

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

**AP TENNTECH, INC.,
A WHOLLY OWNED SUBSIDIARY OF
AFG INDUSTRIES, INC.¹**

Employer
and

Case 26-RC-8265

**UNITED AUTOMOBILE, AREOSPACE,
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA,
INTERNATIONAL UNION,
AFL-CIO-CLC**

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,² the undersigned 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.³
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)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

INCLUDED: all permanent and regular temporary full-time production and maintenance employees of the Employer employed at the Mt. Pleasant, Tennessee facility.

EXCLUDED: all office clerical employees, professional employees, employees of other employers, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

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 this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented

for collective bargaining purposes by the United Automobile, Aerospace, Agricultural Implement Workers of America, International Union, UAW, AFL-CIO-CLC.⁵

LIST OF VOTERS

To ensure that all eligible voters 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 that may be used to communicate with them. **Excelsior Underwear**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Co.**, 394 U. S. 759 (1969). Accordingly, it is directed that an eligibility list containing the **full** names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days of the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. **North Macon Health Care Facility**, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Memphis Regional Office (Region 26), 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **August 8, 2001**.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **August 15, 2001**.

DATED August 1, 2001, at Memphis, TN.

/s/

Ronald K. Hooks, Director, Region 26
National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
tel: 901-544-0018

1. The name of the Employer was amended at the hearing.
2. The Employer and Petitioner have each filed briefs which have been duly considered.
3. The parties stipulated that AP TennTech, Inc., a wholly owned subsidiary of AFG Industries, Inc. (hereinafter "Employer" or "TennTech") is a Tennessee corporation engaged in the production of glass sub-assemblies for automobiles at its facility located in Mt. Pleasant, Tennessee. During the last 12 months, a representative time period, the Employer sold and shipped goods or services valued in excess of \$50,000 to customers located outside the State of Tennessee. Also, during the last 12 months, a representative time period, the Employer purchased goods or services valued in excess of \$50,000 from vendors located outside the State of Tennessee; such goods or services being directly shipped to the Employer's Mt. Pleasant, Tennessee location.
4. The Petitioner seeks to represent all permanent and regular temporary full-time production and maintenance employees employed by the Employer at

its Mt. Pleasant, Tennessee facility, excluding all office clerical, professional and technical employees, guards and supervisors as defined by the Act.

The Employer takes the position that it is not a joint employer with Randstad staffing agency ("Randstad"), which supplies the Employer with temporary service workers ("temporary workers"). Thus, the Employer asserts that the temporary workers supplied by Randstad should not be included in any unit found appropriate herein. The Petitioner takes the position that the temporary workers should be included in the unit. However, the Petitioner expressed a willingness to proceed to an election in any unit found appropriate herein. The record does not reveal any history of collective bargaining in the petitioned-for unit.

There are currently approximately 24 temporary workers working in the Employer's Production/Maintenance Department.

The parties stipulated, and the record reflects, that the following four material program analysts share a community of interest with the production and maintenance job classifications: Kay Lott, Tricia Wilson, Benida Blackburn and Joy Overstreet. The parties also stipulated, and the record reflects that the two production associates also share a sufficient community of interest to be included in the unit: Natasha Ambrose and Kelly Pierce. The parties stipulated, and the record reflects that the following seven team leaders (six team leaders and one acting team leader) are not supervisors within the meaning of Section 2(11) of the Act and possess no authority to hire, fire or discipline employees, nor can they effectively recommend such actions: Troy Hutcheson, Mr. Shirley Jones, Teresa Swartwoor, Edith Cotheran, Vivian Graff, Deana Davis, and Misty Castell. Therefore, in agreement with the parties, I shall include the material program analysts, production associates, team leaders, and acting team leader in the unit found appropriate herein.

The parties stipulated, and the record reflects, that the engineer, David Killen and the engineering technician, Don McMaster, are technical employees. As such, they do not share sufficient community of interest with the production and maintenance employees to be included in the unit. The parties stipulated,

and the record reflects, that the following group leaders possess the authority to hire, fire, discipline employees and/or assign work or they can effectively recommend such actions in a manner requiring the use of independent judgment and are supervisors within the meaning of Section 2(11) of the Act: Joann Pierce, Rose Morris, Rex Wright, Byron Jones, and Theresa Collvent. Accordingly, I shall exclude them from the unit.

THE EMPLOYER'S OPERATIONS

The Employer produces glass sub-assemblies for automobiles at its facility in Mount Pleasant, Tennessee. There are four department managers that report directly to the plant manager. They manage Administration, Quality Assurance, Materials, and Production/Maintenance. Group leaders in Quality Assurance, Materials, and Production/Maintenance report to the department managers. The group leaders supervise the full-time employees and the temporary workers.

