

**R.D. # 0014-99  
Kearney, New Jersey**

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 22**

<b>FREEMAN DECORATING COMPANY<sup>1</sup></b>	
<b>Employer</b>	
<b>and</b>	<b>CASE NO. 22-RC-11760</b>
<b>LOCAL UNION NO. 807, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO<sup>2</sup></b>	
<b>Petitioner</b>	

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein 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<sup>3</sup>, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>4</sup>

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

<sup>3</sup> Briefs filed by the parties have been duly considered.

<sup>4</sup> The Employer was not allowed to litigate the adequacy of the showing of interest submitted in support of the petition. The sufficiency of the Petitioner's showing of interest is an administrative matter not subject

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.<sup>5</sup>
3. The labor organization involved claims to represent certain employees of the Employer.<sup>6</sup>
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 for the reasons described *infra*:

All full-time, regular part-time and on-call traffic and roadway employees, freight clerks, show site freight employees, toolmen and trailer yard employees, employed by the Employer through its Kearney, New Jersey branch office, excluding freight clerks working exclusively at the Jacob Javits Center, full-time freight supervisors, full-time lead supervisors, office clerical employees, professional employees, sales employees, guards and supervisors as defined in the Act.<sup>7</sup>

The Petitioner, in its petition as amended at hearing, seeks to represent a unit of approximately 30 employees including full-time, regular part-time and on-call traffic employees, freight clerks, roadway employees, show site freight employees, toolmen and trailer yard employees, but excluding freight clerks working exclusively at the Jacob Javits Center, full-time freight supervisors, full-time lead supervisors, office clerical

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to litigation. *O.D. Jennings and Company*, 68 NLRB 516 (1946). I am administratively satisfied that the Petitioner's showing of interest is adequate.

<sup>5</sup> The Employer is an Iowa Corporation engaged in the sale and provision of trade show and convention services.

<sup>6</sup> The parties stipulated and, I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

employees, professional employees, sales employees guards and supervisors as defined in the Act. The Employer contends however that this unit is inappropriate for various reasons and maintains that the petitioned-for employees do not constitute an appropriate collective bargaining unit.

The Employer is engaged in the sale and provision of trade show and convention services at various sites throughout the United States. The Petitioner seeks to represent employees hired through the Employer's Kearny, New Jersey office. The venues at which the petitioned-for employees work include the Jacob Javitz Convention Center, New York Hilton, Marriott Marquis, Marriott World Trade Center, Passenger Ship Terminal, New York Sheraton, Madison Square Garden, the 23<sup>rd</sup> Street Armory, New York Convention Center, Garden State Exhibition Center, Meadowlands Hilton, Sheraton Meadowlands, and the Philadelphia Convention Center, all located in the New York, New Jersey and Pennsylvania area. The record revealed that based on the size and nature of the trade show, the Employer provides the staff required to handle all aspects of the show, including manual labor. The Petitioner here seeks to represent certain employees, primarily those working at the Jacob Javits Center, who are not covered by existing labor contracts, and who do not perform the manual labor tasks involved in setting up the show.

***Scope of the Unit:***

In determining the scope of the bargaining unit, it is important to remember that the Petitioner need not seek to represent the most appropriate or most comprehensive bargaining unit; rather, the Petitioner need only seek to represent *an* appropriate unit.

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<sup>7</sup> The Petitioner maintains there are approximately 30 employees in the unit, while the Employer maintains there are approximately 20 employees in the unit.

*P.J. Dick Contracting*, 290 NLRB 150 (1988). Thus, the Board has made clear that in resolving questions concerning the scope of a bargaining unit “...we look first to the unit sought by the petitioner. If it is appropriate, our inquiry ends.” *Dezcon, Inc.*, 295 NLRB 109, 111 (1989).

Furthermore, in determining whether a unit is appropriate, the Board considers whether the employees share a community of interest. The factors the Board reviews in making this decision are well established and include the training and skills of employees, their hours of work and compensation, the extent of interchange among employees, whether there is common supervision, and the history of bargaining at the Employer’s facility. See *Kalamazoo Paper Box Corp.*, 136 NLRB 134 (1962). An application of these factors to the instant case makes clear that the Petitioner’s requested unit of employees is an appropriate unit for purposes of collective bargaining.

