

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

UAW – DAIMLERCHRYSLER
NATIONAL TRAINING CENTER

Employer

and

CASE 7-RC-22091

LOCAL 512, OFFICE AND PROFESSIONAL
EMPLOYEES INTERNATIONAL UNION, AFL-CIO¹

Petitioner

APPEARANCES:

Jerome D. Hill, Attorney, of Detroit, Michigan, for the Employer.
Thomas J. Katona, of Cornell, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter 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 record² in this proceeding, 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.

¹ The name of the Petitioner appears as amended at the hearing.

² The parties filed briefs, which were carefully considered.

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 Sections 2(6) and (7) of the Act.

The Petitioner seeks through a self-determination election to add a group of three maintenance employees to a unit of secretarial, clerical, janitorial, and mailroom employees, all of whom the Petitioner presently represents.³ The Employer opposes the inclusion of the maintenance employees with the existing unit employees because they assertedly fail to share a sufficient community of interest. The Petitioner has indicated that it is not interested in a separate unit of maintenance employees at this time if the request for an *Armour-Globe* election is denied.

In addition, the Employer, contrary to the Petitioner, contends that maintenance employee Glen Alexander Winnie is a supervisor within the meaning of the Act and should be excluded from the unit.⁴

The Petitioner's current bargaining unit consists of approximately 4 janitorial employees, 4 or 5 mail room employees, 10 or 11 secretarial employees, and 12 or 13 clerical employees at the Employer's facility located at 2211 East Jefferson, Detroit, Michigan, known as the National Training Center. There are six unit secretaries employed at various regional centers around the country, and approximately four to six other bargaining unit members employed at the Technology Training Center in Detroit, Michigan. The three maintenance employees sought to be added by the Petitioner are at its National Training Center. In addition to the maintenance and bargaining unit employees, there are groupings of professional employees, such as human resource, accounting, and information technology personnel employed at the National Training Center.

The Employer is a non-profit corporation engaged in providing education and training to DaimlerChrysler employees. The National Training Center has a management hierarchy consisting of two co-directors, James Davis and Frank Slaughter. Directly beneath them are associate directors, Gil Wojcik and Lisa Reinhardt-Kosal. There are three associate co-directors, Mike Brown, Jack Horne, and Leon Klea. Building and Facilities Manager David Smith oversees both the

³ *Armour & Co.*, 40 NLRB 1333 (1942); *Globe Machine & Stamping Co.*, 3 NLRB 294 (1937).

⁴ During the hearing, the Employer raised, but then took no position on the eligibility of maintenance employee Hugo Wierciak, who is on extended medical leave. Since the Petitioner contends Wierciak is eligible, no issue exists regarding his eligibility and he may vote in the election ordered herein. *Bennett Industries*, 312 NLRB 1363 (1994).

janitors and the maintenance employees, but does not have the authority to issue discipline to members of his staff.⁵ Instead, Associate Co-Directors Wojcik and Reinhardt-Kosal decide all disciplinary action, and hire and fire the secretarial, clerical, janitorial, mailroom, and maintenance employees. There is also common supervision over the bargaining unit employees and the maintenance employees exercised by the human resources administrator with respect to matters concerning wages, benefits, and other personnel matters.

In 1997, the current contract, which is due to expire in November 2001, was entered into between Petitioner and the Employer and covered the secretarial, clerical, and mailroom employees. In October 1999, the janitorial employees were added to the bargaining unit by agreement of the parties. At that time, the Employer contends no attempts were made to add the maintenance employees to the bargaining unit, although the Petitioner asserts there were discussions regarding their inclusion in the unit.

With regard to working hours at the National Training Center, the secretarial and clerical staff generally start their work day between 8:00 a.m. and 9:00 a.m. and end their work day between 4:30 p.m. and 5:30 p.m. The maintenance employees generally work between 7:00 a.m. and 5:00 p.m. The janitorial staff begins its work day around 6:00 a.m. The secretarial and clerical employees do not work on an on-call basis, while the maintenance employees do. The mailroom employees do not work on an on-call basis, but may be called into work on rare occasion.

