

**The Atlanta Newspapers and John Long.** Case 10-  
CA-25003

March 23, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On September 25, 1991, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

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

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

<sup>1</sup> The General Counsel has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule and administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In view of the judge's crediting the testimony of the Respondent's witnesses, Holmes, Wisemen, Bagby, and McDevitt, we adopt the judge's finding that the men-in-charge exercise independent judgment in assigning work to their crews and directing the carrying out of their tasks and therefore are supervisors.

The record does not support the judge's findings that the men-in-charge work out of the presence of the foremen the vast majority of the time or that the men-in-charge keep the time of the employees on their crew. These errors do not affect the ultimate conclusion regarding supervisory status.

*Gaye Nell Hyman, Esq.*, for the General Counsel.  
*James A. Demetry, Esq. (Dow, Lohnes & Albertson)*, of Atlanta, Georgia, for the Respondent.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This case was heard before me on July 25 and 26, 1991, at Atlanta, Georgia. The hearing was held pursuant to a complaint issued by the Regional Director for Region 10 of the National Labor Relations Board (the Board) on February 1, 1991. The complaint is based on an amended charge filed by John Long, an individual, on January 11, 1991. The complaint alleges that Respondent, The Atlanta Newspapers, violated Section 8(a)(1) of the National Labor Relations Act (the Act) by demoting its employee John Long on or about May 5, 1990, because he engaged in concerted activities with

other employees for the purpose of collective bargaining and other mutual aid and protection. The complaint is joined by the answer of Respondent filed on February 19, 1991, wherein it denies the commission of any violation of the Act and asserts in its answer as an affirmative defense that the charge should have been deferred to arbitration pursuant to the Board's policy on postarbitral deferral and that the complaint should accordingly not have been issued. The Respondent also asserts in its answer that the Charging Party is a 2(11) supervisor and as such his actions were not protected by the Act, and that the Charging Party's conduct was individual conduct, not concerted activity and was not protected under the Act, and that he was removed from his position as man-in-charge for bona fide business reasons directly related to his ability and suitability to perform the required job functions and unrelated to any protected activity under the Act.

On the entire record in this proceeding, including my observations of the witnesses who testified and after due consideration of the briefs filed by the General Counsel and counsel for the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

A. *The Business of Respondent*

The complaint alleges, Respondent admits, and I find that at all times material Respondent is and has been a Georgia corporation with an office and place of business located in Atlanta, Georgia, where it is engaged in the publication and distribution of a newspaper, that during the calendar year preceding the filing of the complaint, a representative period of its business operations at all times material, it derived gross revenues in excess of \$200,000, held membership in or subscribed to various interstate news services, published various nationally syndicated features, and advertised various nationally sold products and is and has been at all times material, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

B. *The Labor Organization*

The complaint alleges, the Respondent admits, and I find that at all times material the Atlanta Graphic Communications Union, Local 8-M is and has been a labor organization within the meaning of Section 2(5) of the Act.

Facts<sup>1</sup>

The Respondent publishes two major daily newspapers in the State of Georgia, plus other associated editions and other publications in the Atlanta, Georgia metropolitan area. In this regard it operates a pressroom which is approximately 80 feet wide and 350 feet long. There are four printing presses in the pressroom which are each 4 stories tall, 150 feet long, and 11 feet wide. On weekdays two presses are operated on the day shift and three presses are operated on the night shift. On weekends all four presses are operated on both the day and night shifts. Each of the presses is estimated to cost approximately \$12 million. The pressroom is headed by Pressroom Manager Jerry Holmes. In the pressroom there are

<sup>1</sup> The following includes a composite of the credited testimony much of which was not in dispute.

four foremen (including a maintenance foreman) employed on the day shift. Phillip Wiseman is employed as head foreman. There are three foremen assigned to the night shift. At the time of the alleged violation of the Act there were 93 bargaining unit employees in the pressroom classified variously as journeymen, apprentices, and assistants. In addition, there were 13 bargaining unit employees classified as men-in-charge. At the time of the hearing these numbers had been reduced to 87 employees and 11 men-in-charge. Men-in-charge are recognized in the bargaining agreement as unit employees and are paid hourly. The Respondent is authorized to pay a contractually set (or greater) shift differential to them over the journeyman rate. Men-in-charge also receive unlimited sick leave days wherein journeymen do not and are accorded parking places in areas designated for members of management. Foremen are salaried and also receive the unlimited sick leave days and are also permitted to park in the parking areas for members of management.

