

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 5**

**LACEY SUPPORT SERVICES COMPANY**

Employer

and

**Case No. 5-RC-15306**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 147**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before 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, 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.
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. Lacey Support Services Company (the Employer), a Virginia corporation with an office and place of business in Virginia Beach, Virginia is engaged in the business of

providing warehousing services at the United States Air Station at the Norfolk Naval Base Complex in Norfolk, Virginia and in other United States Navy locations. During the past 12 months, a representative period, the Employer provided services valued in excess of \$50,000 to National Technologies Associates, Inc., an enterprise in the State of Florida. At all material times, National Technologies Associates, Inc., provided services to the United States government. The parties stipulate, and I find, that the Employer is engaged in commerce within the meaning of the Act.

International Union of Operating Engineers, Local 147 (the Petitioner) filed a petition seeking to represent a unit of all full-time and part-time employees working for the Employer at the Naval Air Terminal Building LP-167 in Norfolk, Virginia under the NADEP (Naval Aviation Depot) contract, but excluding all supervisors, office clerical employees, and all other employees as defined by the Act. The Petitioner asserts that there are 5 employees in the petitioned-for unit. The Employer contends that there are 6 employees in the petitioned-for unit at its Norfolk, Virginia location in the classifications of stock clerk, tool and part attendant and lead man/work leader. The Employer further asserts that there are 49 employees in the classifications of warehouseman, material coordinator, stock clerk, tool and parts attendant and lead man/work leader in its proposed multi-facility unit. There is no history of collective bargaining between the parties for these employees.

The Employer presented as its witnesses president Oneida Lacey (hereinafter O. Lacey) and corporate attorney/director of contracts Jennifer Lacey (hereinafter J. Lacey).

## **ISSUES**

- 1) Whether the petitioned-for, single-location unit is appropriate; and
- 2) Whether lead man/work leader Henry Long is a supervisor within the meaning of the Act.

## **POSITIONS OF THE PARTIES**

The Petitioner contends that the petitioned-for single-facility unit is appropriate. The Petitioner asserts that there is no community of interest or interchange among employees at the Employer's three sites located in Norfolk, Virginia; Beaufort, South Carolina; and Jacksonville, Florida. The Petitioner further asserts that lead man/work leader Henry Long is a supervisor within the meaning of Section 2(11) of the Act.

The Employer believes that the only appropriate unit is a multi-facility unit encompassing all three of the Employer's sites. The Employer asserts that although its three facilities are in geographically distinct locations, when factors such as control of daily operations and labor relations, similarity of skills and functions, and the extent of local autonomy are considered, a multi-facility unit is appropriate. The Employer further contends that Long is not a supervisor within the meaning of Section 2(11) of the Act.

Based on the record as a whole and careful consideration of the arguments of the parties at the hearing and the Employer's brief, I find that the petitioned-for, single-facility unit is appropriate. I further find that lead man/work leader Henry Long is not a supervisor within the meaning of Section 2(11) of the Act and must be included in the unit found appropriate.

### **THE EMPLOYER'S OPERATION/UNIT SCOPE**

The Employer is a civilian contractor that provides logistic support services to the United States Navy. The Employer is a subcontractor for National Technologies Association and provides warehousing services for aviation products at the Naval Aviation Depot in Jacksonville, Florida; the Naval Air Station in Norfolk, Virginia;<sup>1</sup> and the Marine Corps Air Station in Beaufort, South Carolina. The Employer employs stock clerks, tool and parts attendants, warehousemen, material coordinators and lead men at its various locations. The employees inventory tools and parts when they are received in the tool room, make any necessary notes, and supply the tools to military and civilian personnel. Government employees are the designated individuals in charge of the tool room in Norfolk, Virginia and Beaufort, South Carolina, and the Employer's employees support that individual in the tool room. At the Employer's Jacksonville, Florida site, the employees are supervised by Dennis Crosby, who is employed by the Employer.

