

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

NIPA HARDWICKE, INC.

Employer

and

Case No. 11-RC-6319

INTERNATIONAL UNION OPERATING ENGINEERS, LOCAL 465, AFL-  
CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: 1/

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. 2/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. 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.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 3/

All production and maintenance employees, including Level 1 and 2 chemical operators, maintenance mechanics, material handlers, building maintenance service workers, building maintenance group leader, grounds maintenance service workers, Level 1, 2 and 3 quality control lab technicians, analytical lab technicians, electronic and instrumentation technicians, electricians, shipping and receiving processors, environmental control technicians, environmental control operators, hazardous material operators, and environmental control lab technicians, employed by the Employer at its Elgin, South Carolina facility, but excluding all office clerical employees, Level 3 chemical operators, production clerks, research and development lab technicians and chemists, sales employees and guards, professional employees and supervisors as defined in the Act.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

OVER

engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

International Union Operating Engineers, Local 465, AFL-CIO

#### LIST OF VOTERS

In order to insure 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); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge of the Subregion who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Region 11 office on or before March 8, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

#### 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, D.C. 20570. This request must be received by the Board in Washington by March 15, 1999.

Dated March 1, 1999

at Winston-Salem, North Carolina

s/ Willie L. Clark, Jr.  
Regional Director, Region 11

- 1/ The Employer and the Union have filed briefs, each of which has been carefully considered.
- 2/ The Employer is a Minnesota corporation with a facility located in Elgin, South Carolina where it is engaged in the manufacture and distribution of chemical products. During the preceding 12-month period, the Employer purchased and received products and materials valued in excess of \$50,000 directly from points located outside the State of South Carolina, and during the same period, sold and shipped products valued in excess of \$50,000 directly to points outside the State of South Carolina.
- 3/ International Union Operating Engineers, Local 465, AFL-CIO, hereinafter called the Petitioner, through its petition as amended at hearing, seeks to represent a unit consisting of all production and maintenance employees, including chemical operators, maintenance mechanics, material handlers, building maintenance service workers, building maintenance group leader, grounds maintenance service workers, quality control lab technicians, analytical lab technicians, electronic and instrumentation technicians, electricians, shipping and receiving processors, environmental control technicians, environmental control operators, hazardous material operators, and environmental control lab technicians, employed by the Employer at its Elgin, South Carolina facility, excluding all office clerical employees, professional employees, research and development lab technicians and chemists, sales employees, guards and supervisors as defined in the Act. The Petitioner contends that production clerks should be excluded from the unit, as well as employees who are classified as Level 3 in their particular job classification, with the exception of the Level 3 electricians, whom the Petitioner agreed to include in the unit at hearing. In regard to the latter, the Petitioner contends that the disputed Level 3 employees are supervisors as defined in Section 2(11) of the Act. The Employer takes the position that production clerks should be included in the unit, and that Level 3 employees are not supervisors. Each of the relevant job classifications will be discussed in turn.

The record establishes that the Employer's facility is comprised of five plants, which are in close proximity to each other, and which contain various configurations of reactors and related equipment in which chemical products are manufactured. The facility is located on over 200 acres of land, with the manufacturing plant taking up 50 acres. The facility also includes two warehouses, a research and development building, an administration building, an operations building, a production building, and a maintenance shop, as well as a trailer containing office areas for supervisors, and an enclosed office area for production clerks. There is a continuous production work schedule, which consists of four 12-hour shifts. The schedule is determined once annually; employees on this schedule rotate days off. Those job classifications working 12-hour shifts include chemical operators, quality control lab technicians, production clerks, and environmental control employees. Employees in the remaining job classifications work Mondays through Fridays, 8 hours a day. Those classifications include analytical lab, building maintenance, electronic and instrumentation, traffic and distribution or material handlers, grounds maintenance, shipping and receiving, and maintenance mechanics.