The Employer contends that the unit sought is inappropriate for the following reasons: (1) inclusion of toolmen and trailer yard employees, whom the Employer asserts are guards, would render this a mixed guard and non-guard unit and; (2) the remaining petitioned-for employees are either casual employees or supervisors.<sup>8</sup> For reasons addressed more fully below, I find that toolmen and trailer yard employees are not guards as defined in the Act. Similarly, as discussed in detail *infra*, I find that the remaining regular part-time employees are not all supervisors.

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<sup>8</sup> At the hearing, the Employer argued that the petitioned-for freight clerk employees should be accreted into an existing unit of freight clerks. The Petitioner acknowledged that three freight clerks, who work exclusively at the Jacob Javits Center, will be accreted into an existing collective bargaining unit represented by Local 807 as of July 1, 1999. However, the Petitioner contends that two freight clerks, namely George Swenten and Bill O’Donnell should be included in the petitioned-for unit because they do not work exclusively at the Jacob Javits Center. The Petitioner did not address this issue in its post hearing brief, and since there is not enough evidence in the record to determine whether or not these individuals are appropriately part of an existing unit, or whether they should properly be included in the petitioned-for unit, I will allow these individuals to vote subject to challenge.

***Guards:***

The Employer opposes the instant petition contending that the toolman, Michael Schrek and the trailer yard employees, Darrell Graham, Marcel Graham and Rafael Santarnas are statutory guards that cannot be represented by the Petitioner pursuant to Section 9(b)(3) of the Act.

**A. Toolman:**

The record reveals that Michael Schreck is employed by the Employer as a toolman exclusively at the Jacob Javits Center in a tool trailer where equipment and tools such as screws, screwguns, nails, radios, clips, duct tape, Velcro, bolts and drills are stored. The Employer seeks to exclude Schreck on the basis that he is a statutory guard. Alternatively, the Employer argues that Schreck does not share the requisite community of interest with the other employees in the petitioned-for unit. Richard Demeter, the Employer's Operations Manager Material Handling, testified that the Employer's operations are divided between the freight department and decorating department, and contends that the two departments do not interchange. Demeter testified that the tool room is the "nerve center of the decorating operation" and is not considered a freight operation. Vince Dickensen, Decorating Supervisor, signs Schreck's time-cards 99% of the time. However, Schreck testified that any full-time freight supervisor can also sign his time card. Bill Kuehnle, Respondent's Assistant General Manager, acknowledged that the toolman has regular contact with freight employees during the beginning and end of the day. Additionally, Michael Bradley, an on-call freight supervisor testified that he has borrowed tools from the tool room and freight supervisors go in and out of the tool room on a regular basis. Moreover, Schreck testified that freight department employees utilize the tool room to get bills of lading, manifests, receiving reports, scanners for the

Fed Ex and UPS, which are all stored in the tool room. Schreck also testified that both freight employees and decorating employees man the tool room when Schreck is not there.

With regard to Schreck's responsibilities, Demeter testified that Schreck is responsible for watching, securing, and safeguarding the tools that are used by the Employer's decorating department employees. Demeter also testified that Schreck assists decorating employees when they are looking for specific tools and has employees sign tools in and out to account for their whereabouts. Demeter added that Schreck is also responsible for ensuring that no one takes any tools which they are not authorized to take and "maintains order in the [tool] room." Schreck inspects the tools that are returned to him. Schreck does not monitor the premises by way of a closed circuit TV or video camera system. When Schreck is not in the tool room he locks the door with a combination lock. Schreck testified that he usually gives the combination to the lock to Joe Cimmino, the lead supervisor for a particular show, and to other supervisors that need to get into the tool room before Schreck gets to work. Schreck testified "usually within a matter of days, everybody knows it [the combination]."

The record reveals that Schreck does not wear a unique uniform nor does he wear a badge. Rather, Schreck wears a Freeman shirt just like all of the other employees. Moreover, the record established that Schreck does not carry any weapon, club or other security device. Finally, Kuehnle testified that Schreck is not bonded or deputized, nor does the Employer carry insurance that designates him as a guard. Before Schreck was hired he was not finger printed or photographed, nor did the Employer have the police check on his background.

