

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

EQUITY OFFICE PROPERTIES
MANAGEMENT CORP.

Employer ¹

and

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 30, AFL-CIO

Petitioner

Case No. 34-RC-1736

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.

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

Upon the entire record ² in this proceeding, the undersigned finds:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.³

¹ The Employer's name appears as amended at the hearing.

² The Employer has objected to the Petitioner's references to "Exhibit P-1" in its post-hearing brief. The record reveals that a document was marked for identification as Exhibit P-1, but was neither offered nor received into evidence at the hearing. Accordingly, I have ignored any references to Exhibit P-1 in Petitioner's post-hearing brief.

³ In its post-hearing brief, the Employer moved that the undersigned strike or disregard certain documentary evidence and testimony on the ground that the hearing officer's conduct in securing such evidence was "unprofessional" and biased against the Employer. I have carefully examined the entire record and find no basis for concluding that the hearing officer was either unprofessional or biased against the Employer. In this regard, the hearing officer has both the duty "to inquire fully into all matters in issue" and the authority "to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence". See Sections 102.64(a) and 102.66(a) of the Board's Rules and Regulations, Series 8, as amended. Moreover, I note the absence of any specific claim or evidence that the Employer was prejudiced in any manner by any of the hearing officer's conduct. Accordingly, the Employer's motion to strike or disregard certain evidence and testimony is denied.

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. The labor organization involved claims to represent certain employees of the Employer.

4. The Employer contends that no 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 because of the alleged involvement of Chief Engineer Doug Hayden in the solicitation of authorization cards on behalf of the Petitioner. In this regard, in its post-hearing brief the Employer alleged that Hayden, who was a witness for the Petitioner in this matter, was “intricately” involved in the solicitation of the Petitioner’s authorization cards, and that the Petitioner would “presumably” admit such involvement. To date, the Petitioner has not responded to the Employer’s assertions regarding Hayden’s involvement in the solicitation of authorization cards.

It is well established that allegations of supervisory participation in, or influence upon, a union’s showing of interest, like other attacks upon such showing, are matters for administrative determination and may not be litigated in a representation proceeding. *Georgia Kraft Co.*, 120 NLRB 806, 807-808 (1958). However, having found, *infra*, that Hayden is a supervisor within the meaning of the Act, and as it is also well established that supervisory involvement in the solicitation and distribution of authorization cards can taint a petitioner’s showing of interest (*National Gypsum Co.*, 215 NLRB 74 (1974)), I find that an administrative investigation is warranted as to Hayden’s involvement in the solicitation of authorization cards on behalf of Petitioner. Accordingly, the election directed herein is subject to my administrative determination that the Petitioner possesses a valid and sufficient showing of interest.

5. The Employer, with its headquarters located in Chicago, Illinois, owns and manages commercial and residential properties throughout the United States. Solely involved in this proceeding are two separate properties located in Stamford, Connecticut, a four building complex known as Stamford Plaza and a single facility at 300 Atlantic Street. Petitioner seeks to represent a unit of eight employees in the engineering departments at these two facilities, including chief engineers, building engineers, maintenance technicians, and maintenance assistants and helpers. The Employer, contrary to the Petitioner, contends that the petitioned-for unit is

inappropriate and that only separate units of engineering department employees at each location are appropriate. The Employer further contends, contrary to the Petitioner, that the chief engineer at each facility must be excluded as supervisors under the Act. Finally, the Employer further argues that the chief engineer at 300 Atlantic Street should be excluded on the ground that he is also a managerial employee.

There is no history of collective bargaining covering the petitioned-for unit. However, Stamford Plaza and 300 Atlantic Street are part of what the Employer refers to as its "Stamford Portfolio," which also includes two other facilities in Stamford known as Canterbury Green and 177 Broad Street. The Petitioner currently represents engineering and maintenance employees in separate units at Canterbury Green and 177 Broad Street.

