

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 16

Austin, Texas

AMPCO SYSTEM PARKING, INC.

Employer

and

Case No. 16-RC-10237

**AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES LOCAL #1624**

Petitioner

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, the undersigned finds:1/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/

3. The labor organization involved claims to represent certain employees of the Employer. 3/
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. 4/
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:

INCLUDED: All full-time and part-time cashiers/inventory employees, and drivers, including lead drivers, working at the Bergstrom International Airport, located in Austin, Texas.

EXCLUDED: All office clericals, maintenance employees, supervisors, managers and guards as defined in the Act.

DIRECTION OF ELECTIONS/

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 notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the 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 American Federation of State, County and Municipal Employees Local #1624.

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 containing the full names and addresses of all eligible voters 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); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). 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 shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 16 615 E. Houston Street, Room 565 San Antonio, Texas 78205-2040, on or before July 20, 2000, 7 days after date of decision. 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. This request must be received by the Board in Washington by July 27, 2000, 14 days after date of decision.

DATED July 13, 2000, at Fort Worth, Texas.

/s/ Claude L. Witherspoon
Claude L. Witherspoon, Acting Regional Director
National Labor Relations Board
Region 16
819 Taylor Street, Room 8A24
Fort Worth, Texas 76102-6178

1. The Employer and the Petitioner did not file briefs.
2. The parties stipulated, and I find, that Ampco System Parking, Inc. a California corporation, is engaged in the business of managing the parking lots at Austin's Bergstrom Airport and providing transportation to and from the airport terminals to the parking lots. During the preceding twelve (12) months, a representative period, the Employer purchased goods in excess of \$50,000 directly from enterprises located outside the State of Texas. The Employer's annual gross revenue exceeds \$500,000.
3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner seeks to represent all full-time and part-time cashiers/inventory employees, and drivers, including lead drivers, employed at Austin's Bergstrom International Airport. The record reflects that the parties agree all inventory employees perform the primary function of a cashier, and therefore, are cashiers. The sole issue in dispute in this case concerns the status of the lead drivers. The Employer contends that lead drivers are supervisors as defined by Section 2(11) of the Act and therefore should be excluded from the appropriate unit. There are approximately 157 employees in the

unit sought by Petitioner. There are about 145 employees in the unit Employer asserts is appropriate.

At its Austin location, the sole location involved herein, the Employer employs about eight (8) maintenance employees, eighty-five (85) drivers, twelve (12) lead drivers, sixty (60) cashier/inventory personnel, thirteen (13) cashier supervisors, six (6) dispatchers, three (3) head supervisors, one (1) assistant manager, and one (1) general manager.

The Employer is engaged in the service/transportation industry. It provides bus and shuttle transportation from the Bergstrom International Airport terminal to the various airport parking lots. The shuttle and bus drivers are responsible for picking up passengers and driving them to their parked vehicles, then returning to the terminal for more passengers. In the performance of this work, the drivers drive three different types of vehicles: a 25-passenger bus; a 12-passenger van; and a 7-passenger van.

Cashiers are responsible for collecting customers' money as they leave airport parking lots and work in windowed offices located near the lots. Cashiers also perform cashier audits and communicate via the Employer's radio to the drivers working in the lots.

Cashiers and drivers work on one of three 8-hour work shifts spanning a 24-hour period. At its central office location in Austin, the Employer houses all employees' uniform pick-ups, time clocks, time cards, employee break areas, dispatch area, and management offices.

All employees report to the same supervisory and management staff. Michael Torba is the acting general manager. At the time of the hearing, there was no assistant manager. The Employer's three head supervisors report directly to General Manager Torba. These head supervisors oversee the dispatchers, the lead drivers, the cashiers, the shuttle bus drivers, and maintenance employees. The parties stipulated that maintenance employees should be excluded from any unit found appropriate herein.