Men-in-charge (also referred to as crew chiefs) are placed in charge of a crew (generally approximately seven employees or less) for each press run. The crewmembers are assigned various jobs on various parts of the press and are designated as console man, color men, and offside man and reel operators. crewmembers are stationed occasionally in the reel room, at each end of the press and in a room known as a quiet room. The men-in-charge receive a check list at the beginning of their shift and utilize it to check the various areas of the press. They move along the various locations on the press to perform these checks and to oversee the operation of the press. They perform some of the checks themselves, and assign some checks to the crewmembers whose work they oversee and direct. They also discuss problems in the office with the foremen. The men-in-charge are responsible for the press on which they and their crew are working. The men-in-charge consider themselves to be the boss of the crew they are working with. They resolve minor "squabbles" or disagreements among crewmembers as to such matters as job assignments. They permit employees to go to lunch early after the run has been completed. They serve as timekeepers and are to report any tardiness on the part of crewmembers but do not always report brief periods of tardiness unless it becomes a problem. If they report the tardiness, the employees' pay is docked. They have the authority to stop the press and call maintenance for a malfunction as do journeymen employees. They also fill out evaluation forms for assistants they work with as do foremen, which forms are utilized by Pressroom Manager Jerry Holmes in determining which assistants will be promoted to apprentice. Neither the foremen nor the men-in-charge have the authority to issue discipline or to authorize the working of overtime, both of which responsibilities are reserved to Pressroom Manager Holmes. Once given their assignment for the day the men-in-charge make the determination as to where the members of their crew will be assigned and direct their work during the course of the shift. The men-in-charge perform substantial hands on bargaining unit work whereas the foremen do not, except for training and emergency situations. Foreman Wiseman testified he performs less than 30 minutes of bargaining unit work per week, if that much. Holmes and Wiseman testified the pressroom could not function without the men-in-charge as the result of the size of the presses and various other requirements on their time which make it impossible for them

to personally oversee the operations of the presses. Men-in-charge also determine when the paper is of sufficient good quality to start printing and fill out production reports referred to as alibi sheets reporting waste and various problems encountered during the run and the reasons therefor. In addition to the operation of the press the men-in-charge determine what maintenance and replacements need to be made on the press and they and their crew are sometimes required to perform a "make ready" function rather than engage in an actual pressrun for all or part of their shifts. Men-in-charge also regularly serve as a substitute for unavailable foremen who are undisputed 2(11) supervisors.

Charging Party, John Long, became a permanent man-in-charge in April 1989 and was considered by Pressroom Manager Holmes to be an excellent man-in-charge with good production times, good quality, a good waste record who motivated his crew well. In November 1989, Long filled out an evaluation form for evaluating assistants for promotion to apprenticeship for two assistants in his crew, G. B. Maynard and James Dailey. He also wrote a letter recommending their promotion to apprentice. Subsequently Maynard was promoted while Dailey was not promoted. Long believed that Dailey should have been promoted instead of other employees who were promoted with less seniority. Seniority is a consideration for promotion but promotions are not determined solely by seniority. Foreman Wiseman testified that following the promotions, employee James Dailey told him that Long had said that Dailey had been "screwed" by Holmes in not promoting him. Wiseman informed Holmes of this and Holmes called Long into his office and told him, according to Holmes, "that if he had problems with my decision that he needed to come talk to me about it. We reached, needed to reach some sort of accord in my office, that when he went back out there on that floor, that he needed to support my decisions." According to Holmes, Long concurred with this at the time of the meeting and did not argue about it. Long testified that in November 1989 he heard that:

Dailey was not going to be promoted, but instead there were younger employees that were going to be promoted up over him. And so, I had talked with James (Dailey) about it and we . . . discussed it. I asked him if he wanted to me to go in and talk with Jerry (Holmes) about it.