**B. Trailer Yard Employees:**

Darrell Graham, Marcel Graham and Rafael Santorios are employed by the Employer as trailer yard employees. These employees report to Joe Cimmino, a full-time supervisor. Demeter testified that the Employer uses two yards located in close proximity to the Jacob Javits Center to store trailers. One yard is located directly across the street on 33<sup>rd</sup> Street, and one yard is located on 30<sup>th</sup> Street off on 11<sup>th</sup> Ave. Graham, Graham and Santorios are stationed at the 30<sup>th</sup> Street yard. Demeter testified that the trailer yard employees are responsible for the trailers that are stored in the yard and are required to make sure that people who do not belong in the yard do not gain access to the yard. Kuehnle testified that the trailer yard employees secure the yard and make “rounds” every day and produce a yard chart showing which trailers are in the yard and exactly where they are located. Yardman Santorious testified however that he was never instructed to make “rounds” or to check the yard for damage to the trailers. The trailer yard employees do not inspect the freight that comes in or out of the yard. Santorious testified that he sits at a post in the yard by one of the entrances and as trucks come into the yard he writes down the driver’s name, number of the trailer and what time the trucks enter and leave the yard. Moreover, Santorious testified that the yardman in the morning shift must pick up the yard chart from the Javits Center and give the yard chart to Mike Schreck, (the toolman). Schreck then makes copies of the chart and faxes it to Mike Conroy.<sup>9</sup> The first shift yardman then takes the yard chart to the yard and sits at his post until his relief comes.

Kuehnle testified that the trailer yard is manned 24 hours a day while the Employer is doing a show at the Jacob Javits Center, with one employee working each shift. Kuehnle explained that during the 4:00 p.m. to 12:00 a.m. shift, the Employer

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<sup>9</sup> Santorios did not know Conroy’s title.

utilizes a security guard employed by RAV Security Service to be on the premises with the trailer yard employees. Kuehnle stated that the Employer employs the RAV Security guards in order to have two people on the grave yard shifts and to help to safeguard customer's goods until they are delivered to the show floor. The RAV security guards have a night supervisor who checks their (RAV) rounds and makes sure that they are doing their job properly. RAV security guards wear a uniform which consists of navy blue pants, blue shirt and a picture ID. In addition to RAV security guards in the yard there are also are public safety officers, state police and other private security companies stationed at the Jacob Javitz Center.

Kuehnle testified that trailer yard employees receive no security training and are not required to prevent any vandalism or theft in the yard. They are, however, instructed to contact Kuehnle or a supervisor if an unauthorized person comes into the yard.

Santorios testified that the RAV security guards are responsible for escorting unauthorized persons out of the yard, but in their absence he has escorted trespassers off the premises on two occasions. Kuehnle testified that the yardmen have been instructed to call the Police if they witness people vandalizing property located in the yard. Trailer yard employees do not conduct investigations when they discover property damage – that is the responsibility of a supervisor or Kuehnle. The trailer yard employees' function is limited to alerting the proper individuals.

The record reveals that trailer yard employees do not wear unique uniforms nor do they wear badges. Rather, these employees wear a Freeman shirt just like all of the other employees. Moreover, the record establishes that the trailer yard employees do not carry any weapon, club or other security device. Finally, Kuehnle testified that the trailer yard employees are not bonded or deputized, nor does the Employer carry insurance that

designates these individuals as a guard. Before Graham, Graham and Sanaras were hired they were not finger printed or photographed, nor did the Employer have the police check on their background. They do not monitor any of the premises by way of a closed circuit TV or video camera.

Section 9(b) of the Act, defines guards as individuals who “enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises.” In applying this definition, the Board has long held that employees in a classification that has some guard-like duties are not guards as defined in the Act where those duties are incidental to employment. *Ford Motor Co., 116 NLRB 1995 (1956)*. In *Hoffman Security, 302 NLRB 302 (1991)*, the Board considered whether receptionists were guards within the meaning of the Act. In that case, the receptionists monitored access to service floors by distributing passes to visitors and by asking visitors to sign in. At one of the locations, the receptionist also monitored a closed circuit camera directed at a building where she would observe individuals entering the building. In finding the receptionists not to be guards, the Board noted that the receptionists’ guard duties were incidental to their employment and that the hospital had security guards at the facility twenty-four a day. In *Tac/Temps, 314 NLRB 1142 (1994)*, the Board held that employees that were required to count and record the total product loaded on the employer’s trucks and to report any discrepancies to the plant superintendent were not guards within the meaning of the Act. The Board concluded that the arguably guard-like checking function to be incidental to the primary clerical function of certifying the correct product amount on outgoing and incoming delivery trucks.