Of all the job classifications containing Level 3 employees, that of chemical operator contains the most employees, numbering approximately 122, of whom eighteen are Level 3 employees. At the time of the hearing, there were twelve quality control employees, four of whom were Level 3 employees; ten material handlers, two of whom were Level 3 employees; three analytical lab employees, one of whom was a Level 3 employee; and nineteen maintenance employees, five of whom were Level 3 employees. In addition, excluding the two Level 3 electricians whom the Petitioner amended into the petition at hearing, there were five electronic and instrumentation employees, one of whom was a Level 3 employee; and three building maintenance mechanic employees, including a Group Leader whose non-supervisory status was stipulated to at hearing, and one Level 3 employee. There were four production

clerks. All of these employees are hourly wage roll employees. All employees at the facility share the same benefits.

#### The Chemical Operator Classification.

There are three levels within the chemical operator classification. Level 1 is an entry level position. Upon recommendation of the supervisor, and upon passing a test, an operator may progress to Level 2. Management then selects the operators who may progress to Level 3. The number of Level 3 operators is determined by management, based on the operational needs of the plant.

Chemical operators are assigned to a particular area in one of the five plants. Their work areas are referred to as pads, which contain reactors, and related equipment. Production is performed pursuant to a production shift book, which is formulated by the area superintendent. This schedule sets out the work to be performed and the priorities assigned to each job. Either a supervisor or an Operator Level 3 may enter information into the production work schedule, upon direction of the area superintendent. Neither Level 1 nor Level 2 Operators may enter information into the production schedule. Both the supervisor and the Operator Level 3 work from the production shift book in directing or overseeing work on a particular day.

There are four supervisors assigned to the five plants on each 12-hour shift. According to the testimony of Operator Level 3 Ernest McCollom, it is company policy that either a supervisor or an Operator 3 must be present on the pad at all times. To the extent that the Employer's vice-president of technology testified that there was no such policy, I credit the testimony of McCollom, who was testifying from his direct knowledge as an Operator 3. During a typical 12-hour shift, the supervisor may be physically absent from the area in which an Operator 3 is working for up to 8 hours. During those 8 hours, it is the responsibility of the Operator 3 to oversee the work and direct employees in the performance of that work. This involves both overseeing that the work is done properly, as well as directing employees in the sequence and assignment of tasks to be performed. This latter function was established both by the testimony of employee witnesses and by the written statement of Operator 3 James Godbold, which was attached to a disciplinary action form for an operator whose error resulted in a material spill. Operator 3 McCollom testified that approximately 80% of his time was spent performing operator work, and 20% was spent in the tasks of overseeing and directing other operators.

In the course of producing a particular product, operators rely on documents called "batch sheets." These sheets set out what are essentially recipes for making various chemical products. At various points the sheets contain notations providing that a supervisor must verify, approve or initial a particular step in the process, before the next step can be performed. The Employer produced at hearing a limited number of batch sheets, covering 3 to 4 days of production. Of these sheets, there were 87 possible entries for supervisory signature; nine of these supervisory entries were signed by Operator 3 employees. The batch sheets also contained other entries where the Operator 3 signed to verify that a process was done. The Employer's vice-president testified that, in all, the batch sheets contained the signatures of Operator 3 employees for 22 entries.

The record establishes that on approximately two times a month a Level 3 Operator will serve as a fill-in or acting supervisor in the absence of the supervisor assigned to his plant and shift. When the Operator 3 serves in this capacity, he is responsible for assigning and directing all of the work performed by the operators in his area. If an employee calls in sick, the acting supervisor has the authority to contact an employee who is not working and direct them to come in to work. Moreover,

when serving as acting supervisors, Operator 3 employees have the authority to grant vacation or sick leave for that day. The record further establishes that acting supervisors verify the hours worked by employees to authorize their pay, including overtime. Finally, the Employer's vice-president testified that acting supervisors have the authority to sign disciplinary warnings to document that a disciplinary decision had been communicated to an employee. Operator 3 McCollom testified that if a disciplinary problem arose when he was acting supervisor he would speak to the employee involved in the first instance, and then consult a supervisor in another area if the situation warranted.

