UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

DESIGN CRAFT, INC.
Employer

and

Case No. 29-UC-477

LOCAL 1922, INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, AFL-CIO
Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Marcia Adams, a Hearing Officer of the National Labor Relations Board, herein called 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. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The parties stipulated that Design Craft, Inc., herein called the Employer, a New York corporation, with its principal office and place of business located at 184-08 Jamaica Avenue, Hollis, New York, has been engaged in the manufacture, design and non-retail sale of furniture. During the past year, which

period is representative of its annual operations generally, the Employer purchased and received at its Hollis, New York, facility, goods, supplies and materials valued in excess of $50,000 directly from points located outside the State of New York.

Based on the foregoing stipulations, and on the record as a whole, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The record established that on February 27, 1997, Local 1922, International Brotherhood of Electrical Workers, AFL-CIO, herein called the Petitioner or the Union, filed a petition in Case No. 29-RC-8780 seeking to represent certain employees of the Employer. On April 30, 1997, a Certification of Results was issued. The Union filed a second petition in Case No. 29-RC-9013 seeking to represent certain of employees of the Employer. On November 25, 1998, a Certification of Representative was issued. The certified unit includes:

> All full-time and regular part-time production and maintenance employees, employed by the Employer at its 184-08 Jamaica Avenue, Hollis, New York, excluding all office clerical employees, professional employees, truck drivers, truck helpers, guards and supervisor as defined in Section 2(11) of the Act.

The sole issue during the hearing concerned the status of Durgadath Ramdass, whom the Petitioner contends is a unit employee. Thus, the Petitioner urges that the unit should be clarified to include him.[1] In support of this contention, the Petitioner called Ramdass to testify. The Employer contends that

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[1] The parties stipulated that Ramdass' name appeared on the Excelsior list provided pursuant to the Stipulated Election Agreement in Case No. 29-RC-8780, but he was not on the Excelsior list for the second election conducted in November 1998.

Ramdass is a supervisor within the meaning of Section 2(11) and should be excluded. In support thereof, the Employer called Glenn Shapiro, the president of the company.

Regarding the Employer's overall structure, the record established that Shapiro is the president of the company and the vice president is Morton Weiner. The plant's production manager is Deniswar Ranjatan, also referred to in the record as "Popso." There are 5 departments: finishing, assembly, laminating/flexi, carpentry/cutting and glazing. There are 2 employees in the finishing department, and the supervisor of that department is Denishwar Gadari. There are approximately 7 employees in the assembly department, but there is no supervisor of that department at this time. There are approximately 14 employees in the laminating/flexi department, who are supervised by Ray Henry. There are 8 employees in the carpentry/cutting department, but no supervisor at this time. Finally, there are 2 employees in the glazing department, Ramdass, the employee in question, and a second employee, Bishal Balkaran.

Ramdass was hired by the Employer in April 1996. On or about April 11, 1997 (around the time of the election in 29-RC-8780), his rate of pay was increased from $10.50 per hour to $14 per hour. He claims that the increase was granted because the lead employee in the glazing department was transferred to another department. Because of that transfer, Ramdass performed the work of the former leadman. Accordingly, Ramdass requested an increase to compensate for the additional work he performed.[2] It appears that Ramdass is considered to be a salaried employee, although his rate of pay, when broken down to an hourly rate, is $14 per hour.[3] The Employer admits that there are other unit employees who have similar rates of pay. Ramdass testified that he receives 4 paid sick days and one week paid vacation, but he did not know if other employees are eligible for the same benefits. Shapiro testified that Ramdass, and all other departmental supervisors, have unlimited sick days, but that unit employees' sick leave is restricted to 4. Shapiro admits that unit employees and supervisors are eligible for the same vacation time. Shapiro claims that all unit employees must verbally report their absence to their immediate supervisor, but that Ramdass is only required to leave a message for the production manager or for Shapiro.

Since his hire, Ramdass has worked in the glazing department where he cuts, polishes and pastes mirrors. Ramdass admits that he essentially "runs the department," by completing the orders in the manner in which they were given to him by Popso. According to Ramdass, Bishal Balkaran only works in the glazing department on occasion, when the production manager determines the need.

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[2] There was some testimony from the Employer's and the Petitioner's witnesses that Ramdass received a salary increase because he took over the lead position from another individual. Shapiro testified that when Ramdass asked for a raise, he was given the raise and was told by Shapiro that the work in the department was to be performed timely, to specification and that Ramdass was responsible for all inventory issues in the department. Based on Ramdass' increase in duties, his salary was raised commensurate with that of the predecessor supervisor. In its brief, the Employer claims that Ramdass' request for a salary increase reflects his admission that he "took over" a supervisory position. Despite the Employer's contention in this regard, the record does not definitively indicate that Ramdass' predecessor was, indeed, a 2(11) supervisor. In any event, the critical issue here concerns Ramdass' responsibilities in the glazing department, and not whether he assumed someone else's job.