With respect to the proximity of the employees, the maintenance employees work out of an office located on the lower level of the facility. Although they spend most of their time at the National Training Center, the maintenance employees are also responsible for maintenance at the Technology Training Center and a warehouse in Detroit. The clericals have offices on the third floor. The secretaries do not have offices, but rather have work stations which are located in open ends of each floor of the facility, except for the lower level. Mailroom employees work across the hall from the maintenance department on the lower level. Mailroom and janitorial employees have on occasion assisted the maintenance staff with their duties, such as shedding old tile from a back stairwell, changing light bulbs when maintenance is busy, helping to move a water heater to another floor, and snow removal. Interaction with bargaining unit employees also occurs when the secretarial/clerical staff call the maintenance department to report a problem in the building which requires the maintenance employees' attention. In the event of emergencies concerning the boilers or air

⁵ The parties stipulated, and I find, that Smith is a supervisor as defined in the Act..

conditioning units, the janitorial staff, secretarial staff, or clerical staff have not been called to perform the work of maintenance employees.

With respect to the usage of common equipment, the maintenance employees use refrigeration gauges, thermostat temperature control devices, and they maintain parts for all repairs. They have tool pouches with a complete set of tools for on-site service work, including a complete set of power tools, like hammers, saws, saw-alls, and impact hammer drills. The janitors generally use a large trash can with a holder strapped to it including various cleaning chemicals, scrub brushes, or squeegees.

All three of the maintenance employees hold on-site low pressure boiler licenses, in addition to other licenses such as refrigeration recovery licenses. The janitorial staff is not required to possess any licenses to perform their jobs, and there are no minimum requirements of education or special certifications needed for the janitorial staff. The mailroom employees receive certification through DaimlerChrysler for hi-lo driving. The secretarial staff and the mailroom employees are offered opportunities to attend annual meetings/conferences about the programs of the National Training Center. Neither the maintenance employees nor the janitors attend these meetings. The only meetings which include both the secretarial/clerical staff and the maintenance employees are the staff meetings which include all building personnel.

Although wages and benefits of unit employees are governed by the collective bargaining agreement, maintenance employees also share many of the same fringe benefits including health insurance, paid vacations and holidays, sick leave, and bonuses. Under the collective bargaining agreement, the hourly wage rate for unit employees ranges from \$13.38 to \$20.45. The wage rate for maintenance employees ranges from \$21 to \$27 per hour. Both bargaining unit employees' and the maintenance employees' pay raises are determined by their job performance throughout the year. When employees are up for review, they fill out a position data questionnaire, which is turned in to their supervisor who reviews it and gives it to the human resources administrator. The human resources administrator presents the questionnaires to the compensation review committee composed of four top-level managers, Wojcik, Reinhardt-Kosal, Davis, and Slaughter, which is the body that actually issues raises. The committee meets once a year for the purpose of employee reviews. The bonuses of the secretarial, clerical, janitorial, mailroom, and maintenance employees are all issued in February of each year. The bonus is calculated by taking an amount equal to three percent of the previous year's earnings. The maintenance staff, unlike the bargaining unit employees, also have their salary raises tied to obtaining additional licensures or certifications. The janitors do not have their salary increases tied to receiving educational training, licensures, or certifications.

A self-determination election is one method by which a union may add unrepresented employees to the contractual unit. In such an election, if a majority of the employees vote against representation, they are considered as indicating a desire to remain unrepresented, but if a majority vote for the Petitioner, they are deemed to have indicated their desire to become part of the existing unit, represented by the incumbent union. *Warner-Lambert Co.*, 298 NLRB 993 (1990). In this regard, it is necessary to determine the extent to which the employees to be included share a community of interest with unit employees, as well as whether the employees to be added constitute an identifiable, distinct segment so as to constitute an appropriate voting group. *Capital Cities Broadcasting Corp.*, 194 NLRB 1063 (1972). The Board, in evaluating the community of interest of employees, considers the nature and skill of employee functions, the situs of the work, the degree of common supervision, working conditions, and fringe benefits, interchange and contact among employees, the functional integration of the facility, and bargaining history. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962).

As a threshold matter, I find that the maintenance employees do constitute an identifiable, distinct segment as to constitute an appropriate voting group. As to the issue of whether that group shares a requisite community of interest with the existing bargaining unit, the record demonstrates a degree of functional integration of the Employer's operations. Unit janitors and mailroom employees do, on occasion, assist the maintenance employees. Building and Facilities Manager Smith oversees the function of the entire building, which requires him to assign tasks to both janitors and maintenance employees. Also maintenance employee Winnie, per the direction of his supervisor David Smith, has asked janitors to perform certain maintenance duties within the building. All groups of employees have common benefits and evaluation/review processes, and work similar hours within the same building for the most part. There is also regular contact between unit employees and petitioned-for employees during the performance of routine maintenance and repairs. It is irrelevant to the determination herein whether the Petitioner has previously sought to include the maintenance employees in the existing unit.