Employee witnesses testified without contradiction that they had been told by their supervisors that Operator 3 employees were assistant supervisors and that when the Operator 3 gave them directions, they were to view it the same as if their supervisor were directing them. The record establishes that an operator requested that an Operator 3 sign a vacation leave slip for him on a day when his supervisor was present at work, but not immediately available, and that the Operator 3 did so. Further, employee Douglas Miller testified that, on an occasion when he requested a vacation day two weeks in advance, his supervisor told him to get permission from the Operator 3, who was scheduled to be the assistant supervisor on the day for which Miller was requesting leave. Operator 3 employees conduct weekly safety meetings, at which instructions on how to perform certain tasks safely are conveyed to employees. The Operator 3 verifies that he conducted the safety meeting by signing a form. The hourly wage rate for Level 2 Operators ranges from \$14.09 to \$16.93. The hourly wage rate for Operator 3 employees ranges from \$17.95 to \$18.39.

The Employer produced at hearing a number of disciplinary actions issued to operators; these forms represented a sample of the Employer's records. A review of these records shows that Operator 3 employees prepared incident reports documenting poor job performance of four operators. Although the Employer's Vice-President testified that discipline issued to all four employees, the documentary evidence establishes that the Employer issued discipline to the operator for the conduct outlined in the report in but three out of the four instances. In the fourth instance, the records do not support a finding that discipline issued as a result of the incident report prepared by the Operator 3. The incident reports contain no stated recommendations. I find that the record evidence is insufficient to establish that Operator 3 employees make effective recommendations concerning the discipline of employees. Further, I find that the employee testimony concerning instances of being "written up" by an Operator 3 is inconclusive. Finally, the record evidence establishes that Operator 3 employees have no responsibilities in regard to hiring, firing, promoting, transferring, laying off, or rewarding employees.

Section 2(11) of the Act defines a supervisor as "any individual having the 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 authority is not of a routine or clerical nature, but requires the use of independent judgment." It is settled that the determination of supervisory status properly is made when one of the statutory criteria for supervisory status is met. Allen Services Co., 314 NLRB 1060, 1061 (1994). The Board has emphasized that the requirement of independent judgment in the exercise of any authority is essential. Providence Hospital, 320 NLRB 717 (1996); Juniper Industries, 311 NLRB 109, 110 (1993) In determining whether a particular exercise of authority subsumes the requisite independent judgment, the Board has analyzed the nature of the work that is being performed. The Board has reasoned, for example, that "[t]he tasks usually associated with pulling orders and loading trucks have been found to be routine and to require little direct supervision." *Id.* (citations omitted) Thus, the complexity, or lack thereof, of work to be directed is a relevant factor in determining supervisory status. Moreover, it is settled that an employee

may be found to be a statutory supervisor when, as part of an employer's established, routine practice, the employee serves as a substitute supervisor. Aladdin Hotel, 270 NLRB 838, 840 (1984).

Based on the record evidence set out above, I find that Level 3 Operators are supervisors under Section 2(11) of the Act on two bases. First, the record establishes that Level 3 Operators serve as substitute or acting supervisors as part of the Employer's established, routine practice throughout the year. The Board held in Aladdin Hotel, *supra*, that employees who served, on an ongoing basis, as substitute supervisors on two days a month, were supervisors within the meaning of Section 2(11) of the Act. The appropriate legal standard is whether part-time supervisors spend a "regular and substantial portion of their working time performing supervisory tasks or whether such substitution is merely sporadic and insignificant." Aladdin Hotel, 270 NLRB at 840. In this regard, the Board distinguishes between sporadic substitution and that which is regular and sustained. Thus, when the substitution is for a discrete period of time, such as an annual vacation, the Board has found that this substitution is too isolated and sporadic to confer supervisory status. See Latas De Aluminio Reynolds, Inc., 276 NLRB 1313 (1985). In the present case, the record establishes that Level 3 Operators consistently serve as substitute supervisors throughout the year, rather than for discrete and isolated periods of time. While serving as substitute supervisors, Level 3 Operators perform most, if not all, of the same duties as full-time supervisors. Because this substitution occurs on a regular basis, and because, under the Board's definition in Aladdin Hotel, the amount of time spent is substantial, I find that Level 3 Operators constitute supervisors under Section 2(11) of the Act.