[3] Although the Employer claims that Ramdass is salaried, his paystub indicates an hourly rate. The Employer claims that all supervisors, including Popso, have paystubs reflecting hourly rates so that the Employer "can determine the hourly cost of running the plant."

When Balkaran works in the glazing department, Ramdass instructs him to complete the orders in the sequence in which they arrived in the department. Ramdass admits that because he is the "lead" in the department, Balkaran seeks his counsel as to how to perform certain work. Ramdass claims that he does not make any changes in the order of work performed, unless so instructed by Popso. Ramdass testified that, on occasion and upon Popso's instruction, he performed some work in the assembly department, and has spent up to 8 hours per day there, depending on the work needed.

When Ramdass requires certain supplies for his department, he drafts a list and submits it to Weiner or Popso. Ramdass claims that both he and Balkaran submit requests for supplies and that no one questions these requests. The purchases are made by the vice president of manufacturing and not by the individual supervisors. Shapiro testified that he "might" question a supervisor if he/she seeks to purchase an expensive item. Shapiro testified that all supervisors, including Ramdass, have the authority to return unusable raw materials to the supplying vendors.

It is undisputed that Ramdass has never hired, fired, transferred, laid off, granted time off, or reviewed the work of employees.[4] Regarding discipline of employees, Shapiro testified that any disciplinary problems are raised by the supervisor directly to Popso. Ramdass testified that on one occasion, about one

[4] Although Shapiro testified that all supervisors, including Ramdass, have the authority to recommend termination, and that employees have been terminated based on such a recommendation, he provided no examples involving Ramdass in particular.

year ago, he approached Shapiro and requested a pay increase for Bishal Balkaran. Neither Ramdass nor Shapiro knew if the raise was granted as per Ramdass' request.[5] Ramdass also testified that once every two months, he asks Popso for assistance from another employee in order to complete work. Ramdass claims that he does not have the authority to approve any temporary work transfers.

Ramdass admits that during a supervisor's meeting attended by him, Shapiro indicated that all supervisors and leadmen, including Ramdass, should observe the work of other employees and, if a task was performed improperly, employees should be instructed to redo the work.[6] Shapiro referred to this as visual inspection/quality control. In this regard, Ramdass claims that on a number of occasions, he observed that some employees failed to properly clean an item. Having made that observation, Ramdass asked the employee to redo the work. Ramdass claims that for the most part, employees have complied with his

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5 According to Shapiro, there was a second incident where Ramdass and Balkaran jointly approached him for raise. Shapiro refused to discuss the matter further and, when Ramdass and Balkaran left Shapiro's office, Shapiro claims they "engaged in a strike." Shapiro discharged both employees, but eventually rehired them.

6 After Ramdass received an increase in April 1997, he was asked by Popso to attend supervisory meetings which were held approximately once a month. It was during these meetings that Shapiro instructed Ramdass, and others, to "look out" for mistakes and instruct employees to correct them.

It should be noted that there was some testimony concerning Ramdass' attendance at these supervisory meetings, when he ceased attending, and whether he was considered by the Employer to be supervisor at the time of the election in November 1998. The record reveals that during these meetings, the attendants discussed production schedules, inventory needs, quality control issues, performance of various departments, suggestions on how to improve performance, and the "discharge and hiring of personnel." As to the latter issue, Shapiro did not detail or explain any particular discharge or hire that was discussed during the meetings attended by Ramdass. Ramdass claims that he ceased attending monthly supervisory meetings sometime before the election in November 1998. He claims that he told Shapiro that he no longer wanted to be a supervisor. Notwithstanding all of the foregoing, the issue here is whether Ramdass is currently a supervisor, and not whether he was a supervisor at the time of the election in November 1998.

instruction. However, if an employee makes a mistake a number of times, Ramdass reports it to the department supervisor.

The Employer claims that Ramdass, and all departmental supervisors, have the authority to change the production workflow. For instance, if a product has not come to a particular department by the scheduled time, the supervisor may take certain parts from another department, work on those parts out of the regularly scheduled production order, and return the item to another department for completion. Ramdass testified that he was not aware that he had any authority to change the workflow of a product through the factory, and that he would only do so upon instruction from Popso.

Unlike other employees, Ramdass does not punch a time clock. He ceased punching a time clock when he became a salaried employee.[7] Ramdass does not work overtime. He reports to work at 8:00 a.m. and completes his workday at 4:15 p.m. He has the same lunch period and break time as do other employees. All employees eat in their respective departments. When Balkaran works overtime, Popso (and not Ramdass) authorizes the overtime. However, according to Shapiro, it is the departmental supervisor who determines which employee works overtime. The record does not indicate whether Ramdass has ever been involved in such a determination. When Balkaran requests time off, the request is made directly to Popso, not to Ramdass.[8]

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[7] There was a period of time when Ramdass continued to punch a time clock even after he became a salaried employee. It appears from the record that this was simply an error which occurred for a brief period of time.

