Chrome Deposit Corporation *and* General Truck Drivers and Helpers Union, Local No. 92 a/w International Brotherhood of Teamsters, AFL–CIO, Petitioner. Case 6–RC–11386

June 11, 1997

ORDER DENYING REVIEW

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (pertinent parts of which are attached as an appendix). The request for review is denied as it raises no substantial issues warranting review.[1]

MEMBER HIGGINS, dissenting.

I would grant the Employer's request for review.

[1] The only issue raised in the request for review is whether the Regional Director erred in finding the Employer's crew leaders and fill-in crew leader not to be statutory supervisors.

APPENDIX

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to represent a unit of all full-time and regular part-time truckdrivers, machine operators, chrome platers, mechanics, crew leaders, and maintenance employees employed by the Employer at its Weirton, West Virginia facility (the facility); excluding office clerical employees, guards, professional employees, and supervisors as defined in the Act. Although the parties are basically in accord with both the scope and composition of the unit, the Employer, contrary to the Petitioner, contends the four crew leaders (Ronald R. Earley, Ronald D. Hardsouk, Richard M. Miser, and James D. Richardson) and the fill-in crew leader (Donald S. Creamer) are supervisors within the meaning of Section 2(11) of the Act and accordingly should be excluded from the unit. The four crew leaders are the Employer's four most senior employees; Don Creamer, the fill-in crew leader, is the fifth most senior employee. There are approximately 23 employees presently in the petitioned-for unit. There is no history of collective bargaining for any of the employees involved herein.

The Employer, an Indiana corporation with its principal office located in Portage, Indiana, and a facility located in Weirton, West Virginia, is engaged in the business of chrome deposition and electro discharge texturing of work rolls used by the steel industry to shape and texture steel. Chrome deposition involves placing a work roll, by overhead crane, into one of two plating tanks, which contain a chromic acid solution. The work roll is plated with chrome through electrolysis. Electro discharge texturing (EDT) involves placing a work roll into a computer-operated texturing machine which bombards the work roll surface with electric sparks, thus producing a textured finish. Some rolls are only chrome-plated, some rolls are only textured and some rolls are both chrome-plated and textured, depending on the customer's specifications. The Employer's customers include Weirton Steel, U.S. Steel, Irvin Works, Ormet Aluminum, LTV East, LTV West, and LTV Aliquippa. The Employer does not, itself, own any rolls, but rather processes rolls for its customers.

David J. Cuprik, the plant manager of the facility, a position he has held since February 28, 1997, has overall responsibility for the operation of the facility. Prior to his promotion to plant manager, Cuprik was plant superintendent for 13 years. Richard P. Decker has been the plant superintendent since March 1, 1997. Decker, who reports directly to Cuprik, shares responsibility for the operation of the facility with him and also supervises the work of the truckdrivers and the four work crews, each of which consists of three individuals: a crew leader, an EDT operator, and a chrome plater. Prior to his promotion to plant superintendent, Decker, who was hired in 1983 as a chrome plater, was a crew leader from 1984 to March 1, 1997.[4] Decker, during the past few years, has frequently functioned as both plant superintendent and as a crew leader.[5]

The Employer operates 7 days per week, 24 hours per day, utilizing three shifts: night shift from 10:45 p.m. to 6:45 a.m.; day shift from 6:45 a.m. to 2:45 p.m.; and afternoon shift from 2:45 p.m. to 10:45 p.m. Cuprik and Decker work Monday through Friday, 8 a.m. to 4 p.m. and 6:30 a.m. to 4 p.m., respectively. Decker, on occasion, comes to work earlier or stays later, depending on work demands, including scheduling and handling emergencies. The four work crews, as described above, are assigned to the three shifts, pursuant to a rotating schedule, which is established for an entire year, beginning on January 1 and ending on December 31. Truckdrivers, who are not assigned to work crews, are also scheduled 7 days per week, 24 hours per day. The maintenance employee generally works from 8 a.m. to 4 p.m., Monday through Friday, and occasionally on Saturday.

The daily work schedules for EDT operators and truckdrivers are prepared by Decker and posted in the crew leader office, as is the roll inventory. At the beginning of a shift, all the employees meet in the crew leader office.[6] The EDT

[4] The record reveals that Decker, during his tenure as crew leader, occupied a special status with the Employer. Decker had superior knowledge of the Employer's operation and then Plant Superintendent Cuprik consulted with him because of Decker's experience and expertise and assigned him special tasks. Decker, who was a long-term personal friend of Cuprik, with whom he socialized, did not apply for the position of plant superintendent, in the expectation that he would, in the normal course of events, be promoted to that position. Decker's assumption that he would be promoted was also based on his filling in for Cuprik as plant superintendent for extended periods of time, including all of February 1997. The record establishes that Decker had more authority and responsibility as a crew leader than the current crew leaders have. Accordingly, Decker's testimony regarding his authority and responsibility when working as a crew leader is not dispositive of the authority and responsibility of the current crew leaders and fill-in crew leader.