There is no evidence that the toolman possess any indicia of guard status. Although trailer yard employees are required to report instances of vandalism, loitering

or theft to the proper authorities, the Board has held that the duty to report untoward circumstances, especially when it is shared by all employees, is incidental to employment. *Pepsi Cola Bottling Co. of Cincinnati*, 189 NLRB 105, fn 1, (1971); *Tac/Temps, supra*. In *55 Liberty Owners Corp.*, 318 NLRB 308 (1995), the Board held that door persons and elevator operators at residential buildings that monitored and regulated access to the building, denied entry to unauthorized persons, received deliveries, and observed and reported irregularities were not guards. In so holding the Board noted that these employees did not make rounds, are not trained in security, are not armed, are instructed not to use physical force and do not present themselves as guards in their appearance. In addition, they do not check suspicious packages or ask off-duty employees to leave. Although these employees did ask unauthorized persons to leave or enforced no-loitering or no smoking rules, the Board found these guard-like duties to be incidental to their employment. See also *Wolverine Dispatch, Inc.* 321 NLRB 796 (1996) (receptionists, situated behind thick glass barrier, that admit or deny entry through locked door controlled by the receptionist not guards). In *Lion Country Safari*, 225 NLRB 969 (1976) the Board held that neither front gatemen at a wildlife preserve that takes customers' tickets, advises them regarding the Employer's safety rules, and checks their vehicles for conditions that may be dangerous to the customer or the animals, and refers vehicles he deems unsafe to the Employer's automobile maintenance facility, nor tower observers stationed within the preserve to ensure that customers observe the Employer's rules and who report infractions by two-way radio to rangers, who are required to enforce the rules, were not guards.

In the instant case, in as much as trailer yard employees monitor the trailer yards, are merely required to report instances of vandalism, damage or other unusual occurrence

to the proper authorities, and do not wear a badge or security identification, monitor video surveillance or use physical force in the performance of their duties, I find that they are not guards within the meaning of Section 9(b) of the Act. I further find that to the extent that they may have some guard-like duties, they are incidental to their employment as parking attendants.

Similarly in as much as the toolman does not wear a badge or security identification, does not patrol the facility, monitor video surveillance, use physical force in the performance of his duties, carry walkie talkies, or provide services on a twenty-four hour basis, I find that they are not guards within the meaning of Section 9(b) of the Act. With regard to the Employer's alternative argument that the toolman does not share a sufficient community of interest with other unit employees warranting his inclusion in the unit; I disagree. In conducting the community of interest analysis to determine whether the unit sought is an appropriate one, the Board examines a number of factors, such as bargaining history, functional integration, interchange of employees, hours of work, method of payment of wages, benefits, supervision, contact among employees, work situs and differences or similarities in training and skills. *Atlanta Hilton & Towers*, 273 NLRB 87 (1984), mod. on other grds. 275 NLRB 1413 (1985); *Moore Business Forms Inc.*, 173 NLRB 1133 (1968); *Doubleday & Co.*, 165 NLRB 325 (1967). Here, I find that those factors weigh in favor of including the toolman in the unit sought by Petitioner. In this regard, the tool man has regular contact with freight employees as he spends 100% of his time in the tool room/trailer, which according to Kuehnle is a "focal point" for freight employees to carry out administrative functions such as to fill out their time cards. In addition, as he shares similar hours, breaks, and lunch with other unit

employees, I find that the toolman shares a sufficient community of interest with the other employees to be included in the unit.<sup>10</sup>

***Supervisory Issues:***

The Employer asserts that part-time freight supervisors including hall, dock and traffic supervisors are supervisors within the meaning of Section 2(11) of the Act and should be excluded.