The employees in Jacksonville, Norfolk, and Beaufort do not transfer from one location to another. Generally, the employees in Norfolk do not have any contact with the employees in Beaufort or Jacksonville. Contact, if any, is by way of data entry into a computer system. If there are communications between Norfolk and Jacksonville or Beaufort, they are handled by lead man/work leader Henry Long, or by tool and parts attendant Arthur Parks in Long's absence. Tools and parts are shipped to Norfolk and Beaufort from Jacksonville, the Employer's largest facility. Once the tools are in Norfolk, the employees place them in inventory. If there is a problem or correction to the order, the employees provide the information to Long and he, in turn, contacts Jacksonville and the order will be resubmitted.

Section 9(b) of the Act states the Board "shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof...." The statute does not require that a unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Rather, the Act only requires that the unit be "appropriate." *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Parsons Investment Co.*, 152 NLRB 192, fn. 1; *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950), enf'd. 190 F.2d 576 (7<sup>th</sup> Cir. 1951). A union is, therefore, not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger's*

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<sup>1</sup> On occasion the Norfolk employees are sent to a different work site, Oceana. The Employer does not have any employees stationed at Oceana. Furthermore, there is no evidence that employees from the Employer's other sites in South Carolina and Florida are ever dispatched to Oceana.

*Paramus*, 151 NLRB 748, 751 (1965); *Purity Food Stores, Inc.*, 160 NLRB 651 (1966). It is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. *General Instrument Corp. v. NLRB*, 319 F.2d 420, 422-3 (4<sup>th</sup> Cir. 1962), cert. denied 375 U.S. 966 (1964); *Mountain Telephone Co. v. NLRB*, 310 F. 2d 478, 480 (10<sup>th</sup> Cir. 1962).

The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *D&L Transportation*, 324 NLRB 160 (1997); *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). The presumption in favor of a single location unit can be overcome “by a showing of functional integration so substantial as to negate the identity of the single facility.” *Id.* at 41. The factors that the Board examines in making this determination are centralized control over daily operations and labor relations, extent of local autonomy, similarity of skills, functions, and working conditions, extent of employee interchange, geographic proximity, and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB No. 57 (1999); *Rental Uniform Service*, 330 NLRB No. 44 (1999). The burden is on the party opposing the petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, 310 NLRB 429 (1993). Further, as the Board noted in *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980), the party seeking to overcome the presumptive appropriateness of a single-plant unit must show that the day-to-day interests of the employees at the location sought by the other party have merged with those of the employees at the other locations at issue.

I find that the Employer has failed to present evidence sufficient to overcome the presumption in favor of a single facility unit. Although the record established that payroll and labor relations issues are centralized and handled by the corporate office, the Board has held that centralized administration is not the primary factor it will consider in determining whether employees at two or more facilities share a community of interest. *Neodata Product/Distribution*, 312 NLRB 987, 989, n.6 (1993). There is no evidence of any interchange, either temporary or permanent, between employees at the petitioned-for Norfolk facility and the Employer’s other facilities, and the Beaufort and Jacksonville locations are widely separated in terms of geography. Except perhaps for lead man/work leader Long, Norfolk-based employees do not have any personal or telephonic contact with employees at the Employers’ other facilities. Furthermore, there is separate local autonomy at the Norfolk facility as a government employee is the designated individual in charge of the tool room in Norfolk, Virginia, and the Employer’s employees support that individual in the tool room. At the Employer’s Jacksonville, Florida site, the employees are supervised by a supervisor on the Employer’s payroll, while at the Beaufort, South Carolina site a government employee is in charge of that work-site. Based on the foregoing and the record as a whole, I find that the petitioned-for single-facility unit is an appropriate unit.

## **SUPERVISORY ISSUE**

J. Lacey testified that Long spends his entire workweek as a tool and parts attendant. As a tool and parts attendant and as a lead man/work leader, Long is responsible for using the computer to check the status of tools and parts, enter data regarding orders and their status, and handle inquiries.<sup>2</sup> Although Long receives a higher rate of pay and vacation rate than other employees, it is based on his years of service. Long does not receive any special privileges or other compensation that is not provided to other employees at the Norfolk location. Long has the same work hours and lunch time as other employees. All employees wear uniforms, although Long's uniform has a different collar because he is a work leader.

