

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

GLOBAL MECHANICAL INCORPORATED

Employer

and

Case 6-RC-11787

UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING
AND PIPEFITTING INDUSTRY OF THE
UNITED STATES AND CANADA,
STEAMFITTERS LOCAL 449, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before David Shepley, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Regional Director.¹

Upon the entire record in this case², the Regional Director finds:

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

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹ 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. 20570-0001. This request must be received by the Board in Washington by May 8, 2000.

² The Employer timely filed a brief in this matter which has been duly considered by the undersigned.

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

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(l) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent a unit consisting of all full-time and regular part-time HVAC service technicians employed by the Employer at its Coraopolis, Pennsylvania, facility, herein called the facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

The Employer contends, contrary to the Petitioner, that service manager Chad Papst is a supervisor within the meaning of Section 2(11) of the Act, and that he should be excluded on that basis. There are two employees in the petitioned-for unit, including Papst. The parties agree that if the Regional Director determines that Papst should be excluded from the unit on the basis that he is a supervisor within the meaning of the Act, the unit would consist of one employee, and as such, it would not be an appropriate unit for purposes of collective bargaining. There is no history of collective bargaining for the employees at issue.

Global Mechanical Incorporated, herein called the Employer, is a Massachusetts corporation with its principle office located near Boston, Massachusetts, herein called the Boston office, and an office located in Coraopolis, Pennsylvania. The Employer is engaged in the installation, service and maintenance of heating, ventilation, air-conditioning (HVAC), and refrigeration systems. The record indicates that the Employer primarily services restaurants, including certain Pittsburgh area Kentucky Fried Chicken facilities.

Joseph M. Blair is the Employer's President and CEO. Blair is based out of the Employer's Boston office where approximately nine employees work. Three employees work in the Employer's Coraopolis facility -- service technician Kent Zielinski, service manager Chad

Papst and part-time marketing employee Kathie Kortas³. On average Blair visits the Coraopolis facility monthly, but he is in contact with Papst and/or Kortas several times per week by telephone. Papst began working for the Employer in October 1999 as the service manager. The Employer hired Zielinski in June 1999, and after working about two months, he resigned due to a conflict with the service manager who worked for the Employer prior to Papst. Blair rehired Zielinski as a service technician in late November 1999.

Papst attended a HVAC trade school and worked in the HVAC industry for approximately seven years before coming to work for the Employer. The record discloses that Zielinski has more years of experience in the HVAC industry than Papst, however, it does not indicate the total number of years of experience he possesses. During the hearing in the instant case, Papst testified that he considered himself and Zielinski to be similarly qualified to perform HVAC duties.

All work performed in the Pittsburgh, Pennsylvania area is dispatched through the Employer's Boston office via a telephone paging system, which provides the customer's name, location, telephone number and a description of the nature of the problem. Papst is responsible for either going to the call himself, having Zielinski do the work or having himself and Zielinski perform the task together. Papst spends virtually 100 percent of his workday performing HVAC rather than supervisory-type duties. The record indicates that approximately ninety percent of the time, Papst and Zielinski go to customer locations together and perform the necessary work. Papst schedules the preventive maintenance (PM) for customers, but these PM calls are subject to change when service calls come in. When a crane is needed to perform their work, Papst telephones the Employer's pre-arranged crane supplier and schedules the time and

³ During the hearing, the parties stipulated, and I find, that Kathie Kortas should be excluded from the petitioned-for unit inasmuch as she is not a service technician and she does not share the job duties or working conditions of the service technicians.

Papst was not involved in the Employer's decision to hire Kortas, nor is he involved in Employer decisions concerning her work duties, hours, or other terms and conditions of employment. Kortas reports directly to Blair.

location of crane service. Papst is not involved in negotiating the rates that the crane company charges the Employer.

Although the record indicates that both Papst and Zielinski receive the same wage rate and are eligible for overtime pay, the record does not indicate what wage rates they are paid. Both Papst and Zielinski punch a time clock, and their time sheets are faxed to the Boston office for processing. After they have been employed for six months, both Papst and Zielinski will be eligible for the same fringe benefits, including paid vacation, holidays and health insurance. Decisions regarding whether to leave work early due to lack of work, or to work overtime to finish an urgent service call are made by Papst. It appears from the record that Papst can approve a request for a day off by Zielinski, however, as of the time of the hearing, neither Papst nor Zielinski was eligible for paid leave.⁴

Papst and Zielinski generally work from 8:00 AM to 4:00 PM, and the record indicates that their hours of work are determined by the nature of the work scheduled for the following day and the amount of service calls from customers. Papst has keys to the facility while Zielinski does not. HVAC parts and supplies are purchased either in the Pittsburgh or Boston area with purchase orders which must be approved by the Boston office. Both Zielinski and Papst can use purchase orders to buy parts at specified suppliers. The employer provided Papst with company credit cards for gasoline, Home Depot and Valvoline, but did not issue credit cards to Zielinski. The record discloses that Papst uses the Home Depot credit card to purchase items which are needed immediately, when a purchase order is not practical.