[8] According to Shapiro, all employees must submit a form indicating their first, second and third choice for vacation time. Shapiro claims that all departmental supervisors "have a say" in approving the timing of a vacation request. For instance, Shapiro claims that if two employees requested the same week for vacation, he seeks "input" from the departmental supervisor as to the supervisor's

It is the policy of the Board not to construe supervisory status too broadly as it would result in the forfeiture of Section 7 rights. Chevron Shipping Co., 317 NLRB 379 (1995). Thus, the burden of establishing supervisory status is substantial and it rests with the party alleging it. The Ohio Masonic Home, Inc., 295 NLRB 390, 393 (1989). I find that the Employer has not met its burden and Ramdass is not a supervisor within the meaning of Section 2(11) of the Act.

There is no dispute that Ramdass never hired or fired any employee, or effectively made any recommendations in this regard. At best, there was one occasion where he requested an increase for his co-worker, Balkaran. However, the evidence failed to establish whether Ramdass' recommendation was followed. In this regard, even Shapiro admitted that he did not know if Balkaran received the wage increase requested by Ramdass. Accordingly, the evidence fails to establish that Ramdass effectively recommended a wage increase for Balkaran, or for any other employees. Although the Employer generally contends that all departmental supervisors have the authority to recommend the termination of employees, the record failed to establish that any such recommendation was made by Ramdass at any time.

There was some record evidence that during some supervisory meetings attended by Ramdass, he was instructed to observe the work of other employees and instruct employees to redo poorly performed work. Although Ramdass admits that he has instructed employees to redo their work, and employees have complied with that instruction, the Board has long held that quality control

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preference. However, Shapiro admitted that he sought no such input from Ramdass regarding the sole employee he is alleged to supervise, Balkaran.

functions, i.e., inspecting and reporting the work of others, does not confer supervisory authority. Quadrex Environmental Co., Inc.., 308 NLRB 101, 102 (1992); Brown & Root, Inc., 314 NLRB 19, 21 (1994). Thus, even assuming that Ramdass functioned as a visual quality control inspector by instructing employees to correct errors made, that function fails to establish his supervisory authority.

Regarding Ramdass' authority to grant time off, the Employer claims that all departmental supervisors have "input" in determining whether to allow two employees to take vacation at the same time. However, the record failed to establish that Ramdass was ever faced with such a decision, which is not surprising since there is only one employee allegedly reporting to him. Moreover, Ramdass testified that all vacation requests from Balkaran are submitted to and approved by Popso. Based on the foregoing, the record failed to establish that Ramdass possesses any authority to grant time off to employees.

The Employer contends that Ramdass exercises independent judgment in changing the workflow at the factory. It should be noted that Ramdass contradicted Shapiro and claims that he does not possess the authority to change the workflow, and that he only did so on specific instruction from the production manager. Even assuming that Ramdass has changed the flow of work, it is unclear how such a function establishes supervisory authority. If the Employer is arguing that changing the workflow involves the assignment or re-assignment of work, the record here fails to establish that Ramdass exercises independent judgment in so doing. Rather, based on Shapiro's testimony, Ramdass would only change the work flow when production has slowed slightly and the department needs some work. It does not require any independent judgment as envisioned by Section 2(11) of the Act to seek out work when the department's work flow has slowed. Accordingly, despite the Employer's contention in this regard, I find that the record fails to establish that changes in the work flow confers supervisory authority on Ramdass.

There was some record testimony that Ramdass has the authority to submit requests for supplies/inventory and that those requests are honored without any further inquiries. The Employer argues that the authority to order supplies confers supervisory authority, particularly where the orders are not questioned by management. However, I note that it is not Ramdass who actually does the ordering. Rather, the vice president of manufacturing receives the written requests for supplies and places the orders himself. Thus, it appears that there is at least some oversight by a higher level manager in ordering inventory. Moreover, Shapiro testified that Ramdass' authority to purchase inventory is not unlimited, i.e., Shapiro would question Ramdass about placing an order for expensive supplies. Finally, I note that the authority to pledge the Employer's credit is an indicia of managerial status, an issue not raised here.[9] Even assuming that the possession of such authority was indicative of supervisory status, the evidence clearly shows that Ramdass' requests for supplies are made to maintain the department's supply of inventory for the purpose of completion of the work,

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[9] Sampson Steel and Supply, Inc., 289 NLRB 481,482 (1988), where an individual was not found to be a managerial employee, although he pledged the employer's credit, limits were not imposed on his purchases, and purchases were nonroutine.

which appears to be a purely routine function and does not require the exercise of any independent judgment.