Even though Long is designated as the work leader, he has no authority to hire, fire, discipline, promote, transfer, layoff, recall, give time off, or reprimand employees. J. Lacey testified that Long, as well as other employees, have the ability to recommend these actions. However, the only specific example given was that of an unnamed employee recommending an acquaintance for hire. There is no record evidence that either Long or any of the other employees are involved in the interviewing or decision-making process as to the hiring of the recommended applicant. As a work leader, Long oversees the work that is performed at the Norfolk site, since he is familiar with the previous contract, functions and daily operations. If employees have a question or problem, they report the issue to Long, who forwards the concern to the Employer at the corporate office. Employees can also choose to contact the corporate office directly. Long does not have the authority to purchase materials, supplies, or obligate the Employer in any way. Long does not sign, issue or conduct independent investigations regarding discipline.

Long does not have the authority to reassign employees from one job to another. J. Lacey testified that Long does report unsatisfactory performance or poor work conditions, but any employee can make the same report to the Employer. If there is a problem with a part or tool at the Norfolk location or a question relating to the contract, the employee reports the problem to Long, who then routes all questions to Dennis Crosby, contract supervisor in Jacksonville, or John Martel, corporate regional program manager.

Long does not attend supervisory, managerial or other meetings that other employees are not invited to. If an employee needs to take sick leave, the employee informs Long, who contacts the Employer for approval or disapproval. Long does not have the independent authority to deny a request for leave. If an employee is late to work or does not show up, Long reports this to the Employer. Employees are responsible for keeping their time sheets for a two-week period. Long collects the time sheets and faxes them to the Employer at the corporate office. J. Lacey testified that Long signs each employees' time sheets, but only to verify that the employee was physically present and the hours that he or she worked.

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<sup>2</sup> Arthur Parks is also authorized to use the computer to enter information if Long is unavailable.

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

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.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. *Mississippi Power Co.*, 328 NLRB 965, 969 (1999), citing *Ohio Power v. NLRB*, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical or perfunctory manner does not confer supervisory status. *Chicago Metallic Corp.*, 273 NLRB 1677 (1985). As pointed-out in *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in *Hydro Conduit Corp.*: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also *Quadrex Environmental Co.*, 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. *Bowne of Houston*, 280 NLRB 1222, 1224 (1986).

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. *Kentucky River Community Care, Inc.*, 532 U.S. \_\_\_ (2001). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. *New Fern Restorium Co.*, 175 NLRB 871 (1969).

Despite his title as lead man/work leader, the record is insufficient to establish that Long possesses the requisite independent judgment to be considered a supervisor within the meaning of Section 2(11). Long reports any problems or concerns, either dealing with the contract or an employee, to the corporate regional program manager, the contract supervisor, or corporate headquarters. As noted above, he does not have the authority to hire, fire, reprimand, grant time off, or determine the work schedules of employees at the Norfolk location, or to effectively recommend these actions. I find that

the Petitioner has not met its burden of establishing that Henry Long is a supervisor under the Act. Accordingly, I find that Long is included in the unit and is eligible to vote in the election.

### **CONCLUSION AS TO THE UNIT**

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in the Employer's brief, I find the following employees of the Employer to constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time employees employed by the Employer at its Norfolk, Virginia location, but excluding office clerical employees, professional employees, guards and supervisors as defined by the Act.

### **DIRECTION OF ELECTION**

An Election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group 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 were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that 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, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began 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 INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 147.

### **LIST OF VOTERS**

To insure 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, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. 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 from the date of this Decision. *North Macon Health*

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*Care Facility*, 315 NLRB 359 (1994). 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.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

### 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, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **December 28, 2001**.

Dated December 14, 2001

at Baltimore, Maryland

/s/ WAYNE R. GOLD  
Regional Director, Region 5



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