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

It is well established that Section 2(11) of the Act is to be interpreted in the disjunctive and that the possession of any one of the authorities listed places the employee invested with such authority in the supervisory class. *Ohio Power Co. v. NLRB*, 176 F. 2d 385 (6th Cir. 1949), cert. denied, 338 U.S. 899 (1950). However, Section 2(11) requires that to be classified as a supervisor, the individual must perform the enumerated function with independent judgment as opposed to in a routine or clerical manner. *Walla-Walla Union - Bulletin, Inc. v. NLRB*, 631 F. 2d 609, 613 (9th Cir. 1980); *Hydro Conduit Corp.*, 254 NLRB 433 (1981). The burden of establishing supervisory status rests on the party

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<sup>10</sup> In its post hearing brief, the Employer raises the fact that the Union does not seek to represent the decorating supervisors despite the fact that their duties are similar to freight supervisors. There was no evidence in the record to establish the duties of the decorating supervisors to determine if they share a requisite community of interest with the freight employees. There was however sufficient testimony regarding Shreck's interplay between freight employees as well as decorating employees, and for the reasons described above, I find that Shreck does share the requisite community of interest with the freight employees.

alleging that such status exists. *Tucson Gas and Electric Co.*, 241 NLRB 181 (1979). I find that the Employer has not met this burden.

The freight handling employees who actually perform all of the labor at the exhibitions (i.e., building the displays, unloading the trucks, driving the trucks) are represented by various labor organizations. Some of these employees are employed directly by the Employer, while some are employed directly by the exhibition centers (i.e., Jacob Javits Center). These employees are not at issue in this proceeding. Moreover, the Employer employs 10 full-time freight supervisors, which the parties agree should be excluded from the unit as statutory supervisors. At issue are whether the part-time freight supervisors should be included in the petitioned-for unit.<sup>11</sup>

Quite simply, the freight supervisors oversee the work of the freight handler employees and truck drivers at trade shows. Generally, a freight supervisor interacts with the exhibitors, ensures that the trucks are being unloaded properly, and ensures that the workers bring the correct freight to the correct exhibitor's booth. Freight supervisors can be assigned to four basic roles at a trade show: Lead Supervisor, Hall Supervisor, Dock Supervisor, and Traffic/Roadway Supervisors. The parties agree that certain individuals are full-time Freight Supervisors and are therefore excluded from the unit.<sup>12</sup> These full-time supervisors act as either Lead Supervisors or Hall Supervisors. In its post hearing brief, the Petitioner argues that in addition to the stipulated supervisors, certain

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<sup>11</sup> It should be noted that at various times throughout the record, freight supervisors is used collectively to describe all supervisors at the trade show. It should also be noted that roadway supervisor is used interchangeably with traffic supervisor.

<sup>12</sup> The parties stipulated that the following persons are supervisors within the meaning of the Act. Dean Benintende, Sal Bucclari, Robert Lee, Matt Mager, Dan McAuley, Tom Melillo, Robert Murphy, Frank Vidal, Derrick Webster and Ron Winters.

employees although not employed full-time, when employed work exclusively as Hall Supervisors or Lead Supervisors and should accordingly be excluded from the unit.<sup>13</sup>

The Petitioner argues that the remaining employees work primarily as dock supervisors and/or traffic/roadway supervisors and do not possess any indicia of supervisory status and should therefore be included in the unit. Dock Supervisors are stationed at the loading docks and oversee the unloading and reloading of trucks. Dock supervisors direct crews of employees from truck to truck to ensure that the trucks are unloaded and reloaded in an orderly and timely fashion. A dock supervisor performs his duties primarily in the dock area but may also assist the roadway supervisors.

Traffic/Roadway Supervisors' key responsibility is to direct traffic (the tractor trailers and trucks making deliveries) into the proper bays to ensure the materials are unloaded in the appropriate sequence. They also check the drivers' paperwork to make sure they have signed in at the gate. Once the trucks have been unloaded, a traffic/roadway supervisor often takes on the role of a dock supervisor until traffic direction is needed again for moving the materials out of the site.

Regarding the claim that the dock and traffic/roadway supervisors possess the authority to discipline employees, the record does not support such a conclusion and, in fact, does not establish that dock and traffic/roadway supervisors have exercised any such authority. Supervisory authority cannot be found based on an alleged authority that has not in fact been exercised. *Northwest Steel, 200 NLRB 108 (1972)*. Further, the record

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<sup>13</sup> The Petitioner concedes that Ken Hostetter, Mike Tenaglia, Joe DeMaestri and Tom Lauro should be excluded from the unit because they are not on-call freight supervisors, but rather Hostetter, Tenaglia, and DeMaestri are flown in from Missouri, Cleveland and California respectively to exclusively work at the Javits Center as Hall or Lead Supervisors. Similarly, Lauro is not an on-call freight supervisor, but rather a former full-time employee who makes himself available to work as a Lead Supervisor at the Javits Center. Since the Employer agrees that these individuals should be excluded from the unit, I find that they are properly excluded from the unit found appropriate herein.