In its brief, the Employer argues that Ramdass is held out as a supervisor to the Employer's employees, and cites in support thereof Great American Products, Inc., 312 NLRB 962 (1993), where the Board found an individual, who committed certain unfair labor practices, to be an *agent* (but not a supervisor) of the employer because the employees "would reasonably believe that the employee in question was reflecting company policy and speaking and acting for management." The issue here is not whether Ramdass is an agent of the Employer for the purpose of attributing certain conduct to the Employer. Rather, the issue at bar is his alleged supervisory status. Thus, the Employer's reliance on Great American is misplaced.

In its brief, the Employer also claims that Ramdass' salary increase in April 1997, reflects his promotion to a supervisor's position. In support thereof, the Employer cites Grand RX Drug Stores, 193 NLRB 525 (1971), where the employer raised the scale of salaries to accord with the higher scale of former managers. However, in that case, there was substantial evidence of primary supervisory indicia, i.e., the disputed individuals effectively recommended employees, discharged employees, recommended transfers and disciplinary action, selected the least productive employees for layoffs, issued warnings, approved transfer requests, recommended wage increases, utilized independent judgment in setting work schedules, appraised employees' work and adjusted grievances. Inasmuch as the facts in Grand RX Drug are substantively different from the facts herein, I find the case not controlling herein.

As for Ramdass' wage rate, it appears from the record that he is a salaried employee. However, when his salary is broken down to hourly rates, it appears that there are other unit employees who receive similar rates of pay. The Employer contends that Ramdass received his wage increase because he assumed the function of the preceding supervisor of the department. However, as indicated above, the record does not clearly establish that Ramdass' predecessor was a statutory supervisor. Nor does his increase, per se, confer supervisory authority, particularly in view of the Employer's admission that other unit employees receive similar rates of pay. Although the Employer contends that Ramdass receives unlimited sick days and his reporting requirements for time off are lax compared to other employees, these factors, in the absence of any primary indicia of supervisory authority, fail to confer 2(11) status. And, the fact that Ramdass does not punch a time clock, does not work overtime, or, in the past, attended supervisory meetings, is also insufficient, on their own, to establish that he possesses supervisory authority as defined by the statute. Absent proof of primary indicia of supervisory authority, any secondary indicia, i.e., higher wage rate, unlimited sick days, lax reporting requirements, and attendance at supervisory meetings, are insufficient to support a finding of supervisory authority.[10]

[10] In its brief, the Employer argues that if Ramdass is found to be a unit employee, then the only remaining supervisor is Popso, leaving a ratio of 1 supervisor to 40 unit employees. In support of this position, the Employer cites two cases where the Board considered the ratio of unit employees to supervisors. However, those cases are distinguishable inasmuch as there was evidence of primary

Accordingly, based on all of the above, I find that Ramdass does not possess any of the statutory indicia of supervisory authority and therefore he is not a supervisor within the meaning of Section 2(11) of the Act.

ORDER

The bargaining unit is hereby clarified to include Durgadath Ramdass.

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 April 29, 1999.

Dated at Brooklyn, New York, this 15th day of April, 1999.

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Alvin Blyer
Regional Director, Region 29
National Labor Relations Board

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supervisory indicia. In Concourse Village, Inc., 276 NLRB 12 (1985), the Board found that an assistant maintenance director to be a statutory supervisor, where that individual issued at least one written warning for breaching the employer's policies, which warning could lead to discharge. While the Board noted, in a footnote, the 'inordinate' supervisor-to-employee ratio that would result from a nonsupervisory finding, this was not the primary basis for the Board's determination. In Pennsylvania Truck Lines, Inc., 199 NLRB 641 (1972), the Board found strip supervisors and dispatchers to be supervisors because they exercised their authority to discharge drivers for serious misconduct, sent drivers to other terminals, required them to work overtime and exercised independent judgment in assigning work. While the Board noted the employee-supervisor ratio to be a factor, it was not the primary factor on which the Board relied. I also note that the Employer's reliance on Naples Community Hospital, 318 NLRB 272 (1995), Byers Engineering Corp., 324 NLRB 740 (1997), and North Shore Weeklies, Inc., 317 NLRB 1128 (1995), clearly do not support the Employer's position as the Board found the disputed individuals in those cases to be unit employees, not statutory supervisors.

The Employer also seems concerned that my finding regarding Ramdass may extend to other departmental supervisors. The fact that Ramdass is not a statutory supervisor has little bearing on the supervisory status of other departmental supervisors, such as Ray Henry, who supervises the 14 employees in the laminating department, or any other departmental supervisory positions which are now vacant.

One MetroTech Center North, 10th Floor
Brooklyn, New York 11201

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177-8520-5500

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