

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

THE SARA LEE BAKERY GROUP

Employer

and

Case 10-RC-15316

BAKERY, CONFECTIONERY, TOBACCO
WORKERS AND GRAIN MILLERS
INTERNATIONAL UNION, LOCAL 611

Petitioner

REGIONAL DIRECTOR'S
DECISION AND DIRECTION OF ELECTION

The Employer, The Sara Lee Bakery Group, operates a commercial bakery in Fort Payne, Alabama, employing approximately 750 production and maintenance employees. The Petitioner, Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 611, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all part-time and full-time quality control (QA) employees employed by the Employer at its Fort Payne, Alabama facility, excluding all office clerical employees, production, maintenance, truck drivers, guards and supervisors as defined in the Act.

The Employer contends that the unit is inappropriate because it includes the Quality Assurance Lead Technician (QA Lead), a supervisor as defined in Section 2(11) of the Act. The status of the QA Lead is the sole issue to be determined. The unit sought by the Petitioner has seven employees and the Employer's proposed unit is comprised of six employees.

The parties have a current collective bargaining agreement covering the production and maintenance unit. There is no history of collective bargaining concerning the proposed unit. Both parties submitted briefs that were fully considered herein. As discussed below, I conclude that insufficient evidence was presented to establish that the QA Lead is a supervisor and shall include that position in the bargaining unit.

I. OVERVIEW OF OPERATIONS

The bakery operates nine production lines on twenty-two shifts, five days a week, twenty-four hours a day, with a regular weekend operation. Susan Dooley is the quality assurance manager (QA Manager) and supervises the work of the entire department. Dooley reports to Jim Crowe, the Assistant Plant Manager.

II. SUPERVISORY STATUS

The Supreme Court has established a three-part test for determining supervisory status: Employees are statutory supervisors if (1) they have the authority to engage in any one of the 12 supervisory functions enumerated in Section 2(11) of the Act, (2) their “exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,” and (3) their authority is held “in the interest of the employer.” *NLRB v. Kentucky River Community Care, Inc.*, 121 S. Ct. 1861, 1867 (2001) (quoting *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574 (1994)). The burden of proving supervisory status lies with the party asserting that such status exists. *Kentucky River Community Care, Inc.*, *supra*; *Michigan Masonic Home*, 332 NLRB No. 150, slip. op. at 1 (2000).

Lack of evidence regarding supervisory status is construed against the party asserting supervisory status. *Michigan Masonic Home*, *supra*, slip op. at 1. Mere inferences or conclusional statements without detailed, specific evidence are insufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991).

No evidence was adduced that the QA Lead hires, fires, suspends, lays off, recalls, promotes or rewards employees, or effectively recommends such actions. In addition, I have concluded, as discussed below, that the QA Lead does not possess any of the other indicia of supervisory status.

A. Overview of Quality Assurance QA Lead Position

The function of the QA department, as described by QA Manager Susan Dooley, is to “provide assistance to the production lines, as well as monitor incoming ingredients that are used in production . . . help [production] lines with the Quality Control Point Program and help investigate customer complaints and assist with sample requests.”

The Employer’s operations must comply with several established quality standards, including its own in-house Hazard Analysis of Critical Control Points standards, as well as specifications established by customers. QA employees are responsible for ensuring that the Employer’s operations and products meet these established specifications. The QA employees perform chemical analysis

on raw materials and upon finished products to ensure that the materials meet the established guidelines. The established specifications or guidelines are not subject to interpretation by the QA employees and cannot be altered by the QA Lead.

B. Assignment of Work and Direction of Employees

The actual weekend work to be performed is determined by the QA Manager. While the QA Lead does not determine which employees work overtime, the QA Lead does determine which employee will perform which discrete task and posts these determinations in the laboratory. The QA Lead assigns these tasks to QA employees based upon the employees' skills and workload. Some tasks require special skills, for instance computer program knowledge, while others are routine cleaning assignments. The QA Manager testified that the assignment of weekend work required the QA Lead to exercise "independent judgment". The record does not contain any detailed or specific evidence concerning how the assignment of tasks requires the QA Lead to exercise independent judgment.

