

Entergy Systems & Service, Inc., and Local 1, International Brotherhood of Electrical Workers, AFL-CIO, Petitioner. Case 14-RC-11568

June 30, 1999

DECISION ON REVIEW AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS
FOX AND HURTGEN

On October 5, 1995, the Regional Director for Region 14 issued a Decision and Order in which he found that the Employer's installation crew leaders were statutory supervisors. Because it was administratively determined that the involvement of a supervisor in the organizing effort was so extensive and pervasive as to taint the validity of the Petitioner's showing of interest, the Regional Director dismissed the petition.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Petitioner filed with the Board a timely request for review of the Regional Director's Decision. The Employer filed a statement in opposition to Petitioner's request for review. By Order dated May 22, 1996, the Board granted the Petitioner's request for review.

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

Having carefully considered the record with respect to the issue under review, we conclude, in agreement with the Regional Director, that the Employer's installation crew leaders are statutory supervisors. We adopt the Regional Director's recommendation, but we do so on the limited ground that the crew leaders are supervisors because any one of them can effectively block an employee's promotion.

Briefly, the facts indicate that the Employer installs and maintains energy efficient lighting systems for commercial and industrial facilities. It maintains a warehouse and office in Chesterfield, Missouri. The Petitioner seeks to represent a unit of all helpers, installers and maintenance employees, including crew leaders, at this location. The Employer currently utilizes three installation crews, each consisting of a crew leader and about three installers or helpers.¹ Crew leaders report to the district operations manager (DOM), a stipulated supervisor.

The Regional Director relied on the fact that the crew leaders are regularly the only members of management who are present at job locations and in a position to evaluate and direct the work of crew members. The Regional Director cited the crew leaders' responsibility for running jobs, assigning and directing work, requiring unsatisfactory work to be redone, and evaluating em-

¹ There are currently 11 installers and helpers. There is also a maintenance crew consisting of a maintenance crew leader and one maintenance employee.

ployees to support his finding of supervisory authority.² Thus, the Regional Director concluded that the installation crew leaders are supervisors within the meaning of the Act.

Section 2(11) of the Act requires that the exercise of supervisory authority involve the use of independent judgment. Analysis of the duties and responsibilities of an individual requires that the Board determine whether that person has authority to use independent judgment in performing any of the functions listed in Section 2(11), and to do so in the interest of management. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). The statutory language is disjunctive, and the exercise of any one of the listed indicium is sufficient to make that individual a supervisor. *Queen Mary*, 317 NLRB 1303 (1995); *Ope-rika Foundry*, 281 NLRB 897, 899 (1986); *Ohio Power Co. v. NLRB*, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). The party seeking to exclude an individual from a bargaining unit on the basis that the individual is a statutory supervisor has the burden of proving supervisory status. *North Shore Weeklies, Inc.*, 317 NLRB 1128 (1995); *Clark Machine Corp.*, 308 NLRB 555 (1992). After careful consideration, we find, in agreement with the Regional Director, that the Employer has met its burden of establishing by competent evidence that the crew leaders exercise sufficient independent judgment regarding employee promotions to render them statutory supervisors.

A crew leader completes 30, 60 and 90-day evaluations for each new employee on his crew and an annual evaluation for other members of his crew. Evaluations are signed by the crew leader and the DOM, who discuss the evaluation and then jointly discuss it with the employee. If a crew leader recommends that an employee be promoted, other crew leaders are consulted. The Employer's Standards of Policy and Procedure mandate that "Promotions are based upon a unanimous decision by all crew leaders and the DOM." DOM Daniel McCarthy testified that there was a meeting in February 1995 at which the crew leaders voted to promote employee Steve Whitby. McCarthy further testified that the crew leaders must be unanimous and that there were instances where a crew leader recommended an employee for promotion but the employee was not promoted because there was no unanimous agreement among the crew leaders. Although crew leader Danny Seymour did not testify that any particular promotions have been voted down, his testimony corroborates McCarthy that promotions require unanimous agreement of the crew leaders.

Under these circumstances, we find that the record establishes that the crew leaders have supervisory authority within the meaning of Section 2(11) with regard to em-

² The Regional Director also referred to certain secondary indicia such as possession of credit cards, pagers or phones, business cards, higher wages, and a company car, as supporting his conclusion.

ployee promotions. The record shows that, under the Employer's system, the crew leaders, who conduct the periodic evaluations of their crew members, individually have the authority to make the initial recommendation to promote a member of their crew, and collectively have the authority to make the effective recommendation as to the promotion of crew members.³ Further, as the promotion of a crew member requires the consensus of all crew leaders, each crew leader individually also has the authority to block an employee's promotion. Thus, no employee receives a promotion unless the employee's crew leader recommends it and the other crew leaders concur with that recommendation. On this basis, we find that the crew leaders' ability to affect the promotional opportunities of employees establishes supervisory authority,

³ As found by the Regional Director, the DOM has never overridden the recommendation of the crew leaders.

and we accordingly find them to be statutory supervisors. *El-Tech Research Corp.*, 300 NLRB 522 (1990); *Newspaper Guild Local 47 (Pulitzer Publishing)*, 272 NLRB 1195, 1200 (1984). We therefore find it unnecessary to pass on the Regional Director's reliance on any other statutory indicia of supervisory status.

We conclude that the installation crew leaders are statutory supervisors and that the petition must be dismissed because the Regional Director has determined that the involvement of an installation crew leader in the organizing effort was so extensive and pervasive as to taint the validity of the showing of interest.

ORDER

The decision of the Regional Director is affirmed and the petition is dismissed.