[5] The parties stipulated, and I find, based on Cuprik's authority to hire, discharge, and responsibly direct the work of employees and on Decker's authority to discipline and to responsibly direct the work of employees, that both Cuprik and Decker are supervisors within the meaning of Sec. 2(11) of the Act.

[6] The crew leader office is not reserved for the crew leaders but is used by all the employees during the course of the day. The of-

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operator and truckdrivers check their schedules. The crew leader and chrome plater, working as a team, review the posted inventory of rolls for their shift, prioritize and begin work.[7] Generally, the work proceeds as scheduled. On occasion a customer will call in with a request which would, if granted, disrupt the established work schedule for that day. When that happens, the crew leader will consult with Decker, either in the plant or by telephone, regarding the customer's request. Decker will advise the crew leader how to proceed. Infrequently, Decker will not be available for such a consultation.[8]

As noted above, Decker prepares and posts the truckdrivers' work assignment schedule, as well as the list of truckdrivers who are available in an emergency to make deliveries to specific customers. Should an emergency arise, the crew leader calls Decker to confirm that the on-call truckdriver should be called to work.

Pursuant to an Employer directive, the crew leaders have been advised that they have authority to permit crew members to leave work in the event of a personal emergency. Crew leaders do not send employees home if there is a light workload.

Crew leaders spend about 85 percent of their time performing chrome plating work, working along with the two other crew members. The remaining 15 percent of the crew leader's time is spent doing job-related paperwork, which appears to be ministerial and routine in nature. This paperwork includes completing "SPC's," which are forms that tabulate the receipt of a work roll, the plating procedure performed, and data relating to shipment of the work roll to the customer. The crew leader also prepares bills of lading, which he signs, for customers, which set forth the name and address of the customer, the number of rolls plated, the roll numbers, and the size of the roll. The crew leader also fills out defect or roll deviation reports. Most of the roll defects are listed and described in the Employer's defect manual. If there is any question with respect to the seriousness of the defect, the crew leaders defer decision as to whether the roll should be rejected to either Cuprik or Decker. Crew leaders also fill out a "Taylor-Hobson" report. The Taylor-Hobson is an instrument which measures roughness and is tested at the beginning of each shift to determine if it is functioning properly. EDT operators and chrome platers can also prepare "SPC" forms, bills of lading, and "Taylor-Hobson" reports. The EDT operators have their own list of customer standards relating to roll deviations.

In the event of a workplace injury, which occurs infrequently, crew leaders fill out accident reports, which may also be filled out by Cuprik, Decker, or a witness to the accident.

When employees call off work to the plant superintendent, the plant superintendent advises the crew leader that a crew member will be absent. At that point, the crew leader will implement the Employer's preestablished absentee replacement procedure, which requires an employee from the preceding shift to work 4 hours of the next shift and an employee from the succeeding shift to be called to report for work 4 hours early.

When an employee reports off work directly to the crew leader, the crew leader will call the most senior employee to report to work. The decision as to whom to call out is based on seniority—the most senior employee gets the first opportunity to work overtime. There is a seniority list, as well as a vacation list, posted on the bulletin board in the crew leader office. If the senior employee refuses the overtime, the crew leader calls the next person on the seniority list. The most junior employee is required to work the overtime, if the more senior employees refuse. Should the junior employee refuse to work overtime, the crew leader has no authority to compel the junior employee to report for work. Such problems are referred to the plant superintendent by the crew leader.

Since about December 1996, the Employer has established a "no-overtime" policy, which is posted in the crew leader office. When a crew leader thinks overtime work is in order, the crew leader consults with the plant superintendent who makes the decision whether or not to assign overtime. On occasion, the plant superintendent will post a memorandum stating certain work requires overtime.

The crew leaders have not been advised that they have the authority to discipline employees nor have they ever done so. Problems are referred by the crew leader to the plant superintendent. As a matter of fact, there is very little discipline administered by the Employer. In this regard, the record reveals only one instance of an employee being disciplined. About 10 years ago, a junior employee, chrome plater Ben Gundrum, received a 3-day suspension for refusing overtime. Gundrum became angry at crew leader Ronald Hardsouk and left work. Hardsouk told Gundrum that he would have to answer to the plant superintendent for leaving work in the middle of a shift. Hardsouk did not discipline or suspend Gundrum, nor did he have the authority to do so. Hardsouk, who reported the incident to the plant superintendent, did not recommend discipline for Gundrum.