In addition to weekend work assignments, the QA Lead may assign certain tasks to employees when special testing or special products require additional work. According to Dooley, when special work is required, the QA Lead "directs those employees to obtain those products" and "coaches" employees to ensure they are meeting the established standards. When asked to describe "coaching", Dooley described employees working together, with someone teaching them "hand in hand . . . - not necessarily dictating and saying do this and do that."

Assignment of work, as contemplated in the Act, is more than just routine allocation of cleaning and other duties. The record does not establish that the QA Lead has any responsibility for determining the number of employees assigned to weekend work, which employees will work overtime or which will perform special work when required. The QA Lead merely assigns discrete pre-determined tasks to employees based on their availability and skills. While the QA manager testified that this assignment requires the exercise of discretion, such conclusional testimony, without specific evidence demonstrating the exercise of independent judgment, is not persuasive. *Sears, Roebuck & Co., supra*. The Board has held that "general, conclusory evidence, without specific evidence establishing that [the individual] in fact exercises independent judgment in making an overtime assignment, does not establish supervisory authority." *Tree-Free Fiber Co., LLC*, 328 NLRB No. 51 (1999). Because the record fails to sufficiently explicate the factors that influence the QA Lead's allocation of work, I must conclude that the Employer has not met its burden of establishing that the assignment of work by the QA Lead entails the requisite exercise of independent judgment necessary to endow supervisory status.

C. Assigning Overtime

The QA Lead may also request that QA employees work overtime. If overtime work becomes necessary due to production requirements, the QA Lead will “coordinate” scheduling. Whether overtime is required is entirely determined by the production departments. When overtime work is required, the QA Lead will first assign the work to volunteers; if no employee volunteers, then the employee who is responsible for the shift will be required to work overtime. While the record established that the QA Lead recruits employees to work overtime, the record was silent as to whether the QA Lead can require employees to work overtime against their will.

An employee is only required to work overtime when no one volunteers and then only if the overtime work concerns the employee’s regular work area and shift. Even when overtime is mandatory, the QA Lead has no discretion in “assigning” this work because the assignment is predetermined by the Employer’s established policy.

Because the assignment of overtime is controlled by established procedure, I cannot conclude that the QA Lead exercises independent judgment in requesting employees to work overtime. As the Supreme Court noted in *Kentucky River*, “it is also undoubtedly true that the degree of judgment that might ordinarily be required to conduct a particular task may be reduced below the statutory threshold by detailed orders and regulations by the employer.” As the Employer has failed to demonstrate that the QA Lead exercises independent judgment in the selection of employees to work overtime, I find that the evidence is insufficient to establish this indicia of supervisory status.

D. Granting Time Off and Maintaining Attendance Records

QA Manager Dooley testified that the QA Lead has the sole authority to grant employees’ requests for time off. After approval, the QA Lead then reports the employee’s request to the QA Manager. According to Dooley, she has never countermanded the leave authorization of the QA Lead. Nevertheless, no evidence was presented that any request for leave has ever been denied by the QA Lead. As Dooley explained, “we all try to work together when someone needs to leave.” Because requests for leave are customarily granted, it does not appear that the QA Lead exercises any discretion or independent judgment in this area.

In addition to processing employees’ requests for leave, the QA Lead maintains the attendance records for the QA department employees on attendance cards. To maintain the attendance records the QA Lead has access to the Employer’s computerized attendance records maintained by the payroll office. The QA Lead periodically prints out these computerized records and

permits employees to review them for accuracy. If there is a discrepancy, the QA Lead makes the necessary corrections for submission to the payroll office and presents them to the QA Manager for authorization. The QA Manager could not recall any occasion where she had not signed a change request presented by the QA Lead.