reveals that the dock and traffic/roadway supervisors do not have the authority to issue any discipline to other staff. Although the Employer claims that dock and traffic/roadway supervisors can report that an employee is not performing his work properly to the dock master, it appears that this is merely a reporting function and, therefore, does not establish supervisory status. *Express Messenger Systems*, 301 NLRB 651, 653-654 (1991). Dock and traffic/roadway supervisors do not hire freight handlers or recommend hiring freight handlers or drivers. Freight handlers are referred to the Employer by a hiring hall. Dock and traffic/roadway supervisors have no responsibility whatsoever with regard to firing, or laying off freight handlers.

The Employer claims that dock and traffic/roadway supervisors exercise sufficient authority to assign, responsibly direct and discipline employees to justify excluding them as statutory supervisors. The assignments at issue are assignments to specific tasks, not assignments involving overall job responsibilities. Whether such "assignments" are denoted by the statutory term "assignment," as opposed to the term "responsibly to direct" is not clear. See *Providence Hospital*, supra, 320 NLRB at 727. However, under either statutory phrase the assignments at issue here are not characteristic of those of "supervisors who share management's power or have some relationship or identification with management," and are thus distinguishable from "skilled nonsupervisory employees whose direction of other employees reflects their superior training, experience or skills." See *id.* at 729. The Board in *Providence Hospital* quoted with approval the court in *NLRB v. Security Guard Service*, 384 F. 2d 143, 151(5th Cir. 1967):

If any authority over someone else, no matter how insignificant or infrequent, made an employee a supervisor, our industrial composite would be predominantly

supervisory. Every order-giver is not a supervisor. Even the traffic director tells the president of a company where to park his car.

The tasks to which these asserted supervisors assign employees, such as moving a truck from one bay to another to avoid a traffic jam, directing freight handlers where to put the freight (which exhibitor's booth), directing freight handlers as to the sequence of unloading the freight, are routine. These individuals assign tasks to employees based on what needs to be done and who is available. There was no showing that independent judgment was required to select among employees. See *Clark Machine Corp.*, 308 NLRB 555, 555-56 (1992) (assignments are routine when based on employees' skills that are well known). There was no evidence that it was necessary to resolve conflicts or problems with respect to the tasks to be performed or the skills or strengths of the employee. In any event, the majority of the time, the dock and traffic/road supervisors assign tasks to individuals who are not employed by the Employer. In such a case, the Board will not find an individual to be Section 2(11) supervisor unless one supervises employees of the employer in question. *Crenulated Co.*, 308 NLRB 1216 (1992).

Based on all of the aforementioned factors, and the record as a whole, noting that the dock and traffic/roadway supervisors do not use independent judgment in directing other employees, in evaluating employee performance, nor do they possess any indicia of supervisory status, I find that they are not supervisors within the meaning of Section 2(11) of the Act, and they are included in the unit. See, *Consolidated Services*, 321 NLRB 845 (1996); *North Shore Weeklies, Inc.*, 317 NLRB 1128 (1995); *Spector Freight System, Inc.*, 216 NLRB 551 (1975).

The Employer claims that on-call supervisors Justin Vidal, Jim Journigan, Kirby Green, Mike Bradley, Rich Koop, Mike Verzi, Sal Desiervo, and Shawn Gorman also act

as Hall Supervisors and Lead Supervisors and should therefore be excluded from the bargaining unit as Section 2(11) supervisors.<sup>14</sup> With regard to these employees, the record establishes that these on-call employees have acted as hall supervisors on occasion when management has needed them to fill in for the scheduled hall supervisor. The exercise of supervisory authority on a sporadic and irregular basis is insufficient to establish supervisory status under the Act. *See Williamson Piggly Wiggly, Inc., 280 NLRB 1160 (1986); Blue Island Newspaper Printing, Inc., 273 NLRB 1709 (1985).* While the Employer produced a summary of payroll records to purportedly establish the frequency with which on-call employees act as hall supervisors, as well as dock and traffic supervisors, I find this evidence insufficient to prove the supervisory status of the aforementioned employees in the bargaining unit.<sup>15</sup> Accordingly, I find that they are not supervisors within the meaning of Section 2(11) of the Act, and they are included in the unit.