Although the maintenance employees possess licensures and are better paid than unit employees, no doubt reflective of their higher skill level, based on the foregoing, I find that the maintenance employees have the requisite community of interest with the currently represented secretarial, clerical, mailroom, and janitorial

employees, and that their inclusion in the unit is appropriate, as requested by the Petitioner, if the maintenance employees so desire.⁶

As to the supervisory status of Winnie, like the other two maintenance employees, he is responsible for repairing and maintaining the heating and cooling equipment at multiple locations. When Building and Facilities Manager Smith, who himself began as a maintenance employee, is absent or away from the building, he delegates some of his responsibilities to Winnie. Beginning about December 2000, Associate Co-Directors Wojcik and Reinhardt-Kosal announced to Winnie that he was officially the fill-in supervisor for Smith and awarded him a five percent wage increase, although there is no paperwork reflective of this action. Winnie substitutes for Smith when he is on vacation approximately 30 days a year, during 2 weeks of extended leave around the Christmas and New Years holidays, when Smith is at off-site training conferences about 3 to 5 times a year, and when Smith uses his 7 to 10 personal days a year. Smith estimates that he is away from the building approximately three times a week, although sometimes only for one or two hours.

Only Smith possesses an unlimited license which permits him to work on low pressure boilers. The three maintenance employees are able to perform the work on equipment at other buildings by working under Smith's license as assistants to him. Of the maintenance employees, Winnie is considered to be the most skilled of the three, and has the highest licensing qualifications. Winnie conducts on-site training for Fuqua and Wierciak when he is working on refrigeration units. The performance of the maintenance staff is evaluated by the work and repairs they complete and based on the position data questionnaires filled out by each maintenance employee. In Smith's absence, Winnie reviews the work that was done by the other two maintenance employees, although as indicated earlier, only the compensation review committee decides merit raises and bonuses based on the position data questionnaires.

All three maintenance employees are paid on an hourly basis, with Winnie receiving approximately \$27 per hour, Fuqua receiving approximately \$22.50 per hour, and Wierciak receiving approximately \$21 or \$22 per hour. The salary of Winnie is determined partly by his licensing and work in the maintenance department, and partly by his assumption of Smith's duties in his absence. Winnie does not receive any extra fringe benefits which are not provided to Fuqua or Wierciak.

⁶ That is not to say that a separate unit of maintenance employees would not also be appropriate, if the Petitioner so desired. *Overnite Transportation Co.*, 322 NLRB 723 (1996) (There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit; the Act requires only that the unit be "appropriate," that is, appropriate to insure to employees in each case "the fullest freedom in exercising the rights guaranteed by the Act.")

Winnie and Wierciak work from 7:00 a.m. to 3:30 p.m., but Winnie is also on emergency call 24 hours a day. Within the first 30 minutes that Winnie arrives at work, he reviews what work needs to be done that day by checking the voice mail on the phone system. Smith, who also begins working at 7:00 a.m., checks the voice mail for repairs a few times a week. There are usually three to six messages on the voice mail every morning. After Winnie reviews the voice mail and determines what, if anything, needs to be repaired, he can do the work himself, ask Wierciak to help him with the repair, assign the job entirely to Wierciak, or he can wait until Fuqua comes into work and assign the repair task to him. Winnie makes this determination based on their relative skill levels and how busy they are. The types of jobs Winnie assigns to Fuqua or Wierciak are repairs to the heat pumps, replacing or repairing blown circuit breakers, replacing fluorescent lights, flushing valves on the toilets, and preventative maintenance. Winnie is not required to discuss these daily assignments with Smith, but in practice Winnie checks with Smith half the time before he assigns work to either Fuqua or Wierciak. Approximately six times a year, complex repairs are contracted to an outside company. Neither Winnie nor Smith are permitted to sign the contracts assigning work to outside companies. This is a task reserved for the associate co-directors. When Smith is out of the building, Winnie is responsible for meeting with outside contractors or city inspectors.

As indicated previously, neither Smith nor Winnie have ever been involved in the hiring process and they have never warned, reprimanded, disciplined, or suspended an employee, nor have they effectively recommended such action. They also do not participate in the review process which determines the wage increases to be received by the maintenance employees, and they have no authority to lay off, recall, promote, or transfer employees. Within the last six months, Winnie has discussed with the associate co-directors a problem which arose when he assigned work to an employee and that employee declined the assignment. The associate co-directors handled the situation from that point. The personnel department, not Winnie or Smith, handles scheduling, vacation requests, tardiness, and absences.