The Employer's proffered evidence does not establish that the QA Lead's role in maintaining the department attendance records was more than ministerial or reportorial in nature. The Employer did not present specific evidence that the QA Lead exercised any form of discretion in executing these functions. Moreover, simple access to the Employer's computer network and attendance records does not confer supervisory status. *Sorenson Lighted Controls*, 286 NLRB 969, 988 (1987).

Based thereon, the Employer's evidence concerning the QA Lead's responsibility for granting time off and maintaining attendance records is insufficient to establish supervisory authority.

D. Discipline

The record established that the QA Lead has never issued discipline to employees. On occasion, the QA Lead has attended disciplinary meetings between QA employees and the QA Manager. At those meetings, the QA Lead has not made any recommendation regarding discipline. The QA Manager testified that the QA Lead's function at disciplinary meetings was to communicate QA employees' views and to provide a witness for the Employer. No testimony was elicited that the QA Lead makes recommendations, effective or not, concerning employee discipline.

Similarly, the QA Lead is involved in the training of probationary employees. At the conclusion of the probationary period, the QA Manager completes the probationary employees' performance review. The QA Manager determines whether the employee is performing adequately. The QA Lead, based upon her role in training the employee and upon other employees' feedback, provides the information upon which the QA Manager relies in conducting the reviews. There was no record testimony that the QA Lead makes any type of recommendation regarding the retention of probationary employees.

Mere participation at disciplinary meetings does not vest an employee with supervisory status. It must be established that the alleged supervisor makes effective recommendations regarding discipline. As there is no indication that the QA Lead influences decisions regarding employee discipline or retention, I cannot conclude that the QA Lead exercises supervisory authority in this regard.

E. Resolution of Grievances

The Employer asserts that the QA Lead has an official role concerning employee complaints. According to QA Manager Dooley, the QA Lead handles “disagreements” in the lab and acts as the “mitigator or the referee” to assist in resolving interpersonal disputes among employees. For example, Dooley testified that a situation arose where QA employees believed that another QA employee who had called in sick was really out of town. To resolve this dispute, the QA Lead “coordinated the weekend schedule.” There was no evidence to explain how the coordination of the weekend schedule resulted in the resolution of this employee concern or of any employee grievance.

Dooley further testified that on one occasion production employees took “offense” to a QA’s order to dispose of product. According to the testimony, the QA Lead resolved this problem by coaching the QA employee to “work as a team in diffusing issues that might have come out of that.” Again, the record does not reflect what, if any, specific actions the QA Lead took to resolve employee grievances, beyond “coaching” the QA employee.¹

Grievance resolution is indeed an indicia of supervisory status. However, the Act contemplates resolution of complaints regarding working conditions or other terms and conditions of employment. The testimony regarding complaints by production employees is not persuasive, as the description of the QA Lead’s role in resolving this conflict fails to establish that the QA Lead took any steps to resolve the grievance and doesn’t establish that the QA Lead effected any change in the working conditions of the involved employees.

E. Responsible Direction

The responsible direction of employees is an additional category that takes into account various responsibilities that are not encompassed by one of the other supervisory indicia.

The Employer’s job description for the QA Lead requires the QA Lead to “provide safety QA Leadership for the department.” QA Manager Dooley, testified that the “[l]ead person monitors when we have new employees, about the safe - - - job safety care, and reviewing the safety procedures of each job . . . the QA Lead job also entails if there is any safety aspects on the job that may be required, as far as reporting or monitoring for safety precautions.” It cannot be gleaned from this testimonial record whether the QA Lead’s role in safety leadership requires the QA Lead to responsibly direct employees. While it appears that the QA Lead may provide training, training alone does not vest an individual with supervisory status. *Byers Engineering Corp.*, 324 NLRB 740 (1997).

¹ As previously noted, coaching was defined by the QA manager as teamwork. According to the definition proffered, coaching doesn’t specifically direct or mandate that another employee undertake a specific action.