***On-Call Employees:***

While the issue of on-call employees was not raised in the post-hearing briefs, throughout the hearing the Employer maintained that in the event the above employees are found not to be statutory supervisors, they should nevertheless be excluded from the petitioned-for unit because they are casual employees. The record reveals no evidence that part-time employees are employed seasonally or that they are temporary employees.

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<sup>14</sup> The Employer also includes Ken Hostetter, Tom Lauro and Joe Demaestri as individuals who serve as Hall Supervisors. As discussed in footnote 13, Hostetter, Lauro and Demaestri are properly excluded from the unit.

<sup>15</sup> During the hearing, the Union objected to the admission of Employer's Exhibit 8 because the Employer failed to produce the underlying records utilized to prepare the summary. Over the Union's objection, Exhibit 8 was admitted into evidence. The Union filed a special appeal opposing the Hearing Officer's ruling admitting Exhibit 8 into evidence. Given the fact that I have found the information provided in Exhibit 8 as insufficient to prove supervisory status, and have concluded that these individuals are not supervisors and should be included in the petitioned-for unit, I find that the Union's special appeal is moot.

In this connection, there is no evidence that these employees are advised by the Employer, upon hire, that their job is for a limited duration. Further, the record discloses that the Employer operates on a year round basis. There is no evidence that the Employer hires so called part-time employees to work on a seasonal basis as the payroll records described *infra* disclose that such part-time employees are employed during the entire year.

Payroll records introduced into evidence reveal that employees classified as part-time freight supervisors by the Employer work various numbers of hours in any given week. In this regard, some employees work on a weekly basis whereas others have gaps in their employment. The table listed below reflects the number of hours worked per week by employees for the 13 week period prior to the hearing.

ON-CALL EMPLOYEES<sup>16</sup>

NAME	3/20 <sup>17</sup>	3/27	4/3	4/10	4/17	4/24	5/1	5/8	5/15	5/22	5/29	6/5	6/12
Bradley	64.0	82.5	74.0	45.5	74.0	55.0	72.5	46.0	0	0	0	0	0
Calise	75.0	25.0	77.5	0	83.5	57.5	67.5	49.5	50.0	49.0	68.5	44.0	53.0
Chapman	0	0	09.5	0	37.8	0	52.0	11.0	41.5	52.3	60.5	0	0
Christy	57.5	79.0	32.0	40.0	72.0	39.5	58.0	44.0	45.5	42.0	60.5	34.5	30.0
D'Amato	63.8	83.5	52.6	19.5	73.0	52.0	54.3	47.5	32.5	50.0	45.8	21.5	35.0
Demaestri	02.0	08.0	09.0	04.0	02.0	07.0	07.0	0	0	0	0	0	0
DeSiervo	68.5	63.5	79.0	22.0	73.5	54.5	72.5	46.5	34.2	53.0	32.5	42.0	33.8
Duignan	60.5	82.5	81.0	0	77.0	64.5	69.0	59.5	0	0	43.5	51.5	18.5
Erickson	24.0	0	13	0	0	0	0	0	0	0	0	0	0
Garcia	0	0	0	0	0	0	0	11	0	0	0	0	0
Gorman	45.3	23.5	33	58	45	34.5	37.5	0	43.5	40.5	52.5	49.5	50.5
Green	79.0	66.5	75.5	40.0	73.5	42.5	51.0	72.0	50.5	59.5	55.0	59.5	62.0
Guzman	61.5	71	67.2	13	73.7	49.5	56.5	12	45	44.5	61.5	53.5	51.5
Hostetter	03.0	01.0	14.0	07.0	07.0	07.0	06.0	0	01.0	05.0	06.0	0	0
Journigan	44.5	73.5	59.0	58.5	69.0	54.0	59.5	50.0	50.5	45.0	78.0	0	0
Kernochan	77	71.5	64	33	75.5	64.5	32	39.5	47.5	46.5	44	21	39.5
Koop	67.5	58.0	65.5	46.5	70.5	55.0	56.0	48.5	49.5	61.5	44.5	43.5	41.0
Lauro	56.0	32.0	0	16.0	08.0	0	0	08.0	0	0	0	0	0
Leary	56.0	40.5	58.5	15.5	77.0	75.0	51.5	21.0	43.5	41.0	59.5	56.0	52.0
Lopez	66.5	53.0	46.0	49.5	64.0	64.5	73.5	56.0	45.0	41.5	58.0	33.5	45.5
Powers	70.0	84.5	79.5	67.0	73.5	59.5	80.0	63.5	44.5	64.5	77.5	34.5	57.0