The record reflects that cashiers and drivers share the same benefits and similar starting wages. Specifically, after 180 days of service, all cashiers and drivers have the option of receiving the same employee benefits, including medical, dental, vision, and life insurance. Moreover, all cashiers and drivers receive the same starting rate of pay, and are eligible for the same range of percentage increase in wages. Cashiers and drivers start at \$8 per hour, and lead drivers start at \$8.50 per hour. All full-time cashiers and drivers receive identical vacation benefits, and paid days off depending on the length of time employed and the position occupied. All cashiers and drivers report to the same Human Resources department, where all hiring and firing decisions are made for all employees. A single payroll person handles the time cards for all the cashiers and drivers. Further, all cashiers and drivers wear the same uniform and are subject to annual performance reviews, which are conducted with both management and the employees' immediate supervisors. Although the record reflects that some cashiers have driven the

two smaller size vans, it does not reflect the frequency with which cashiers have driven these vehicles. The record does not reveal that drivers have filled in for cashiers, although the Employer maintains they could if required.

With regard to the specific duties of the lead drivers, the record reveals that lead drivers spend all of their time driving Employer's shuttles. Lead drivers maintain the spacing of Employer's shuttles. If the lead driver has trouble finding a passenger's vehicle, he then radios the cashier supervisor, who will help him locate it. When a parking lot is full, the lead driver may direct one of the other drivers to assist. The record reveals the lead drivers and drivers report to the same Dispatcher Supervisor, Robbie Davis. Mr. Davis assigns all the drivers, including lead drivers, the parking lots they will work and schedules their lunch breaks. When Mr. Davis is occupied and cannot release the drivers for their break, the lead drivers may step in for Mr. Davis and allow the drivers to take their break. Similarly, if a lot is full of passengers, the lead driver may direct one of his buses to go to the lot. Finally, while the Employer contends the lead drivers may settle employee disputes and grievances, there is no evidence that any dispute or grievance has been filed or that any lead driver has settled such a dispute or grievance.

With respect to the issue of the supervisory status of lead drivers, the Employer maintains that lead drivers have authority to discipline other employees. If a lead driver notices a driver or other employee acting improperly, the lead drivers may write-up that person and submit a "Corrective Action" form to management. This form includes a section where the lead driver provides a written narrative of the incident. The form also includes a section completed by the lead driver regarding the action the lead driver believes ought to be taken. The record reflects that lead drivers have had this authority for about one month. Several days before the hearing, one of the lead drivers wrote up a driver for unprofessional conduct, and recommended that management speak to him about his behavior. The employee was called in, and management spoke with him. Employer imposed discipline against him in the form of a write-up. The Employer did not produce any evidence to show that the lead driver participated in the decision to discipline the employee.

The record reflects that lead drivers do not have authority to hire and fire employees. All decisions regarding hiring and firing are made by representatives in the Employer's Human Resource Department. Lead drivers also may not grant time off to other employees.

The record reveals that lead drivers may recommend the suspension or termination of an employee through a write-up that is submitted to management. After these reports are turned in, the employee, the lead driver, and supervisor have a "confrontation conference" where they try to resolve the problem. The Employer contends that if the lead driver feels he can solve the problem on his own, he has the right to do so without a report being made. There is no evidence that such action has ever been taken by a lead driver in the past month, since Employer maintains it conferred this authority on the lead drivers.

The record also reflects lead drivers are authorized to take immediate action to remove an employee from the road who is determined to be under the influence of drugs or alcohol. However, the record reveals all employees have the responsibility to report a co-worker who may be under the influence of drugs or alcohol. As with discipline, suspension or termination, the lead driver completes an incident form and turns it in to management. Further, the lead driver has authority to send that driver in for a drug test. Nevertheless, no evidence was produced to demonstrate exactly how the lead driver refers the employee for the actual drug test. Furthermore, the Employer produced no evidence to show lead drivers have reported an employee for illegal drug use. Finally, the record reveals that there is no formal training provided to the lead drivers concerning the proper handling of a situation involving employee drug tests.

In addition, to the above-described duties, lead drivers are responsible for coordinating the shuttle drivers on their assigned routes. If the need arises, the lead drivers have the authority to change the route. Lead drivers also may transfer a shuttle driver from one parking lot to another.