The Employer maintains a quality assurance manual which establishes quality control policy and responsibilities. With respect to the crew leader responsibilities, the manual states as follows:

> The Crew Leader has the responsibility for completing inspection and production reports, preparing Bills of Lading, verifying Standard Operating Procedures are implemented and performing on-the-job training.

The Employer has a stable work force and the most junior employee was hired in 1988. New employees are trained by the crew leaders and the other crew members. Crew leaders do not train other crew leaders, do not give hazardous material training which is handled by the plant manager, and do not explain the Employer's rules and regulations to new employees.

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fice, which contains a telephone used by all employees, functions as a "greeting place" in which employees socialize.

[7] On the rare occasions when the crew leader and chrome plater disagree regarding the roll work, the crew leader's decision prevails.

[8] This situation has arisen about once or twice in the past 6 months. The crew leader, in Decker's absence, determines what course of action to take. In the event that a customer's request would not require a change in the schedule established for that day's work, the crew leader will agree to the request. If the customer's request impacts on deliveries for other customers, the crew leader will continue to seek consultation with either Cuprik or Decker on how to schedule the work.

Although Decker, when a crew leader, had authority, without prior approval from the plant superintendent, to purchase relatively low cost materials and equipment like razor blades, ropes, and hand tools, the current crew leaders and fill-in crew leader do not have authority to make purchases on the Employer's behalf without prior approval from the Employer.

Crew leaders do not wear any article of clothing, badge, or insignia distinguishing them from the other employees.

Fill-in crew leader Donald Creamer, who was hired in December 1984, has worked as a "fill in" crew leader for about 5 years on a limited but regular basis. When filling in as a crew leader, he performs the same work as the four regular crew leaders. During the past year, Creamer has worked as a fill-in crew leader somewhere between 3 to 6 months. When not working as a fill-in crew leader, Creamer generally works the afternoon shift as a chrome plater. When working as a crew leader, he receives the crew leader rate; when working as either an EDT operator or chrome plater, Creamer receives that job's hourly rate.

It is well settled that the possession of any one of the indicia of supervisory authority specified in Section 2(11) of the Act is sufficient to confer supervisory status on an employee. *Allen Services Co.*, 314 NLRB 1060, 1061 (1994); *Auto West Toyota*, 284 NLRB 659 (1987). However, Section 2(11) of the Act requires that such authority must be exercised with independent judgment on behalf of management, and not in a routine manner. *Juniper Industries*, 311 NLRB 109, 110 (1993); *Somerset Welding & Steel*, 291 NLRB 913, 914 (1988); *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). If the supervisory indicia is exercised in a merely routine, clerical, perfunctory, or sporadic manner, then supervisory status is not conferred on an employee. *Allen Services Co.*, supra; *Bowne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986); *Feralloy West Co.*, 277 NLRB 1083, 1084 (1985). Employees who are merely conduits for relaying management information to other employees are not supervisors. *Bowne of Houston, Inc.*, supra. The Board will not consider titles alone to be determinative of supervisory status. *Marukyo U.S.A., Inc.*, 268 NLRB 1102 (1984). Further, the burden of providing evidence of supervisory status rests on the party asserting that such status exists. *S. S. Joachim & Anne Residence*, 314 NLRB 1191, 1194 (1994); *Northcrest Nursing Home*, 313 NLRB 491, 496 fn. 26 (1993); *Bowne of Houston, Inc.*, supra., *Tucson Gas & Electric Co.*, 241 NLRB 181 (1979).

Applying these principles to the instant case, I find that the Employer has failed to demonstrate that the crew leaders and the fill-in crew leader are supervisors as defined in Section 2(11) of the Act. The record reveals that the leaders do not have authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them or to adjust their grievances or to effectively recommend such action.[9] The record clearly establishes that the crew leaders and fill-in crew leader to not possess the statutory indicia of Section 2(11) authority.