There are two vans at the facility which are used by Papst and Zielinski. Each man uses the same type of tools and equipment, and both are required to purchase certain tools at their own expense that they use in the performance of their duties. Papst, Zielinski, Blair and all service technicians wear the same uniform to work which consists of a sweatshirt or polo shirt

⁴ Earlier this year, Zielinski told Papst that he was taking off work for his birthday. Papst responded-- "Yeah, sure go ahead."

and navy pants. The Employer's name is written on the shirts, but employees' names and/or job titles do not appear on the uniforms.

Employees do not receive performance evaluations. Papst testified that he has never received any customer complaints about Zielinski's work. Blair advised Papst when he was hired that he had the authority to discharge an employee, but the record indicates that Papst has never hired, fired or disciplined an employee, or effectively recommended the same. With respect to the hiring of Zielinski, the record indicates that Zielinski stopped by the facility and told Papst that he would call Blair about getting rehired with the Employer. Zielinski later called Blair and Blair made the decision to rehire Zielinski. There is no evidence that Papst interviewed Zielinski before he was hired, or otherwise evaluated his qualifications for the job. Papst's "input" into the hiring process appears to be limited to answering Blair's question -- "What did you think of him" (Zielinski)? Papst replied -- "Yeah, if you can bring him back, bring him back, you know".

It is well established that the possession of any one of the indicia of supervisory authority specified in Section 2(11) of the Act⁵ is sufficient to confer supervisory status upon an individual provided that such authority is exercised with independent judgment on behalf of management. Hydro Conduit Corporation, 254 NLRB 433, 437 (1981). However, the exercise of this authority in a merely routine, clerical, perfunctory or sporadic manner does not confer supervisory status. Chicago Metallic Corporation, 273 NLRB 1677, 1689 (1985). Further, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, Inc., 280 NLRB 1222, 1224 (1986).

⁵ Section 2(11) of the Act states:

The term "supervisor" means 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.

The burden of proving supervisory status rests on the party asserting that such status exists. Tuscon Gas & Electric Company, 241 NLRB 181 (1979); Bennett Industries, 313 NLRB 1363 (1994). In this case, therefore, the burden rests with the Employer. For the reasons that follow, I find that the Employer has not met its burden with respect to Papst.

In the instant case, it appears that Papst functions primarily as a conduit or intermediary for Blair's directives in performing the Employer's work. The record indicates that Zielinski is at least equally, if not more experienced in HVAC work than Papst, thus Zielinski appears to need little direction other than informing him of the location of maintenance and service calls. Maintenance work on HVAC units is scheduled according to timetables that appear to be based on Manufacturers' specifications rather than the exercise of independent judgment. I find, therefore, that Papst's assignment and scheduling of work are routine and clerical in nature and that he does not exercise sufficient independent judgment in the performance of his duties to confer supervisory status on him.

Furthermore, Papst's general responsibility for service and maintenance operations, in the absence of an agreed-upon supervisor, does not render him a supervisor within the meaning of the Act inasmuch as Zielinski is familiar with the nature of the work and does not need continuous supervision. See McCullough Environmental Services, Inc., 306 NLRB 565 (1992), and Vanport Sand and Gravel, Inc., 267 NLRB 150 (1983). Moreover, in Tri County Electric Cooperative, 237 NLRB 968 (1978), the Board held that employees are not supervisors within the meaning of the Act where their superintendent appeared at their jobsite as infrequently as once a month and the crew had a two-way radio for contacting him when unusual circumstances arise. Thus, the fact that Blair is not in Pittsburgh on a regular basis does not confer supervisory status on Papst, particularly where there is only one other employee and where Blair and Papst communicate by telephone several times per week.