<sup>16</sup> It should be noted that the Employer also provided payroll records for Darryl Graham, Marcel Graham and Rafael Santorios. As it is the Employer's position that these employees should be excluded from the unit because they are statutory guards, not because they are casual employees, their hours have been omitted from the chart.

<sup>17</sup> While the Employer provided payroll records which cover the period from January 1998 through June, 1999, the established formula in determining whether employees are casuals necessitates a review of the 13 week period prior to the hearing date only.

NAME	3/20 <sup>17</sup>	3/27	4/3	4/10	4/17	4/24	5/1	5/8	5/15	5/22	5/29	6/5	6/12
Rios	12.5	17	7	0	0	8.0	0	0	0	0	0	0	0
Rivera	0	0	0	0	0	0	0	0	0	0	0	0	0
Seiger	70.5	84.5	45.5	18.5	74	40	63.5	20.5	45.5	33	20	42	0
Schreck, G.	87.0	94.0	83.5	46.5	89.0	90.0	84.0	89.0	59.0	82.5	83.5	54.0	73.0
Tenaglia	03.0	15.0	0	03.0	02.0	04.0	0	0	0	0	0	0	0
Verzi	56.5	27.0	09.0	31.0	42.5	0	0	15.0	0	25.0	53.5	48.5	15.0
Vidal, J.	0	0	0	0	0	0	0	0	0	0	0	0	0
Woods	0	0	0	0	24.5	0	0	0	86.5	10.0	0	0	0

The test for determining whether an employee is a regular part-time employee or a casual employees takes into account factors such as regularity and continuity of employment and similarity of work duties. *Tri-State Transportation Co.*, 289 NLRB 356 (1988); *Pat's Blue Ribbons*, 286 NLRB 918 (1987). In these circumstances, I find that the on-call employees have a sufficient community of interest with regular employees to be included with them. In this regard, the record disclosed that the on-call employees perform work identical to that of the full-time employees, and under the same supervision. Moreover the evidence of interchange coupled with the consistently large amounts of hours these on-call employees work at any given time establish that these employees work with regularity. While the on-call employees do not receive the same compensation package and they possess a certain flexibility in acceptance of work, I find that these factors do not detract from the substantial community of interest they share with the other employees. Under these circumstances, I find that the on-call employees possess an overwhelming community of interest with the regular full-time drivers.

*Fleming Foods*, 313 NLRB 948 (1994); *Pat's Blue Ribbons*, *supra*; *Fresno Auto Auction*,

*167 NLRB 878 (1967)*. In circumstances such as those present in the instant case, the Board has utilized an eligibility formula in determining which employees are eligible to vote as regular part-time employees. *Metro Cars, 309 NLRB 513, 516 (1992)*; *Trump Taj Mahal Casino, 306 NLRB 294, 295 (1992)*. Eligible to vote as regular part-time employees under this formula are those employees who regularly average four or more hours of work per week during the last calendar quarter prior to the election eligibility date. *Ibid.* Those individuals who do not satisfy this formula are ineligible to vote as irregular or casual employees. *Metro Cars, supra*. Accordingly, I find that the on-call freight supervisors who meet the eligibility requirements noted above are eligible to vote in the election directed herein

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the voting groups found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting groups who are 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 the status as such during the eligibility period and their replacements. Those in the military services of the United States Government 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 **Local Union No. 807, International Brotherhood of Teamsters, AFL-CIO.**

### **LIST OF VOTERS**

In order to ensure 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 in 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); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).* Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the voting groups found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility, 315 NLRB 359 (1994).* In order to be timely filed, such list must be received in the NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before July 20, 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 provision 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, DC 20570-0001. This request must be received by the Board in Washington by July 27, 1999.

Signed at Newark, New Jersey this 13<sup>th</sup> day of July 1999.

/s/William A. Pascarell

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William A. Pascarell, Regional Director  
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