In its brief, the Employer contends that the crew leaders and fill-in crew leader are Section 2(11) supervisors based on their ability to schedule and transfer employees, to assign work, and to responsibly direct and discipline employees. The authority the crew leaders and fill-in crew leader may possess with respect to scheduling, transferring, or assigning work to employees is de minimis. The evidence does not support the Employer's contention with respect to crew leader authority to assign and responsibly direct the work of employees. Rather, the evidence established that the schedules for the EDT operators and truckdrivers are prepared and posted by the plant superintendent, as is the roll inventory. The crew leader and chrome plater mutually establish their order of work. Should they disagree on the order of work—a rare occurrence—the crew leader, as the senior and most experienced chrome plater, determines how to proceed. Such a determination, based on seniority and experience, does not establish crew leaders as statutory supervisors. It is well established that persons who exercise limited supervisory indicia on an irregular or sporadic basis will not be found to be statutory supervisors. Any limited authority the crew leaders or fill-in crew leader may possess with respect to assigning or directing work is largely routine and does not require the exercise of independent judgment which would disclose the possession of supervisory authority. The work assignments made by the crew leaders are routine and based on the crew leader's tenure and competency. The crew leaders are, at most, experienced leadmen who operate within the parameters that have been defined by management. *North Shore Weeklies, Inc.*, 317 NLRB 1128 (1995); *Quadrex Environmental Co.*, 308 NLRB 101 (1992); and *Vanport Sand & Gravel, Inc.*, 267 NLRB 150 (1983).

With respect to the transfer of employees, the Employer relies on the October 1996 agreement between then crew leader Decker and crew leader Richardson to permit two EDT operators to trade crews. The record established that Decker initiated the discussions with Richardson regarding the transfers and advised Richardson that he supported the employees' request. The record further established that Richardson concurred in Decker's position. As noted above, by October 1996 Decker's special status as crew leader was firmly established and it is not unreasonable to infer that Decker's support of the EDT operators' requests, as communicated to Richardson, would rise to the level of a recommendation not to be disputed by a less senior crew leader. Moreover, such a single instance of transfer, even if actively participated in by Richardson, is de mininis.

With respect to crew leaders' authority to discipline, the Employer's reliance on Hardsouk's involvement in Gundrum's suspension, which occurred about 8 to 10 years ago, is misplaced. As noted above, the record established that Hardsouk merely advised Gundrum that he believed Gundrum might get into trouble if he left work early. This statement of Hardsouk's to an employee on one occasion many years ago is inconclusive, at best, and fails to support the Employer's inference that Hardsouk effectively recommended Gundrum's suspension. Rather, the evidence indicates otherwise. Additional examples of Decker's authority to discipline are, as noted above, in view of his special status not dispositive of the current crew leaders' authority.

[9] Although the Employer contends, in its brief, that the crew leaders and fill-in crew leader possess certain secondary indicia of supervisory status, I find it unnecessary to evaluate these factors as it is well settled that secondary indicia are not dispositive in the absence of evidence indicating the existence of any one of the primary indicia of such status. *North Jersey Newspapers Co.*, 322 NLRB 394 (1996); *Billows Electric Supply*, 311 NLRB 878 fn. 2 (1993).

The Employer's reliance on crew leader authority to grant time off and to train employees is also unavailing. The crew leaders, pursuant to the Employer's directive, grant time off to employees in emergency situations, which the Employer has empowered the crew leaders to determine. Such training as has occurred at the Employer in recent years is performed by both the crew leaders and unit employees.

The record establishes that the crew leader's relationship with the other crew members is closer to that of a leadman, if not that of a fellow employee, than a supervisor. The crew leaders spend 85 percent of their time performing the same work as the other employees. The fill-in crew leader spends even more of his time as a regular employee, since he only works as a crew leader, at most, 6 months of the year. The rest of the time the fill-in crew leader performs unit work.

Finally, I note that the crew leaders and the fill-in crew leader share similar wages and identical fringe benefits and other terms and conditions of work with the employees in the petitioned-for unit. Thus, they are hourly paid, receive overtime and, most significantly, spend the majority of their time performing unit work. Based on the above and the record as a whole and noting that the evidence does not establish that the crew leaders possess any of the indicia of supervisory status as set forth in Section 2(11) of the Act, I find that Ronald R. Earley, Ronald D. Hardsouk, Richard M. Miser, James D. Richardson, and Donald S. Creamer are not supervisors within the meaning of the Act. As noted, the Board has repeatedly held that individuals possessing the duties and responsibilities similar in nature and scope to those possessed by the crew leaders at issue herein do not exercise independent judgment in the manner contemplated by Section 2(11) of the Act. Rather, the decision-making authority shown on this record to be possessed by the crew leaders is, at best, the kind of routine, decision-making authority typical of nonsupervisory leadmen rather than true supervisory authority within the meaning of Section 2(11) of the Act. *New Jersey Newspapers Co.*, supra; *North Shore Weeklies, Inc.*, supra; *Allen Services Co.*, supra; *Somerset Welding & Steel*, supra. Accordingly, I shall include the crew leaders in the unit found to be appropriate herein.

Accordingly, I find that 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:

> All full-time and regular part-time truckdrivers, machine operators, chrome platers, mechanics, crew leaders and maintenance employees employed by the Employer at its Weirton, West Virginia facility; excluding office clerical employees, and guards, professional employees and supervisors as defined in the Act.