The Stamford Portfolio

Corporate oversight of the Stamford Portfolio is the responsibility of Regional Senior Vice President Chris Munday and Vice President of Property Management Jeff Spruill, both of whom are located at the Employer's offices in Washington, D.C. Reporting directly to Spruill is General Manager Laura Westfall, who is located at Stamford Plaza and has primary responsibility for all operations at that location; Senior Property Manager Jack Brown, who is located at Canterbury Green and has primary responsibility for all operations at that location; and Property Manager Anna Buonantony, whose office is located at Canterbury Green, but who has primary responsibility for all operations at 177 Broad Street and 300 Atlantic Street. Reporting directly to Westfall is Operations Manager Joe Ragonese, who has an office located at Stamford Plaza, but whose responsibilities include providing technical support and supervision for all four locations. In this regard, his duties were expanded to include 177 Broad Street and Canterbury Green in January 1999, and 300 Atlantic Street in March 1999. At the same time as Ragonese's duties were expanded to cover the other three locations in the Stamford Portfolio, Doug Hayden's responsibilities as chief engineer at Stamford Plaza were expanded to cover all four buildings at that location. As a result of his expanded duties, Ragonese visits Canterbury Green, 177 Broad Street, and Stamford Plaza on a daily basis, and provides technical support and advice at 300 Atlantic Street on an as-needed basis. He has primary responsibility over the engineering departments at Canterbury Green and 177 Broad Street, and prepares the performance evaluations for the chief engineer at Stamford Plaza. Ragonese also

works with outside contractors who perform cleaning and landscaping services at all four locations. If a dispute arises between Ragonese and Brown or Buonantony on the proper solution to a problem, it is resolved by Westfall.

Supervision at Stamford Plaza

The employees in the petitioned-for unit at Stamford Plaza, all of whom are employed in the engineering department, include Chief Engineer Hayden, Engineer Lance Csonka, Maintenance Technicians Richard Mellia and Kenny Smith, and Maintenance Assistants Michael Butler and Keith Goff. These employees are responsible for general building maintenance, including plumbing, heating, cooling, and lighting repairs. As chief engineer, Hayden performs the same type of work between 30% and 75% of his time, with the remainder spent overseeing the work of the other employees. All “heavy” work -- such as landscaping, remodeling, or rewiring -- is contracted out. With regard to such contracted work, Hayden takes the initial step of soliciting contractor bids and proposals. On a “day-to-day job,” Ragonese contracts with whomever Hayden recommends. On a “capital project,” Ragonese and Hayden “work together” on making the final selection.

Tenant service calls, which constitute about half of the work performed by the engineering department employees at Stamford Plaza, are received by the Employer’s receptionist at Stamford Plaza, who writes up a work ticket detailing the tenant’s complaint. These work tickets are then placed in a basket where they are retrieved throughout the day by the engineering department employees. When emergency situations arise during the work day, a wireless radio is used by an unidentified person to call an engineer or maintenance person to the scene.⁴

The remainder of the work performed by the engineering department employees at Stamford Plaza consists of preventative maintenance and work generated from “walk-throughs”. Although walk-throughs are generally performed by either Hayden or Ragonese who walk through the building checking for possible problems, any employee in the engineering department who notices a problem while walking through the building is expected to either fix it on the spot or alert Hayden or Ragonese to its existence. All of these unremedied repair projects are listed on a “pass board” in the engineering

⁴ All properties in the Stamford portfolio use wireless radios; however, Stamford Plaza is on its own separate radio frequency, while the other three sites share one frequency. If an emergency arises at Stamford Plaza after regular work hours or on the weekend, an engineering department employee who is scheduled to be on-call is paged by an unidentified person to come into work.

department office, where they are prioritized and assigned by Hayden. In making such assignments, Hayden relies upon his knowledge of the employee's ability to perform the required repair. Hayden makes these type of assignments on a weekly basis, listing each employee's name on a sheet of paper and listing several work assignments under each name. The pass board also contains general work assignments from Hayden directed at everyone.⁵

All of the work performed by the engineering department employees at Stamford Plaza is recorded in a daily work log which was suggested and created by Hayden after discussions with Ragonese and Westfall. The purpose of the daily work log is to insure against employees' "dogging" jobs, i.e., taking choice jobs and leaving less favorable jobs for the other employees to perform.