And so I went in and—he agreed . . . I did go in and talk with Jerry (Holmes) about it. I explained to Jerry that James (Dailey) was qualified and that he had the seniority and that in accordance with our contract the man should be moved up. Jerry's response was, was that these other men he had, had prior experience. In fact they didn't have prior experience. They'd never worked in a newspaper shop before they had come to this particular shop there. Like I say, they also had less seniority. So, at any rate, being that was the first step of a grievance procedure, the proper thing to do, that's what I went and did. And he disagreed and so, the meeting was over with.

Long testified further that after this meeting there were a number of small incidents which happened on the press whereby Holmes was exerting pressure on his crew and that whereas generally there had been "lax" (lull) times per-

mitted during slow periods in recognition of the all out effort required during high demand periods to get the paper out, that Holmes and the foreman started cracking down on his crew:

Particularly on Saturdays when we had to work a 17 hour shift. We came in at 6:15 in the morning and we didn't get off until 11:30 at night. You know, obviously, a pretty long time period there. Like I say, generally, when there was a lax (lull) time . . . they would allow us to take little breaks. So during the period of the first of the year of 1990 they started cracking down and pretty well tried to keep us busy all the time during the entire, roughly, 17 hour—17-1/2 hour time period there.

Long testified further that there was an incident, wherein during the course of a grievance filed by employee Bob Stewart on his crew, Holmes had told Stewart that Long was having him do all the dirty work rather than getting his journeyman's hands dirty. Long testified this happened in late March and after Stewart told this to him, he went in to talk to Holmes about it and Holmes denied that he had said this. Long also testified about concerns of other employees who had held but relinquished the man-in-charge position because of alleged harassment by management and former employee Robert Smith who had also been by-passed for a promotion to apprentice. Long testified he had discussed with the other employees what should be done about this and they had discussed going over Holmes' head to remedy the situation but he did not feel the timing was right and was waiting for an opportunity to do so.

Long testified further that subsequently in April 1990 on a Wednesday, he came into work and his locker had been "bashed in." He reported this to Holmes and Holmes said that if he found out who had bashed the door in, that person would be fired and that he (Holmes) would see to it that he would never work in a pressroom in the United States again. Subsequently, that evening while Long was working a double shift he talked with some employees on the night shift who told him that Kim Hall, a man-in-charge on the night shift had done this. He confronted Hall who admitted it and apologized and told him and other employees that he had been on "steroids and D balls," "some kind of muscle building pills of some kind." "He was a weight lifter and body builder and all this." He said "he had been on these steroids and D balls and that he was just on edge," and that he had thought that Long or someone in his crew had moved his car in the garage where he parked. Hall said he had decided to start at the top as Long was the man-in-charge of the crew and this was why he had bashed in his locker. Long relayed this information to Holmes. He subsequently learned either that day or the day after that Holmes had called Hall into his office and removed him as a man-in-charge and suspended him for 30 days. Long testified further that on the following Saturday this matter was a topic of discussion at lunch and that foreman Phillip Wiseman, who was eating lunch at the same table said "Well, John (Long), you know if it would have been you, ' . . . Jerry (Holmes) don't like (you) too much,' . . . your ass would have been fired." Long further testified that Wiseman also said that he had overheard a conversation Holmes had with Plant Manager

Robert Guthrie and had not told Guthrie about the "steroids and the D balls."

Long testified that following this conversation with Wiseman he contacted George Alford, Respondent's labor relations manager by calling him the following Monday and discussed it with him. Long asked Alford if he (Long) could meet with him and with Stan Pantel, Respondent's vice president of operations. Alford agreed to a meeting but suggested that plant manager Robert Guthrie was the proper person to meet with Long. Long agreed to meet with Guthrie the following Tuesday but Alford was unable to attend. Long met with Guthrie on May 1. Long testified he discussed the failure to promote Dailey and the other incidents of alleged harassment by Holmes and discussed the entire locker bashing situation and that he "was asking for some kind of relief to the kind of treatment that we was getting."

