11), the Employer still failed to carry its burden of proving that the performance of those supervisory duties requires the exercise of independent judgment.

In considering whether the lead persons exercise independent judgment, the Board should consider the facts (1) that they spend a small amount of their working day giving directions, (2) the directions are given to a small group of employees, and (3) the employees are performing the same or very similar operations every day. The Employer's Vice President testified that "employees perform the same task or job every day." Tr. at 45. One line lead person explained that you basically are "using the same things every day" and "[i]t's the same process to put it together every day." Tr. at 106. The shipping lead person also explained that the shipping employees "basically do the same thing every day." Tr. at 247. Similarly, a load supervisor affirmed that "loading of the trucks [is] pretty routine day to day." Tr. at 261.

The Employer simply failed to come forward with evidence of the exercise of independent judgment. The Vice President for Human Resources testified in vague, general terms: “They may give them direction as to what’s needed to solve a particular problem or to correct an incorrect performance of their job.” Tr. at 38. Similarly a Load Supervisor simply stated that he told his three person crew, “Where to put and how to put it.” Tr. at 142. As the RD found, one lead “gave no details regarding the instructions he gives or the factors involved in determining what those instructions will be.” Supp.D&D at 14.

Specifically, there was almost no testimony about the factors the lead persons consider in giving directions. The little testimony there was does not suggest the exercise of independent judgment. One witness testified that load supervisors load trucks in accordance with a sheet of paper they are given the lists the order of “drops” and “he load it by that. . . . Drop one is at the door; . . . on down the line of the truck.” Tr. at 121. “And then he gets the employees to help him load the truck that way.” Tr. at 121. A load supervisor confirmed this process. Tr. at 140. He affirmed, “you’re loading in order.” Tr. at 121. These facts are consistent with the Board’s consistent conclusion that directing employees in the loading of trucks does not require independent judgment. “The Board, with court approval, has found that the assignment and direction of employees in connection with the loading and unloading of trucks, and in connection with the storing of goods, is generally routine in nature.” *Millard Refrigerated Services, Inc.*, 326 NLRB 1437, 1437 (1998).

The Employer failed to carry its burden of proving the exercise of independent judgment.

IV. Secondary Indicia Demonstrate That Croft's Leadmen Are Not Statutory Supervisors

The Board need not consider any secondary indicia in order to reach the conclusion that the lead persons are not supervisors. But if it does, these indicia support that conclusion.

The Employer's own counsel referred to a "supervisory core" which did not include the "lead persons in the plant." Tr. at 12. The plant has a Plant Manager and 20-25 admitted supervisors. Supp.D&D at 7. The supervisors have authority over a single large department or multiple smaller departments. Supp.D&D at 7. There are 25 to 30 lead persons. There are 350 employees in the unit, including the leads. Thus, under the RD's decision there is a ratio of 21 to 26 supervisors to 350 employees or approximately 1 to 14. If the leads are included, however, the ratio is approximately 50 supervisors to 325 employees or almost 1 to 6. The ratio is even more unreasonable in specific cases, for example, if the lead supervisors are statutory supervisors the ratio on each crew is one to three. Supp.D&D at 8. The same ratio would exist on some assembly lines. Tr. at 180.

The lead persons are paid on a hourly rate. There are production employees who are paid a higher rate. Tr. at 116. Line lead person Coleman, for example, testified he earned \$7.80 per hour. Tr. at 116. The lead persons receive the same benefits and are accorded the same privileges as the admitted rank-and-file employees. Tr. at 75.

The lead persons do not attend the daily supervisors' meeting. Tr. at 82.

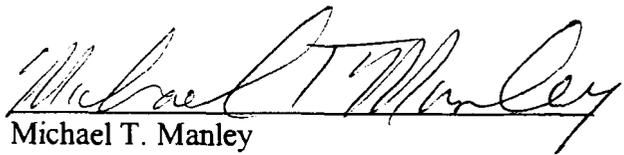
The lead persons were previously part of the bargaining unit when it was represented by a different labor organization.

Thus, the secondary factors support the conclusion that the lead persons are not supervisors.

Conclusion

For the above-stated reasons, the Board should adopt the RD's conclusion that the Employer did not carry its burden of proving that the lead persons are supervisors.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certify that a copy of the foregoing was served upon all parties to this action by United Parcel Service (UPS, Next Day Delivery) this 19th day of September, 2003, address to the following individuals:

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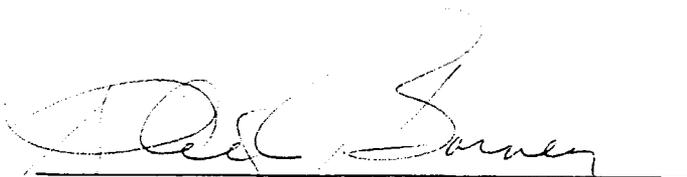
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