The record also reflects that Hayden is responsible for preparing the annual evaluations of the engineering department employees at Stamford Plaza. These evaluation forms are reviewed by Westfall and Ragonese. Although they may direct Hayden to make additional comments on an evaluation, the record indicates that Ragonese and Westfall do not change the employee ratings determined by Hayden. The ratings are used by Westfall in conjunction with a uniform salary matrix to calculate an appropriate wage increase for the evaluated employee. The proposed wage increase, along with the Hayden's evaluations, are then sent to the Employer's regional office in Washington, D.C., where they are again reviewed and utilized to implement wage increases. The record reflects that these annual evaluations always result in employee wage increases.

Although Hayden has informally counseled employees regarding their work, there is no evidence that he has ever formally disciplined any of the engineering department employees. To the contrary, the record reflects that if Hayden becomes aware of conduct which may warrant discipline, he merely reports it to Ragonese or Westfall.

Hayden has participated in the hiring of one employee, Keith Goff. In this regard, he reviewed resumes which had been collected by Ragonese. The prospective

⁵ The record contains the following examples of these instructions [emphasis in the original]: Week of 5/18/99, "EVERYONE TAKE 15/min a day to strenighten (sic) BOTH shops . . ."; week of 3/15/99, "WHEN DONE WITH YOUR ABOVE ITEMS, CHOOSE SOMETHING FROM THE BOARD IN MY OFFICE!"; week of 3/1/99, "WORK TICKETS ARE EVERYONE'S RESPONSIBILITY!!"; and week of 11/23/98 "ALL, you are responsible for 1) where you leave tools i.e., mech rooms 2) putting all covers back on units 3) IF mech room for example, is a mess co-ordinate with porter and yourself to see that it gets cleaned . . . IF you have a question as to where something should go, ASK me . . ."

candidates were jointly interviewed by Hayden and Ragonese. Hayden was asked for his opinion of the applicants and recommended that Goff be hired. The recommendation to hire Goff was then submitted to Westfall, Spruill, and the Human Resources Department, each of whom had to approve the recommendation before Goff could be hired. Since Goff began working at Stamford Plaza, Hayden has assigned him to work with other experienced employees for training purposes.

Overtime work at Stamford Plaza is scheduled by Ragonese on a rotating basis, but Hayden signs or initials all overtime payroll slips to certify that the work has been performed. Hayden does not receive paid overtime, and his name does not appear on the overtime schedule. All requests for time off must be approved by Ragonese. However, the engineering department employees generally check with Hayden prior to submitting their requests in order to insure that their absence will not create any scheduling problems. Employees who call in sick may contact Hayden or Ragonese, or simply leave a message on the Employer's answering system. Once an individual has called in sick, Hayden reorganizes the assignments on the "pass board" to compensate for the absent employee. When Hayden takes time off, he preschedules tasks on the pass board.

Hayden has the authority to purchase items which have been pre-approved in the Stamford Plaza operating budget, but he must first seek authorization from either Ragonese or Westfall for non-budgeted expenditures. In emergency situations, however, he is permitted to make necessary repairs without prior authorization of the cost of the repair. Hayden is paid a salary of \$60,000.00 per year. In contrast, the other engineering department employees, all of whom are paid on an hourly basis and receive paid overtime, earn \$50,000 or less per year. In addition, Hayden's

participation in the Employer's stock option program is capped at 1,000 shares, while the other employees in the engineering department are capped at 100 shares. Hayden is expected to wear a white company shirt, while the rest of the engineering employees wear blue company shirts. Hayden has his own office with a desk, telephone, cell phone, fax and computer.

Supervision at 300 Atlantic Street

As noted above, Property Manager Buonantony has been responsible for 300 Atlantic Street since her transfer from Stamford Plaza in 1997. Also as noted above, Buonantony was relocated to Canterbury Green in February 1999, and beginning in March or April 1999, Ragonese has provided Buonantony with technical support and advice at 300 Atlantic Street. This has resulted in a total of two visits to that location by Ragonese, and telephone contact at least once a week.

The engineering department at 300 Atlantic Street consists of only two individuals: Chief Engineer Dave DeWitt and Engineer Enaroy Simms. Simms reports directly to DeWitt who reports directly to Buonantony. Although Buonantony has always relied heavily upon DeWitt to oversee the engineering department at 300 Atlantic Street, her reliance on DeWitt has increased since her relocation to Canterbury Green.