Long testified that subsequently, on Saturday, May 5, 1990, Foreman Wiseman asked Long to come into Holmes' office and in the presence of Wiseman, Holmes told Long he would not tolerate anyone disagreeing with his management decisions and questioning his managerial abilities and that "No one, will go over my head. Holmes then said, "You're off for the rest of the day with pay." and as of Monday, you'll be a journeyman and you'll pick your off days." At that point Long said, "Well, Jerry, this is discipline," and "I want a union representative present. Holmes said, "There will be no union representative present, and the meeting is over with." On the following Friday, Long met with Vice President of Operations Stan Pantel and discussed the above. He also filed a grievance. Both Holmes and Foreman Wiseman denied that Holmes had stated that Long was demoted because of going over Holmes head but contended that Holmes had inquired if this was the reason for his demotion and that Holmes said it was not.

Foreman Wiseman testified concerning the conversation with Long at lunch following the incident involving Hall that Long was questioning Holmes' decision not to fire Hall and that Long had stated that if he bashed in a locker, he would have been fired and that if Hall came anywhere near him, his family would own a piece of the newspaper (referring to a lawsuit). Wiseman reported these statements to Holmes. Wiseman denied having told Long that if he had bashed in his locker he would have been fired or that he had told Long that Holmes had not told Guthrie the whole story.

Guthrie testified that at the meeting between himself and Long, Long reiterated the locker incident and that had heard that Holmes had not told Guthrie all of the circumstances of this incident to Guthrie. Guthrie told Long that his statement was the same as he had heard from Holmes. Guthrie testified he told Long that he was probably instrumental in Holmes' decision not to discharge Hall as he thought that if Hall was otherwise a good employee and worth salvaging they should make every effort to do so. Guthrie testified the conversation went from the locker incident to the differing management styles of Long and Holmes, that he had been involved in some management courses that he thought would benefit Holmes, that his crew was one of the better performers and that some of his employees "had gotten a raw deal" concerning some promotions to apprentice. Guthrie stated he believed Long was speaking on behalf of himself rather than on behalf of his fellow employees during the conversation.

## Analysis

The General Counsel contends that Long was demoted due to his participation in concerted activities with his fellow employees citing Holmes' testimony that he had told Long he had "no choice but to remove him from the job," because Long was "creating unrest out there on the floor because of the decisions I was making." The General Counsel notes that Holmes testified that Long was an excellent man-in-charge. In support of her position that Long was engaged in protected concerted activity, the General Counsel also cites the testimony of Guthrie that Long had stated that his crew had gotten "a raw deal" in reference to employees not being promoted, that he wanted to take care of the employees on his press and that if his crew performed well and finished early, they should be permitted to leave. The General Counsel also contends that although "Holmes denied making any reference to Long's meeting with Guthrie on May 1, the credible evidence warrants a contrary finding." In this regard the General Counsel relies on Holmes' testimony that the topic came up, although Holmes testified that it was brought up by Long who asked whether the demotion was due to his meeting with Guthrie. The General Counsel contends that Long's action in meeting with Guthrie on May 1, was the final straw in Holmes' view and that Holmes retaliated by demoting Long on May 5.

The General Counsel further contends that the evidence "clearly demonstrates that on May 1, Long acted on his behalf and that of his fellow employees. In this regard the General Counsel relies on Long's testimony that he "had discussed going to higher management, for months, with fellow employees," and argues that the "employees not only knew that at some point Long would proceed, but welcomed such action." The General Counsel concludes that the demotion of Long on May 5 was in retaliation for his pursuit of his rights under the Act and thus violated Section 8(a)(1) of the Act, citing *Meyers Industries*, 281 NLRB 882 (1986). The General Counsel also contends that Long was "acting within the rights guaranteed under the collective bargaining agreement," as the "handbook specifically authorizes employees believed subjected to harassment to contact the next higher level of management, when discussion with the immediate supervisor is not possible or desirable." The General Counsel contends that this is what Long did and that his "assertion of a right contained in the contract is a continuation of the concerted action that generated the agreement," and that "accordingly, the assertion of said rights affects all employees covered by the agreement" and that "a demotion based thereon is unlawful," citing *City Disposal Systems*, [465 U.S. 822 (1984)].