The record reveals that Papst spends virtually 100 percent of his workday performing HVAC work, and that he spends only a tiny percentage of his time performing supervisory-type duties. Like Zielinski, Papst is paid by the hour, and he is eligible for overtime pay. Papst

receives the same fringe benefits and works under the same rules as Zielinski. Under similar circumstances, the Board has found that employees did not possess the supervisory authority contemplated by Section 2(11) of the Act. Upshur-Rural Electric, 254 NLRB 709 (1981); Commercial Fleet Wash, Inc., 190 NLRB 326 (1971).

Further, the Board has held that, where an employee is said to possess some aspect of supervisory authority, but has not exercised it, and it does not appear probable that he/she will exercise the authority in the future, absent other indicia of supervisory status, the employee will not be considered a supervisor within the meaning of the Act. Northwest Steel, 200 NLRB 108 (1972). In the instant case, Blair advised Papst when he was hired that he had the authority to discharge employees. However, the record indicates that Papst has never hired, fired or disciplined any employee, or effectively recommended the same. Based on the record, it is apparent that Papst does not view himself as Zielinski's supervisor as he attempts to resolve work assignment issues through mutual agreement rather than the exercise of supervisory authority.

The record indicates that the Employer issued three credit cards to Papst, however, two of them relate to the operation of the vehicles that they use and the third card for Home Depot is used only when time is of the essence for an HVAC service. Under these circumstances, given the lack of other indicia of supervisory status, I do not find that Papst's ability to use these credit cards confers supervisory status on him. Similarly, the fact that Papst maintains possession of the keys to the office does not confer supervisory status. See Dan's Olney Foods, Inc., 286 NLRB 741, 742 fn. 4 (1987), enfd. 130 LRRM 3171 (7th Cir. 1989).

While the record indicates that Papst did not protest when Zielinski told him that he was taking his birthday off, it appears that Papst merely did not object to Zielinski's statement, not that Papst approved a request for time off. Even assuming, arguendo, that Papst granted Zielinski's request to take the day off, this incident is not sufficient to confer supervisory status on Papst. In this regard, the Board has held that the ability to authorize the use of leave for

short periods of time does not indicate supervisory authority. Kent Products, Inc., 289 NLRB 824 (1988); Vanport Sand and Gravel, Inc., supra.

A few days before the hearing, Zielinski was sent home for lack of work. While the Employer implies that Papst alone made the decision that Zielinski would not work for a few days, the record indicates, to the contrary, that, during a telephone conversation, Blair advised Papst that since there was not enough work for two men, either Papst or Zielinski would have to stay home. Faced with a decision to be temporarily out of work himself or to chose the only other Pittsburgh HVAC employee, Papst chose to work himself. Papst then declined to even advise Zielinski that he would be off work and it was Blair, not Papst, who informed Zielinski that he would be off temporarily due to lack of work. Thus, it was Blair who effectively made the decision to temporarily reduce the work force and announced that decision to Zielinski. Papst's only role was to make the obvious choice not to be laid off himself. This scenario does not, I find, indicate the possession of any meaningful supervisory authority by Papst.⁶

Based on the above, and on the record as a whole, I find that Papst functions as a leadman and is not a supervisor within the meaning of Section 2(11) of the Act. I shall, therefore, include him in the unit found appropriate herein.

All full-time and regular part-time HVAC service technicians and service managers employed by the Employer at its Coraopolis, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

⁶ I find the cases cited by the Employer in support of its position that Papst is a supervisor to be distinguishable from the facts of the instant case. In this regard, in Mid Allegheny Corporation, 233 NLRB 1463, 1465 (1977), contrary to the facts of the instant case, the supervisor at issue therein was promoted into a position that the parties did not dispute was supervisory within the meaning of Section 2(11) of the Act.

In Famous Amos Chocolate Chip Cookie Corp., 236 NLRB 1093 (1978), in finding that the individuals in question were supervisors within the meaning of the Act, the Board relied on the fact that they exercised independent judgment in making work assignments to employees and that they responsibly directed the work of employees. In the instant case, as I indicated supra., I do not find that Papst exercises independent judgment in the direction of Zielinski, thus, I find the facts in Famous Amos to be distinguishable from the facts in the instant case, and therefore, not controlling.

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.⁷ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and 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.⁸ Those eligible shall vote whether or not they desire to be represented for collective bargaining by United Association of

⁷ Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

⁸ In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director 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, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before May 1, 2000. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

Journeyman and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Steamfitters Local 449, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 24th day of April 2000.

/s/Stanley R. Zawatski

Stanley R. Zawatski

Acting Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD

Room 1501, 1000 Liberty Avenue

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177-8560-4000