Although not entirely clear, it appears that the nature and assignment of the work performed by the engineering department employees at 300 Atlantic Street is substantially the same as Stamford Plaza. Thus, work is generated either by a work ticket resulting from a tenant complaint, or by a walk through. The work tickets are actually prepared at Canterbury Green, where the tenant calls are received, and then faxed to DeWitt at 300 Atlantic Street. DeWitt then either performs the work himself or assigns it to Simms. DeWitt spends approximately 60% of his time performing such building repair work. DeWitt has trained Simms, and schedules Simms' overtime, days off, and vacations.⁶

⁶ The record reflects that DeWitt effectively recommended to Temco Services, a company which employs Day Porter Majnor, that Majnor be disciplined for failing to adequately perform his duties at 300 Atlantic Street. However, no party contends that Majnor is an employee of the Employer or that he should be included in the petitioned-for unit, and there is no evidence that DeWitt has ever been involved in disciplining Simms.

In August or September 1998, DeWitt recommended that Simms be promoted from Maintenance Technician to Engineer based upon Simms' receipt of a "D2" license from the State of Connecticut. Buonantony followed DeWitt's recommendation and promoted Simms. DeWitt also prepares Simms' annual evaluation, utilizing the same system as Stamford Plaza, discussed in detail above.

DeWitt has the same authority as Hayden regarding the contracting of work and the expenditure of money for budgeted items, discussed in detail above. However, it appears that expenses in excess of \$500 must be authorized by Buonantony. DeWitt has his own office, phone, computer, and fax machine, which is also used by Simms. He is paid a salary of \$66,800, whereas Simms is paid an hourly rate of \$20.00 plus overtime. DeWitt has the same 1000 share cap as Hayden under the Employer's stock purchase plan.

In July 1998, DeWitt attended what the Employer has described as a "confidential" management meeting, where Munday, Spruill, Buonantony, and other management personnel conferred about the "goals" for 300 Atlantic Street in 1999, and to prepare the 1999 budget for that location.

Supervisory Status of Chief Engineers Hayden and DeWitt

Based upon the foregoing and the record as a whole, I find that Hayden and DeWitt are supervisors as defined in the Act.⁷ In this regard, it is well established that the indicia of supervisory status listed in Section 2(11) of the Act are set forth in the disjunctive, and that the existence of only one is necessary to support a finding that an employee is a supervisor within the meaning of the Act. See, e.g., *Concourse Village, Inc.*, 276 NLRB 12, 13 (1985). Thus, although both Hayden and DeWitt spend a substantial portion of their time performing the same repair and maintenance work as the other employees in the petitioned-for unit, the record establishes that both regularly assign and direct the work of engineering department employees, and that they prepare written evaluations which directly affect the wages of engineering department employees. See, e.g. *Allen Services Co.*, 314 NLRB 1060 (1994); *Georgetown Development & Management Corp.*, 227 NLRB 381 (1976); *Wilson Kaplan d/b/a Chandler Associates*, 220 NLRB 730 (1975); *Custom Bronze and Aluminum Corp.*, 197 NLRB 397 (1972); *Potomac Electric Power Co.*, 111 NLRB 553, 559 (1955). Moreover,

⁷ In light of this finding, it is unnecessary to address the Employer's contention that DeWitt should be excluded from the petitioned-for unit as a managerial employee.

Hayden has effectively recommended the hiring of employees, and DeWitt has effectively recommended the promotion of employees. See, e.g., *Allen Services Co.*, supra; *Georgetown Development and Management Corp.*, supra; *Wilson Kaplan d/b/a Chandler Associates*, supra. Finally, I note that both Hayden and DeWitt are paid on a salaried basis at a significantly higher rate than the other employees in the petitioned-for unit, they both have their own office, and they both receive additional benefits. See, e.g., *Georgetown Development and Management Corp.*, supra.

Scope of the Unit.