The record reflects that the production area is divided into two areas by a wall. The "Saturn" side completes mostly Saturn assemblies. The other side houses lines that assemble products for Mercedes Benz and other customers. The entire area is made up of about fifteen model specific production lines. There may be as many as eleven people or as few as one person working on a line. When a customer sends an electronic order, the group leader takes that order, assures that the supplies are available from the Materials Department, then assigns and directs full-time employees and temporary workers to assemble the product. Once the product has been assembled, it is loaded onto a truck and shipped.

The record does not reflect when the Employer began using temporary workers. The Employer received its temporary workers from Randstad until early 1999. It then switched to Kelly Services. The Employer returned to Randstad on June 5, 2001. Many temporary workers provided by Kelly Services were able to continue working at the Employer's facility by switching to Randstad as their employment agency.

The temporary workers supplied by Randstad work the same shifts as the Employer's full-time employees. Both groups are also expected to work overtime when assigned. Neither group is guaranteed regular hours. If business is slow, group leaders can send temporary workers home.

The record reflects that both groups of employees use a credit card like device with a metallic strip that is scanned by an electronic scanner to enter the building. This entry card is also used to gain access to the facility by the vendors and janitorial service used by the Employer. Full-time employees use the same card to track their time worked. Once the time card is scanned electronically, the scanner relays the information to a computer. The Employer then retrieves that information from the computer to track the hours worked by each full-time employee. Until Randstad took over providing temporary workers in June of 2001, the temporary workers also used this same time clock.

When Randstad took over, the Employer installed a separate time clock for the temporary workers. The temporary workers use a second credit card like device to scan in their time worked in the same manner as the full-time employees. The information generated by this time clock is also sent electronically to a computer for retrieval. Larry Carter, the Employer's plant manager, testified that the Employer does not have access to the information generated by the time clock provided for the temporary workers. However, Jennifer Polaczyk, the Randstad agent currently monitoring the temporary workers at TennTech, testified that the information is transmitted electronically to her and to Dave Johnson, the Employer's production maintenance manager, on a daily basis. Polaczyk is at the plant daily from 7:00 a.m. to 9:00 a.m. and 2:30 p.m. to 4:30 p.m. to monitor attendance. She has an office available at the plant for meeting with the temporary workers. The record also reflects that the Employer's group leaders help Polaczyk track the attendance of the temporary workers by notifying her if a temporary worker has not reported to work or has called in sick.

The record reflects the temporary workers' employment with TennTech via Randstad is temporary with the definite possibility of becoming permanent. The

last time the Employer hired new full-time employees was in September of 2000. All twelve of the people hired worked at the TennTech facility as temporary workers.

The hiring procedure for full-time employees and that used for temporary workers is slightly different. Different applications are completed. The Employer requires a group interview that is conducted by a majority of the plant management team for full-time employment. Full-time employees also go through an orientation that covers the policies of TennTech and reviews the TennTech handbook. Temporary workers supplied by Randstad receive a different handbook that was developed by Randstad in conjunction with TennTech. This handbook is specific to TennTech and describes the attendance policy, dress code and expectations of TennTech. Both groups receive the same safety training, MSDS training (Material Safety Data Sheets), attend the same quality classes, and receive the same job specific training. Both groups must also complete a drug test, a physical and a physical ability test before beginning work at TennTech.

The record reflects that full-time employees and temporary workers work in the same production area, on the same lines, doing the same work. They have the same lunch and break periods, share the same lunch area, smoking and non-smoking break rooms, locker areas, and parking area.

Temporary workers do not receive the attendance bonus, overtime pay, call back pay, reporting pay, jury duty pay, military duty pay, Holiday Pay or 401(K) matching contributions or health and dental insurance that full-time employees receive from the Employer. Temporary workers do receive paid holidays and vacation time, bereavement leave, insurance benefits, and workman's compensation from Randstad.

The record indicates that the Employer distributes a bonus to full-time employees twice a year based upon quality, safety, production and teamwork. Larry Carter, TennTech plant manager testified that temporary workers are not eligible for the Employer's bonus. However, the record includes a list of temporary workers and the bonus amount they received from Randstad based on

attendance, productivity and quality of work at TennTech that was approved for payment by Carter.

TennTech supplies its full-time employees with safety glasses, a \$40.00 yearly allowance to purchase steel toed shoes and uniforms that must be worn Monday through Thursday. Randstad supplies the temporary workers with safety glasses and steel toe covers for their shoes. Temporary workers are not required to wear a uniform.