Smith holds approximately three to four meetings a year for the maintenance employees. Winnie does not conduct any meetings on his own. Smith attends supervisory meetings roughly two to three times a year, which Winnie has never attended. However, within the last year, Winnie took facilities management training classes from an off-site training school to assist him with his duties in filling in for Smith.

Smith has an office located on the third floor. There are computer terminals that control the heating and cooling of the building in both Smith's

office and in the maintenance department. Winnie only uses Smith's office if the computer terminal in the maintenance office is not functioning. Winnie has a desk located in the maintenance office, and the two other maintenance employees share another desk.

The maintenance employees, including Winnie, wear a uniform of gray pants and a gray striped shirt. Smith does not wear a uniform, but may on occasion cover his dress shirt/tie with a maintenance smock when performing actual maintenance. All three maintenance employees must punch in/out at a time clock, while Smith does not.

Section 2(11) of the Act defines a supervisor as:

...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 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.

Analysis of the duties and responsibilities of an individual requires that the Board determine whether that person has authority to use independent judgment in performing any of the functions listed in Section 2(11), and to do so in the interest of management. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Designation of an individual by title as a supervisor is insufficient to confer supervisory status. *Shen Automotive Dealership Group*, 321 NLRB 586 (1996); *Davis Supermarkets*, 306 NLRB 426, 458 (1992), *enfd.* 2 F.3d 1162 (D.C. Cir. 1993). Secondary indicia of supervisory authority, such as higher pay, and the absence of direct on-site supervision during substantial periods of the work day, cannot itself support a finding of supervisory status, absent evidence that the individual also performs one or more of the functions set forth in Section 2(11). *Northcrest Nursing Home*, 313 NLRB 491, 500 (1993). The burden of establishing supervisory status rests on the party asserting the status. *NLRB v. Kentucky River Community Care*, 121 S. Ct. 1861 (2001).

Where an employee completely takes over the supervisory duties of another, he is regarded as a supervisor under the Act. *Birmingham Fabricating Co.*, 140 NLRB 640 (1963). However, sporadic supervisory substitution does not warrant a supervisory finding. *Latas de Alumino Reynolds*, 276 NLRB 1313 (1985). While substituting for a supervisor, an employee must actually exercise supervisory authority. Where intermittent supervision of unit employees is involved, the test is whether the part-time supervisor spent a "regular and substantial" portion of time performing supervisory duties, or whether

substitution and the exercise of supervisory authority is sporadic and insignificant. *Aladdin Hotel*, 270 NLRB 838 (1984).

Even assuming Winnie regularly substitutes for Smith, Winnie does not spend a regular and substantial portion of his time exercising supervisory authority. Indeed, Smith's own exercise of supervisory authority is circumscribed by the exclusive role that higher management plays in hiring, firing, disciplining and deciding other significant personnel matters. Smith's role is basically limited to directing and assigning employees, but Winnie assigns work to the other two maintenance employees only incidentally because he arrives at work before them and picks up the repair orders off the voice mail system first. Even then, Winnie exercises little independent judgment because the tasks assigned are routine and can be performed by any member of the maintenance staff, including Winnie himself. When work is not of a routine nature, Smith is available for consultation, which Winnie avails himself of regularly. *Mid-State Fruit, Inc.*, 186 NLRB 51 (1970). The other two maintenance employees can and have retrieved and performed repair orders on their own without approval from Winnie. Consequently, I find that any exercise of supervisory authority by Winnie during his substitution for Smith is isolated, at best, and does not warrant a supervisory finding as urged by the Employer.

For the reasons stated above, I conclude that a self-determination election is appropriate for the following voting group:

All full-time and regular part-time maintenance employees employed by the Employer out of its facility located at 2211 East Jefferson, Detroit, Michigan, but excluding guards and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election. If a majority of valid ballots is cast for Petitioner, it will be taken to have indicated the employees' desire to be included in the existing secretarial, clerical, mailroom

and janitorial employees unit currently represented by the Petitioner. If a majority of valid ballots is not cast for representation, it will be taken to have indicated the employees' desire to remain unrepresented.

Dated at Detroit, Michigan, this 8th day of November, 2001.

/s/ William C. Schaub, Jr.
William C. Schaub, Jr., Regional Director
National Labor Relations Board, Region 7
Room 300, Patrick V. McNamara Federal Bldg.
477 Michigan Avenue
Detroit, Michigan 48226

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