The burden of proving supervisory status rests squarely on the party asserting that claim. *Bennett Industries*, 313 NLRB 1363 (1994). The mere fact that an employer asserts an employee supervises other employees is not sufficient to establish that the individual is a supervisor within the meaning of Section 2(11) of the Act. *North General Hospital*, 314 NLRB 14, 16 (1994). Where recommendations concerning discipline and reward “were not shown to be effective or to result in personnel action being taken without resort to individual investigation by higher authority,” a nonsupervisory determination followed. *Hawaiian Telephone Co.*, 186 NLRB 1 (1970); *Mower Lumber Co.*, 276 NLRB 766 (1985). Likewise, an employee does not become a supervisor simply because he has greater skills and job responsibilities or more duties than fellow employees. *Baby Watson Cheesecake*, 320 NLRB 779, 783 (1996) citing *Federal Compress Warehouse Co. v. NLRB*, 398 F. 2d 631 (6th Cir. 1968).

Notwithstanding the Employer’s assertion that lead drivers possess supervisory authority within the meaning of Section 2(11) of the Act, a close examination of the record shows otherwise. First, the record reflects that the lead drivers have no authority to hire, fire, or grant time off. Second, while the record reflects that lead drivers play some role in directing other drivers, this direction is clearly routine in nature. *Sears, Roebuck & Co.*, 292 NLRB 753, 754 (1989). Third, while the lead drivers have the authority to write up employees for a variety of reasons, and while these write-ups include the lead drivers’ recommended course of action, the Employer will call in the employee for a “confrontation conference” at which he is given a chance to present his side. Moreover, although the lead drivers are present at confrontation conferences, also present are the assistant manager, the employee’s immediate supervisor, and the employee, himself. Therefore, any disciplinary action issued against the employee is the result of management’s independent investigation at the “confrontation conference.”

The Board has consistently held that the authority to effectively recommend "generally means that the recommended action is taken with no independent investigation by superiors, not simply that the recommendation is ultimately followed." *ITT Lighting Fixtures*, 265 NLRB 1480 (1982). See also, *Hawaiian Telephone Co.*, 186 NLRB 1 (1970); *Children's Farm Home*, 324 NLRB 61 (1997). In the present case, the lead driver's recommendation is not taken by the assistant manager or immediate supervisor at face value, rather, a roundtable meeting is held where the assistant manager and other management representatives hear the employee's side of the story. Although the lead driver may be present at this meeting, the assistant manager does not accept the lead driver's recommendation without the employee getting an opportunity to present his/her version of the incident.

Additionally, the Employer argues that the lead drivers have the authority to take other drivers in for drug testing if it is suspected that he/she is under the influence of drugs or alcohol. However, the record is not clear on how this is accomplished. Furthermore, the record reveals lead drivers' authority to take employees in for drug testing is not in their written job description, rather, it is a function that is presently being added to the position of lead driver. Finally, Employer produced no evidence that a lead driver has ever referred an employee for drug testing. The Board has held that the mere possession of authority to order intoxicated employees to leave does not constitute discipline. *Chevron Shipping Co.*, 317 NLRB 379 (1995). Furthermore, even assuming arguendo that this function was disciplinary, the Board has held the mere issuance of a directive to alleged supervisors setting forth supervisory authority is not determinative of their supervisory status. *Connecticut Light & Power Co.*, 121 NLRB 768, 770 (1958), see also *Bakersfield Californian*, 316 NLRB 1211 (1995). Finally, the record reflects that all employees, not just lead drivers, have the responsibility to report an employee for illegal drug use.

Based on the totality of the evidence, I find that the Employer has failed to establish that lead drivers exercise any of the elements of supervisory status set forth in Section 2(11) of the Act. Therefore, I find that these employees are not supervisors, and are properly included in the appropriate unit. Moreover, I find that given the similarity in wages, hours, benefits, and common supervision and interaction between the cashiers, drivers, and lead drivers, these employees share a sufficient community of interest to be properly included in the bargaining unit found appropriate herein.

5. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

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