When group leaders conduct shift meetings, both full-time employees and temporary workers attend. When the group leaders make job assignments they are tracked on a job board in the group leaders' office. The only distinction between temporary workers and full-time employees is the color of the paper used for the name of the person working on the line. Temporary workers' names are written on green paper. Full-time employees' names are written on white paper. The record reflects that the full-time and temporary workers are interchangeable when working on the production lines.

The record reflects that both full-time employees and temporary workers must get approval from the group leader before scheduling vacation. During the period Kelly Services was providing the temporary workers, vacation time for a temporary worker was denied by Joann Pierce, a TennTech group leader.

The record reflects that group leaders can discipline temporary workers without permission or input from Randstad. However, Randstad must get prior approval from the Employer before disciplining a temporary worker for the accumulation of excessive points. The point system used to monitor the performance and attendance of temporary workers is a part of the handbook developed by Randstad and TennTech.

JOINT EMPLOYER ISSUE

The Employer asserts that TennTech and Randstad are not joint employers. It further points out that the Petitioner did not present evidence on this issue. Therefore, the Employer concludes, the temporary employees should be excluded from any unit found appropriate herein.

However, it is not necessary for the Petitioner to establish that the Employer is a joint employer with Randstad for a unit that includes Randstad temporary employees to be found appropriate. Where “there is no dispute that the Employer is a statutory employer of the temporaries, and the Petitioner seeks to bargain only with the Employer,” it is not necessary that I reach the joint employer issue. Indeed, the Board has concluded that the absence of one of the alleged joint employers at the bargaining table does not destroy the ability of the named employer to engage in effective bargaining to the extent it controls their terms and conditions of employment. **Outokumpu Copper Franklin, Inc.**, 334 NLRB No. 39 slip op. at 1 (2001), *citing Professional Facilities Management, Inc.*, 332 NLRB No. 40 (2000). Thus, the absence of evidence to establish a joint employer relationship between TennTech and Randstad is not determinative. In the instant case the record establishes that the Employer exercises control over the day-to-day working conditions of the temporary employees including assignment of work, overtime, and discipline. Therefore, I shall decline to make any findings with regard to whether AP TennTech and Randstad are joint employers.

SCOPE OF THE UNIT

The Employer points to the factors used in **Continental Baking Co.**, *supra*, as those appropriate to determine community of interest. The question there was whether a multi-plant, single company, nation wide unit was appropriate. 99 NLRB 777, 783 (1952). However, the Board’s recent decision in **M.B. Sturgis, Inc.**, 331 NLRB No. 173 fn. 19 (2000) guides my decision. There the Board discussed whether and under what circumstances employees who are jointly employed by a “user” employer and a “supplier” employer can be included for representational purposes in a bargaining unit with employees who are solely employed by the “user” employer. In that case the Board found that jointly employed and solely employed employees of a single user employer could be included in the same unit. 331 NLRB No. 173, slip op. at 8-9 (2000).

The Employer also cited the dissenting opinion in **Interstate Warehousing of Ohio**, 333 NLRB No. 83 (2001) *citing M.B. Sturgis, Inc.*, 331

NLRB No. 173 fn. 19 (2000). However, I find the majority opinion itself instructive. There, the Board reiterated its holding in *Sturgis*, that even though the supplier employer determined economic terms, a unit including temporary workers could be appropriate under a community of interest analysis. This analysis is based on whether the temporary workers work side-by-side with the full-time employees, perform the same work, are subject to the same supervision, and work the same hours.

Here, even though Randstad controls economic terms, the temporary workers work side-by-side with the full-time employees on the production lines, they perform the same work, are subject to the same supervision under the group leaders, and work the same hours. **Interstate**, *supra*, *citing Sturgis*.

In applying the community of interest test to determine the scope and composition of bargaining units, the Board has consistently held that Section 9(a) of the Act requires only that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining. There is nothing in the statute that requires that the unit for bargaining be the only appropriate unit or the ultimate unit or even the most appropriate unit. The Act requires only that the unit be “appropriate”. That is, the unit must be appropriate to ensure employees in each case the fullest freedom in exercising the rights guaranteed by the Act. **Morand Bros. Beverage Co.**, 91 NLRB 409 (1950). See, **Dezcon, Inc.**, 295 NLRB 109, 111 (1989) (the Board need only select an appropriate unit, not the most appropriate unit).

Based on the above, I find that the community of interest shared by the temporary employees and the full-time employees is sufficient to include them in the petitioned-for unit. There are approximately **101** employees in the unit.

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.

CLASSIFICATION INDEX

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