The Respondent defends on three separate grounds. Initially it contends that this decision on the complaint should be deferred to the arbitration award issued on November 5, 1990, wherein the arbitrator denied the grievance brought on Long's behalf concerning the demotion by the Union under the contractual grievance procedure. Secondly, it contends that Long was a supervisor as a man-in-charge and that his activities were not protected under the Act. Finally, it contends that the actions of Long were individual actions, not concerted activity within Section 7 of the Act and were thus unprotected. In support of its position that this matter should be deferred to the arbitration award of November 5, 1990, the Respondent asserts that on May 10, 1990, the Union filed

a grievance with Respondent protesting Long's May 5, 1990 removal from the man-in-charge position and that pursuant to the grievance and arbitration provision of the parties then existing collective-bargaining agreement, an arbitration was held on September 10, 1990, before an impartial arbitrator, that the Charging Party and the Respondent were represented by counsel at the hearing and both presented testimony and documentary evidence at the hearing and made arguments at the hearing and submitted postarbitration briefs to the arbitrator. The Respondent notes that in its brief on behalf of Charging Party Long the Union argued that the Respondent violated the Act by demoting Long for engaging in "the protected activity of complaining about unfair treatment to Robert Guthrie, Production Manager of the Newspaper." The Respondent also notes that on November 5, 1990, Arbitrator Marcus issued a Decision and Award finding no violation of the agreement by Respondent's removal of Long from the man-in-charge position. The Respondent thus contends that "Because the arbitrator considered the identical facts under consideration in this case, and because the arbitrator's decision is not clearly repugnant to the Act, decision on the General Counsel's complaint should be deferred. In support thereof, the Respondent cites *Dennison National Co.*, 296 NLRB 169 (1989), wherein the Board discussed the criteria for deferral to an arbitration award and concluded that:

The Board will find that the arbitrator has adequately considered the unfair labor practice if (1) the contractual issue is factually parallel to the unfair labor practice issue, and (2) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice. *Olin Corp.*, 268 NLRB 573, 574 (1984); Differences, if any, between the contractual and statutory standards of review are weighed by the Board as part of its determination under the *Spielberg* standards of whether an award is clearly repugnant to the Act.

and *Olin Corp.*, supra at 574, wherein the Board set out the test for deferral to an arbitration award:

We would find that an arbitrator has adequately considered the unfair labor practice if (1) the contractual issue is factually parallel to the unfair labor practice issue, and (2) the arbitrator was presented generally with the facts relevant to resolving the unfair labor practice. In this respect, differences, if any, between the contractual and statutory standards of review should be weighed by the Board as part of its determination under the *Spielberg* standards of whether an award is "clearly repugnant" to the Act. And, with regard to the inquiry into the "clearly repugnant" standard, we would not require an arbitrator's award to be totally consistent with Board precedent. Unless the award is "palpably wrong," i.e., unless the arbitrator's decision is not susceptible to an interpretation consistent with the Act, we will defer.

Finally, we would require that the party seeking to have the Board reject deferral and consider the merits of a given case show that the above standards for deferral have not been met. Thus, the party seeking to have the Board ignore the determination of an arbitrator has the burden of affirmatively demonstrating the defects in the arbitral process or award.

The Respondent thus argues that the arbitrator “was presented a contractual issue factually parallel to the unfair labor practice issue.” Respondent further contends that the arbitration award is not “clearly repugnant” to the Act as it is not “palpably wrong” because it “is susceptible to an interpretation consistent with the Act.” The Respondent further notes that the Union in its brief to the arbitrator argued that:

John Long in discussing with Holmes and higher management working condition[s], the abilities and qualifications of employees in his crew, or the decisions made by Holmes was engaged in activity protected by the National Labor Relations Act.

The Respondent thus contends that the facts and issues presented in the arbitration case were identical to that of the instant case and were fully considered by the arbitrator.

With respect to the deferral issue, the General Counsel also cites *Olin Corp.*, supra, and contends that “the Board deems deferral appropriate if the Arbitrator has adequately considered the unfair labor practice issue.” The General Counsel notes the issues delineated by the arbitrator were:

(1) Did the company violate the collective bargaining agreement when it unilaterally demoted John Long from man-in-charge to journeyman pressman on or about May 5, 1990; and (2) Did the Company deny John Long union representation in violation of the collective bargaining agreement at which it unilaterally demoted him.