I also find that, during the times when Level 3 Operators are not serving as acting supervisors, they nevertheless responsibly direct employees, and, in so doing, exercise independent judgment such that they are supervisors under Section 2(11) of the Act. As an initial matter, that the production shift book sets out the overall daily work priorities, thereby setting the parameters of production both for the regular supervisor and the Operator 3, does not automatically eliminate opportunities for independent judgment in the specific execution of the work. In this regard, the instructions set forth in the batch sheets demonstrate that the work that is being directed is far from routine. Moreover, the record establishes that for approximately 2/3 of the time during a regular shift the supervisor is not present on the pad. During this time the Operator 3 both oversees work, and directs operators to perform tasks, such as directing an employee to move from one job task to another within a work area, or to move to a different work area altogether. In regard to the latter, the record reflects that an Operator 3 moved one operator from his assigned work area to another work area based on his judgment that work was slow in the operator's area. This occurred without the supervisor's knowledge or prior approval, on a day when the supervisor was present. Moreover, only Level 3 Operators and supervisors can sign off on the batch sheets; Level 1 and 2 operators cannot do so. The record evidence thus supports the conclusion that both the Operator 3 and the supervisor exercise commensurate authority in assigning and directing work during a shift. As well, the record establishes that Level 3 Operators have the authority to grant time off for employees even when the supervisor is present. Based on the foregoing, it is clear that the Operator 3 has the authority to exercise independent judgment in his direction of employees.

I find also that secondary indicia of supervisory status support a finding the Level 3 Operators are supervisors under Section 2(11) of the Act. That is, the Employer cloaks the Level 3 Operators with apparent or ostensible authority by referring to them as assistant supervisors and by admonishing operators to do as they are told by them. See Wolverine World Wide, 196 NLRB 410 (1972) This apparent authority is further underscored by the role that Operator 3 employees play in authorizing employees to perform steps in the production process and by conducting safety meetings on behalf of

the Employer. In addition, the pay of the Level 3 operators is substantially greater than that of the Level 2 operators.

Based on the foregoing, and the record as a whole, I find that Level 3 Chemical Operators are supervisors under Section 2(11) of the Act. I shall, therefore, exclude them from the unit found appropriate herein.

The Quality Control Technicians.

Quality Control Technicians work in the Quality Control Lab. There are three technicians assigned to each of four shifts; on each shift, there is one Level 3 technician. There is one supervisor assigned to the Quality Control Lab. Quality control technicians analyze samples. The supervisor prepares the lab book, which sets out the priorities for the samples to be run on a given shift. The Level 3 technician spends 80% of his time running samples, 10% of his time reviewing analysis slips for accuracy, and the remainder instructing or directing the other technicians. In regard to the function of directing and instructing, the Level 3 may tell the other technicians to run one sample before another one, consistent with the priorities set out in the lab book. If a technician does not understand the process by which a test should be run, the Level 3 will give instruction on how the sample should be run.

When a technician calls in reporting an absence for a particular shift, either the Level 3 or any technician who answers the phone will contact the supervisor. If they are unable to get in touch with the supervisor, either the Level 3 or the remaining technician will then contact other technicians to come and fill in that day.

There is no record evidence of any Level 3 technician serving as a substitute supervisor for any period of time. Nor is there any evidence of Level 3 technicians conducting meetings on behalf of the Employer, of being held out as supervisors by the Employer, or of authorizing sick leave or vacation leave. Level 3 Technicians do not have any power to hire, fire, transfer, lay off, promote, reward or discipline other employees. A Level 3 Technician has participated in three or four interviews of prospective employees during the five years that he has worked in the lab, and has been asked for his opinion concerning the prospective employee, but has not made any recommendations in that regard.