The record reflects a significant level of interchange between and among the Employer's managers at the locations in issue, reflecting a highly centralized control of management and labor relations.⁸ The record further indicates that each location in the Stamford Portfolio has its own operating budget, tools, maintenance materials, and tenants. However, the record reflects no evidence of any interchange of employees between Stamford Plaza and 300 Atlantic Street, on either a temporary or permanent basis. There is similarly no evidence of any work-related contacts between such employees. Although the record reflects that the engineering department employees at Stamford Plaza and 300 Atlantic Street perform the same work under similar terms and conditions of employment, their work is restricted to their respective location, and they are subject to separate immediate supervision.

In determining the appropriateness of a petitioned-for multi-facility bargaining unit, the Board examines traditional community of interest factors, including similarity in employee skills, duties and working conditions; centralized control of management and supervision; functional integration, including employee interchange; geographic separation of facilities; collective bargaining history; extent of union organization; and

⁸ In this regard, in 1997, Buonantony was transferred from her position as general manager of Stamford Plaza to the property manager position at 300 Atlantic Street. Also in 1997, Westfall worked in conjunction with Spruill to transfer Engineer Doug Hayden from 300 Atlantic Street to Stamford Plaza, which included Hayden's promotion to chief engineer for two of the buildings at Stamford Plaza. At the same time, Dave DeWitt, the chief engineer at Stamford Plaza, was transferred to the same position at 300 Atlantic Street. Westfall also hosts weekly management meetings at Stamford Plaza, which are attended by Buonantony, Brown, Ragonese, and leasing directors for all four locations within the Stamford Portfolio. Westfall is also responsible for evaluating the performance of Buonantony, Brown, and Ragonese.

employee choice. *Macy's West, Inc.*, 327 NLRB No. 201, slip op. at 2 (March 31, 1999).⁹

Based upon the foregoing and the record as a whole, I find that a combined unit of engineering department employees at the Employer's Stamford Plaza and 300 Atlantic Street locations is not an appropriate unit for the purposes of collective bargaining. More particularly, I note that the two locations are geographically and administratively separate and lack any semblance of functional integration, with no temporary or permanent employee interchange, no regular employee contacts, no regular exchange of tools or materials, and no common supervision. See, e.g., *Executive Resources Associates, Inc.*, 301 NLRB 400 (1991).

Although I have found that only separate units at Stamford Plaza and 300 Atlantic Street are appropriate, the status of the chief engineer at 300 Atlantic Street as a statutory supervisor leaves only one unit employee at that location. Inasmuch as the Board will not direct an election in a unit consisting of only one employee (*Roman Catholic Orphan Asylum*, 229 NLRB 251 (1977)), I will not direct an election in the unit at 300 Atlantic Street.

In view of the above, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining with the meaning of Section 9(b) of the Act:

All full-time and regular part-time building engineers, maintenance technicians, and maintenance assistants employed by the Employer at Stamford Plaza in Stamford, Connecticut; but excluding all other employees, the chief engineer, and guards, professional employees and other supervisors as defined in the Act.

DIRECTION OF ELECTION

Subject to an administrative determination as to the validity and sufficiency of the Petitioner's showing of interest, an election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those employees in the unit 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

⁹ Contrary to the Employer's contention, the presumptive appropriateness of a single-facility unit is inapplicable where the petitioner seeks to represent a multi-facility unit. *Capital Coors Co.*, 309 NLRB

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. These eligible employees shall vote whether or not they desire to be represented for collective bargaining purposes by International Union of Operating Engineers, Local 30, AFL-CIO.

To ensure that all eligible employees have the opportunity to be informed of the issues in the exercise of their statutory rights 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); *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 and Direction of Election, the Employer shall file with the undersigned, an eligibility list containing the *full* names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359 (1994). Subject to the administrative determination of the Petitioner's showing of interest noted above, the undersigned shall make the list available to all parties to the election,. In order to be timely filed, such list must be received in the Regional office, 280 Trumbull Street, 21st Floor, Hartford, Connecticut 06103, on or before August 9, 1999. No extension of time to file these lists shall be granted except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

322 (1992), citing *NLRB v. Carson Cable TV*, 795 F.2d 879, 886-887 (9th Cir., 1986).

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, DC 20570. This request must be received by the Board in Washington by August 16, 1999.

Dated at Hartford, Connecticut this 2nd day of August, 1999.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
Region 34
National Labor Relations Board

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177-8520-5500
177-8540-6500
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