

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

TENNECO PACKAGING, INC.¹

Employer

and

CHEMICAL & ALLIED PRODUCTS WORKERS UNION, LOCAL 20, AFL-CIO

Petitioner

Case 13-RC-20191

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 record² in this proceeding, the undersigned finds:

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.³

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:⁴

All full-time and regular part-time production and maintenance employees including corrugator operators, impregnator operators, saw operators, mechanics, glue coat operators, quality inspectors, assemblers, assembly coordinators, catchers, packers, forklift operators and team leaders employed by the Employer at its location currently located at 1175 Central, University Park, Illinois; but excluding all administrative assistants, office clericals, engineers, managers, confidential employees, manufacturing team specialists, supervisors and guards 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 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 Chemical & Allied Products Workers Union, Local 20, 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); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before September 10, 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, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by September 17, 1999.

DATED September 3, 1999 at Chicago, Illinois.

/s/ Harvey A. Roth

Acting Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as amended at the hearing.
- 2/ The arguments advanced by the parties at the hearing and in briefs have been carefully considered.
- 3/ The Employer is engaged in the manufacture of evaporative media pads. During the past calendar year, a representative period, the Employer derived gross revenues from the performance and sales of its services in excess of \$50,000 from customers located directly outside the state of Illinois. During the same period, the Employer derived gross revenues in excess of \$500,000 from the sale and performance of its services.
- 4/ The Petitioner seeks to represent a unit of production and maintenance employees at the Employer's University Park, Illinois, facility. The positions of the parties and their stipulations are described below.

Facts

The parties stipulated as to the unit description. The only issue presented was the supervisory status of the team leaders. The Employer contends that the team leaders are not supervisors within the meaning of Section 2(11) of the Act. The record indicates that in off-the-record discussions prior to the hearing, the Petitioner indicated that it believed the team leaders may be supervisors. Nevertheless, at the outset of the hearing, the Petitioner stipulated to the inclusion of the team leaders in the unit. Despite the apparent agreement of the parties to include the team leaders in the unit, the Employer wished to have the issue of their supervisory status resolved and proceeded to present evidence at the hearing on the status of the team leaders over the Petitioner's objections.ⁱ Further into the hearing, the Petitioner agreed with the Employer and stipulated that the team leaders are not supervisors.

The Employer is engaged in the business of manufacturing evaporative media pads which cool air by evaporating water. The operation at the facility in question is known as Glacier-cor. The manufacturing process involves coating paper with a resin, corrugating the paper and forming sheets in dimensions according to customer specifications. The sheets are then glued together and heated in an oven. The plant runs 24 hours a day, 7 days a week.

Each 12-hour shift has a manufacturing team specialist (MTS) who supervises the production employees and team leaders. Paul Abrahamsen is the plant manager at the facility in question and also at another facility in Alsip, Illinois. He reports to no one.

Each of the team leaders previously held positions as production employees with the Employer. The team leaders perform production work on a daily basis. For example, they deliver supplies and raw material to the production lines, assist employees, and set up and prepare production lines. Generally, the team leaders

ⁱ At the hearing, the Petitioner directed the Region's attention to *Bennett Industries*, 313 NLRB 1363 (1994), and objected to the presentation of any evidence. In *Bennett*, the Board found that it was proper to refuse to permit the Employer to present evidence on a supervisory issue since it would not take a position. Like the instant case, there was no contention by any party that the employees were supervisors.

Nonetheless, I find that the Employer's efforts, while somewhat superfluous, are permissible. The Board's Statement of Procedure, Section 101.20(c) (cited in *Bennett* at 1363) provides that "[t]he parties are afforded full opportunity to present their respective positions and to produce significant facts in support of their contentions." Here, the Employer seeks to prove its position, albeit an undisputed one, that the team leaders are not supervisors. As such, *Bennett* is distinguishable because, here, the Employer took a position and attempted to prove it by evidence presented at the hearing. Accordingly, the Hearing Officer properly allowed the presentation of such evidence in this case.

perform production work to cover for employees on breaks or absent employees. The team leaders also assist with the shipping and receiving of material by unloading and driving forklifts.