I find that the record evidence is insufficient to establish that Level 3 Quality Control Technicians are supervisors under Section 2(11) of the Act. In particular, there is no record evidence that the Level 3 Technicians responsibly direct employees. The one area in which the Level 3 Technician appears to direct employees is in prioritizing the order in which particular samples should be run. This exercise is limited in scope, and appears to be informed directly from the mandate of the lab book. The record evidence, therefore, and the reasonable inferences to be drawn therefrom, does not establish that the Level 3 Technician uses sufficient independent judgment in his direction of other employees to qualify as a supervisor under Section 2(11) of the Act. Based on the foregoing, and on the record as a whole, I shall, therefore, include the Level 3 Quality Control Technicians in the unit found appropriate herein.

Material Handlers, Electronic and Instrumentation, Building Maintenance, Analytical Lab, and Maintenance Employees.

Because there is no record evidence concerning the job duties and responsibilities of the Level 3 employees in the classifications noted above, the Level 3 employees in each of these classifications will be permitted to vote challenged ballots.

Production Clerks

There are four production clerks at the Employer's facility. This classification was created approximately two to three years ago. The duties of the production clerks primarily involve preparing the batch sheets that are used by the chemical operators in the preparation of the various chemical products. The clerks issue the batch sheets, record information from the completed batch sheets, and fill out forms for supervisors. The clerks also assist their supervisor in inventory checks in the warehouse. The production clerks have an office in the supervisor's trailer, perform some clerical tasks for supervisors, and are supervised by Wade Potter, who also supervises two other employees whom the parties stipulated were office clerical employees. The production clerks work 12-hour shifts and are paid by the hour. Office clerical are salaried, and do not punch a time clock. The production clerks go into the plant area only occasionally, to retrieve documents, but do have contact either with supervisors or operator 3 or 2 employees within the plant by radio during the shift. The record does not establish the frequency of these telephone contacts, nor does it establish with what job classifications the contacts routinely occur.

The Board customarily excludes office clerical employees from units of production and maintenance employees, while plant clericals are generally included in such units. Hygeia Coca-Cola Bottling Co., 192 NLRB 1127 (1971); Westinghouse Electric Corp., 118 NLRB 1043 (1957); Raytee, 228 NLRB 646 (1977). The Board has noted that the distinction between office clericals and plant clericals is not always a clear one because the disputed employees often appear to share characteristics of both groups in the duties they perform and in their working conditions. T. E. Hamilton, 270 NLRB 331 (1984). A controlling factor in making this distinction is whether the disputed clericals perform work that is directly related to, and integrated with, the functional operation of the facility and duties performed by other unit employees. Ives Business Forms, Inc., 263 NLRB 286, 289 (1982) In making this determination the Board looks at factors such as whether the clericals have regular contact with unit employees; work in an area adjacent to unit employees; and share common wages, immediate supervision, working conditions and fringe benefits with unit employees. American Parts System, Inc., 254 NLRB 901, 902 (1981). If such factors are present, the clericals are considered to be plant clericals. If, however, the disputed employees have separate and distinct functions from unit employees, are separately supervised; physically separated; and have minimal contact with unit employees, the clericals are found to be office clericals and are excluded from the unit. See PECO Energy Company, 322 NLRB 1074, 1084 (1997)

The foregoing demonstrates that the production clerks share common supervision with office clerical employees, are physically separate from production employees, perform clerical tasks for supervisors, and have limited contact with production employees. Based on the foregoing, and the record as a whole, I find that the production clerks do not satisfy the criteria the Board traditionally has followed in finding employees to be plant clericals. I shall, therefore, exclude them from the unit.

NIPA Hardwicke, Inc.  
11-RC-6319

---

177-8520-6200  
420-5662-0000  
177-2484-6200  
440-1760-2920-4000  
440-1760-2400  
440-1760-2960