The General Counsel cites the arbitrator’s conclusion that it was not necessary to determine (1) If Holmes had reason to believe Long was undermining Holmes’ management of the pressroom; (2) if Long’s demotion was disciplinary; (3) whether the Company had just cause to demote Long, and; (4) who won the swearing contest between Holmes and Long. The arbitrator examined the various contract provisions and found no basis therein to resolve the issue. The arbitrator then decided this case by utilizing the past practice of the parties in reliance on the testimony of Holmes and Wiseman that men-in-charge had been unilaterally demoted in the past by Respondent without generating the filing of grievances by the Union and concluded that this established a past practice supporting the Respondent’s unilateral right to demote men-in-charge. Accordingly, the General Counsel contends that the issue whether the Company violated the collective-bargaining agreement when it unilaterally demoted Long is not parallel to the unfair labor practice issue and the arbitrator was not presented generally with the necessary facts relevant to resolve the unfair labor practice and that deferral to the arbitration award is not warranted citing in support thereof *Barton Brands, Ltd.*, 298 NLRB 976 (1990), and *Armour & Co.*, 280 NLRB 824 (1986).

My review of the foregoing convinces me that deferral is not appropriate in this case. Initially it is clear that the arbitrator specifically refrained from considering the very issues which would be involved in making a determination as to whether the Respondent had violated the Act by its demotion of Long and decided the case solely on his finding that the past practice of the parties established that on some occasions men-in-charge had been unilaterally demoted by the Respondent without the filing of grievances by the Union.

Thus while the contractual provisions of the contract could conceivably have permitted the unilateral demotion of men-in-charge as the arbitrator found that the past practice did, the determination by the arbitrator did not address in any manner whether the demotion of John Long was for just cause. As the General Counsel contends, an employer may be found not to have violated the contractual agreement of the parties or the established past practice of the parties but may nonetheless be found to have violated its statutory obligations under the Act. Thus, although the arbitrator found that the Respondent had the right to unilaterally demote men-in-charge under established past practice, he did not address the statutory issues as to whether the Respondent’s conduct in demoting Long was motivated by his engagement in concerted activities protected by the Act, or whether he was excluded from the protection of the Act as a statutory supervisor. See *Olin Corp.*, supra, and *Barton Brands, Ltd.*, supra. See also *Lewis G. Freeman Co.*, 270 NLRB 80 (1984), wherein the Board deferred to an arbitrator’s award upholding a suspension of one employee and reducing the suspension of another employee to a written warning. In *Freeman*, supra, the Board found that “the arbitrator adequately ruled on the statutory issue.”

#### The supervisory issue

The Respondent has also asserted as an affirmative defense that Charging Party Long was a supervisor within the meaning of Section 2(11) of the Act and was thus excluded from the protection afforded employees under Section 7 of the Act, citing *Beasley v. Food Fair of North Carolina*, 416 U.S. 659, 660 (1974), and *Parker-Robb Chevrolet*, 262 NLRB 402 (1982), in support thereof. Section 2(11) of the Act sets out the following definition of a supervisor:

The term “supervisor” means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, *promote*, discharge, *assign*, reward, or *discipline other employees*, or *responsibly to direct them*, or to adjust their *grievances*, or *effectively to recommend such action*, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of *independent judgement*. [Emphasis added.]

29 U.S.C. § 152(11).

The Respondent also asserts that it is well established that Section 2(11) is to be read in the disjunctive and that possession of any one of the enumerated indicia of supervisory status is sufficient to render an employee a statutory supervisor citing *George C. Foss Co.*, 270 NLRB 232 (1984); *NLRB v. Edward G. Budd Mfg. Co.*, 169 F.2d 571, 576 (6th Cir. 1948), cert. denied 335 U.S. 908 (1949), provided that the authority is exercised with independent judgment on behalf of management citing *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). The Respondent contends that the men-in-charge positions generally and the Charging Party’s position in particular are supervisory in nature within the meaning of Section 2(11) of the Act. The General Counsel contends that the men-in-charge and Charging Party Long in particular “are essentially serving as quality control inspectors” and are not supervisors as they do “not have the authority to hire, fire, layoff, or discipline employees.”