The plant manager and MTSs are responsible for assigning work. A MTS prepares a production schedule based on customer orders and also the line schedules. The team leaders have no role in preparing these schedules but do distribute the line schedules. The team leaders complete a portion of the production report form which identifies the orders to be completed. The team leader fills out the form based on information in the production schedule. The team leader does not prioritize the order of completing the work. The production employees complete the production report form by filling in information showing what production they have run during their shift. The forms are returned to the team leaders who transfer information from the individual reports to a master report. The team leader does not review the individual forms for accuracy but merely transfers the data. These reports are then given to the MTS for review and eventually to a clerk for data entry. A customer request may change an order but those incidents are handled by the MTS or plant manager who notifies the team leader who has no authority to change an order without approval from the plant manager or MTS. If the Employer experiences good performance in terms of safety or production, Abrahamsen may reward employees with pizza. The Employer also has a gain-sharing program. The team leaders have no authority to effect or recommend rewards to employees.

The Employer obtains employees by advertising, screening applications, and interviewing applicants. The plant manager has ultimate authority for the hiring of employees. Team leaders have no role in hiring or recommending employees and do not interview applicants. Any employee can refer an acquaintance for employment but those individuals undergo the same hiring process as other applicants. Only the plant manager may authorize the transfer of employees. The team leaders have no authority to transfer or recommend the transfer of employees.

Likewise, disciplinary authority lies with the plant manager and MTSs. The team leaders play no role in issuing or recommending discipline. The plant manager or MTSs conduct disciplinary investigations and determine what action, if any, to take. Team leaders cannot issue or recommend suspension, discipline or discharge of employees. The team leaders also do not authorize or recommend lay-offs. Similarly, the plant manager is responsible for promoting employees. The team leaders are not involved in these decisions.

When employees wish to take time off, they submit a request form and coordinate the request with the MTS or plant manager. The team leaders cannot approve time off for employees. They also cannot recommend or authorize overtime. The plant manager or MTSs determine whether overtime is necessary.

The team leaders and production employees use the same time clock. The MTSs are salaried. The hourly employees are paid weekly while salaried employees are paid semi-monthly. Hourly employees are eligible for overtime pay while salaried employees are not. All hourly employees receive the same benefits (i.e. medical and dental insurance, 401(k) plan, gain sharing plan, and pension plan). The same vacation and holiday policies apply to all hourly employees. The hourly employees are all subject to the same work rules and attend the same safety and production meetings. The plant manager and MTSs attend management meetings which are not open to team leaders. The team leaders work the same shift schedule as production employees.

Analysis

Section 2(11) of the Act defines the term “supervisor” as:

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 merely routine or clerical nature, but requires the use of independent judgment.

The possession of any one of these authorities is sufficient to deem the employee invested with such authority a supervisor. *Allen Services Co.*, 314 NLRB 1060 (1994); *Queen Mary*, 317 NLRB 1303 (1995). The burden of demonstrating supervisory status is on the party seeking to exclude an individual as a supervisor. *Bennett Industries*, 313 NLRB 1363 (1994). In each case, the differentiation must be made between the exercise of independent judgment and the routine following of instructions, between effective recommendation and forceful suggestion, and between the appearance of supervision and supervision in fact. *See, e.g.*, *Chevron Shipping Co.*, 317 NLRB 379 (1995); *J.C. Brock Corp.*, 314 NLRB 157 (1994); *Clark Machine Corp.*, 308 NLRB 555 (1992); *McCulloch Environmental Services*, 306 NLRB 565 (1992); and *Quadrex Environmental Co.*, 308 NLRB 101 (1992).

Based on the undisputed record evidence and stipulations of the parties, I find that the team leaders are not supervisors within the meaning of the Act inasmuch as they do not use independent judgment in the exercise of any supervisory indicia. The plant manager has the authority to hire, promote, discipline, and discharge employees. The MTSs also play a role in determining discipline of employees. The team leaders have no involvement in any of these determinations.

Additionally, the team leaders also work alongside the production employees on a daily basis. The team leaders and production employees are hourly paid and enjoy the same benefits. They are also subject to the same work rules and vacation policies. Only the plant manager and MTSs may authorize time off.

Similarly, the plant manager and MTSs direct and assign work. The team leaders' role in the distribution of work is merely ministerial in terms of filling out production reports based on information from the production schedules formulated by the MTS. The team leaders only transcribe information from one report to another without any independent judgment or review. The team leaders' distribution of reports to the lines is likewise ministerial and routine.

In sum, the undisputed record evidence, in agreement with the parties' stipulation, demonstrates that the team leaders are not supervisors within the meaning of the Act inasmuch as they have no authority to use independent judgment in the exercise of supervisory indicia. Further, in agreement with the the parties' stipulation and the record, the team leaders are appropriately included in the stipulated unit found appropriate herein. There are approximately 53 employees in the unit found appropriate.