I find based on the testimony of Pressroom Manager Jerry Holmes, Foreman Phillip Wiseman, Man-in-charge Timothy Bagby, and Man-in-charge Mike McDevitt whom I credit with respect to the authority and duties and responsibilities of the men-in-charge that notwithstanding their historical inclusion in the bargaining unit, the men-in-charge, including, Charging Party Long, have been at all times relevant here supervisors within the meaning of the Act and find the cases cited by the Respondent above support its position that Long was at all times material a supervisor and excluded from the protection of the Act. Initially, the undisputed evidence shows that the men-in-charge are promoted from bargaining unit journeymen pressmen positions and receive an increment in pay above that of the contractually specified minimum rate set out in the agreement for the men-in-charge positions. The men-in-charge receive unlimited sick leave days not enjoyed by other bargaining unit members. They also are permitted to park in an area designated for managerial and supervisory employees. The men-in-charge are in charge of a crew consisting of seven to eight employees who are classified as journeymen, apprentices, and assistants as was Long. They are considered the boss of the crew and are also referred to as crew chiefs. New employees are told they are to follow the instructions of the men-in-charge. The men-in-charge receive the assignment for their crew. The men-in-charge and their crew operate a printing press 150 feet high, 350 feet long, and 11 feet wide on four different levels or floors. Each of the printing presses operated by Respondent in its downtown pressroom are valued in excess of \$12 million. The men-in-charge oversee the operation of the press and are in charge of and responsible for the running of various newspaper editions and other publications and are also responsible for the makeready of the presses between printings when various phases of maintenance are performed. The men-in-charge carry out these responsibilities on their own and out of the presence of the foremen the vast majority of the time. They move about the printing press and oversee the work of the members of their crew. Although they have a checklist of operations to perform, it is their responsibility to assign crewmembers to various tasks and to delegate work to be performed by them. The men-in-charge determine when the quality of the paper is good enough to commence a printing run. They are accountable for the quality of the paper and must account for and explain waste and any problems with the equipment. In so doing I find the men-in-charge and Long in particular, at all times material, had significant authority over and responsibility for their crews with respect to the assignment of work to them and their direction in carrying out their tasks and that this authority required the use of independent judgment. While it is true that Long and the other men-in-charge did not have the authority to hire, fire, or layoff or otherwise discipline employees or to grant overtime, they possessed other indicia of supervisory status. In this regard the men-in-charge keep the time of employees on their crew and have exercised some discretion as to whether to report brief periods of tardiness to management. The men-in-charge also have the authority to independently repair mechanical problems on the press. The men-in-charge have the

authority to and regularly do resolve "squabbles" or disagreements that arise among members of their crew resolving or adjusting potential grievances informally. The men-in-charge are also responsible for reporting any misconduct of employees to the foreman or the pressroom manager. The men-in-charge and the foremen fill out evaluation forms for assistants in their crew concerning their recommendations for promotion to apprentices. The men-in-charge are the first step in the line of progression for promotion to foreman and are invited to attend foremen's meetings although they are not required to attend.

I find that all the foregoing and the record as a whole supports a finding that the men-in-charge and Long at all times material were supervisors within the meaning of Section 2(11) of the Act. I also find, that assuming arguendo, Long was demoted because of his engagement in concerted activities on behalf of other employees concerning their terms and conditions of employment, this conduct on his part was not protected under Section 7 of the Act as he is excluded from that protection because of his supervisory status. There is no evidence here of any coercion of Long to violate the law or discouragement from participation in Board process or grievance procedures which would compel the protection of the Act to be accorded Long despite the general exclusion of statutory protection to supervisors. In view of the foregoing I find it unnecessary to make credibility determinations as to what transpired concerning the versions of Guthrie and Long, Wiseman, and Long, and Holmes, Wiseman and Long at their respective meetings as in any event under any of the versions, Long's engagement in concerted activities on behalf of himself and/or fellow employees was not protected under Section 7 of the Act as he was a 2(11) supervisor excluded from the protection of the Act. I, accordingly, find the complaint should be dismissed. *Beasley v. Food Fair*, supra, and *Parker Robb*, supra.

#### CONCLUSIONS OF LAW

1. Respondent is an employer within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. This case should not be deferred to the arbitrator's award of November 5, 1990.
4. At all times material, John Long was a supervisor within the meaning of Section 2(11) of the Act and was excluded from the protection of Section 7 of the Act, and the complaint should be dismissed.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>2</sup>

#### ORDER

The complaint is dismissed in its entirety.

<sup>2</sup>If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.