There was additional testimony concerning the QA Lead's role in monitoring employee performance. While the QA Manager retains primary responsibility for ensuring the QA employees are properly performing their duties, the QA Lead assists in monitoring employee performance. The QA Lead will assess employees' work to determine conformity with established quality guidelines. The QA Lead also assists the QA Manager in ensuring that the QA employees are performing their lab tests properly and completing paperwork correctly. On a quarterly basis, the QA Lead prepares samples of analytical tests performed by each QA employee and sends the samples to an independent lab for verification. The QA Lead then prepares a report on the employee's performance based upon the independent lab's findings. No testimony was proffered to establish whether these "evaluations" were recorded in the employee's personnel file or whether the QA Lead's evaluation of the employees' performance affects the employees' continued employment.

While the Employer avers that the QA Lead may "coach" employees on their work performance and direct employees to repeat analytical tests, the evidence was insufficient to establish supervisory authority. When asked to define "coaching", Dooley explained that coaching means the QA Lead "works with" the employees, but doesn't dictate to them or direct them. The QA Lead merely instructs employees what to do based upon well-established guidelines. Training and assisting employees alone does not necessitate a finding of supervisory status inasmuch as the designation as a trainer or coach may be the result of an individual's superior knowledge and experience. *Byers Engineering Corp.*, 324 NLRB 740 (1997). Since the guidance provided by the QA Lead is mandated by clear and established parameters, it cannot be established that this guidance requires the exercise of independent judgment. In *Chevron Shipping Co.*, 320 NLRB 717, 729 (1996), the Board found that if an employer constrains the degree of judgment exercised by an individual with detailed orders or regulations, such constraints preclude a finding of supervisory status. See also, *Kentucky River*, supra.

The record testimony does not establish that the QA Lead plays any role in evaluating employees or has any responsibility to direct employees utilizing the exercise of independent judgment. Merely checking to see if an employee has complied with established standards does not amount to responsible direction. See *Alco-Gravure, Inc.*, 249 NLRB 1019 (1980) (Quality control employees deemed not to be supervisors, even though they could halt production and direct that corrections be made.)

F. Secondary Indicia

The QA Lead, like the other QA employees, is a non-exempt hourly employee. While the QA Lead receives a higher pay scale, this alone is not dispositive. The QA Lead shares the same benefit package as the other QA

employees. The QA Lead shares the same break room and time clock with other QA employees. The QA Lead spends approximately 20% of her time performing analysis and testing with the remaining time on other functions.

QA Manager Dooley maintains an office adjacent to the laboratory, as does QA employee Jim Tumlin. The QA Lead does not have an office but maintains the only desk in the laboratory.

The record shows that the QA Lead is responsible for ordering lab supplies, collecting data for the waste water test performed by an outside lab, has a Sara Lee credit card, participates in compliance inspections and, on occasion, substitutes for the QA Manager at the Employer's weekly managerial meeting.

While the QA Lead is involved in the selection of suppliers and contractors, as well as budgeting, these activities do not necessarily vest supervisory status. It is clear that the QA Lead does have limited discretion to select suppliers and that this discretion is exercised in the interest of the Employer. However, these functions do not require the exercise of any of the authorities enumerated in Section 2(11) of the Act. Therefore, even the exercise of independent judgment in this realm will not confer supervisory status.

The QA Lead also prepares the QA department agenda for the weekly staff meeting. These meetings are conducted based on an established format. The QA Manager, as well as QA employees, may suggest topics for discussion at the weekly staff meeting. The QA Lead compiles these suggestions and coordinates the agenda items. There was no evidence that the QA Lead rejects suggested topics, only that she creates the agenda. Further, as with the exercise of discretion and judgment discussed above, it was not established that setting this agenda provided the authority to responsibly direct employees' work or exercise any other enumerated authorities.

Record testimony reveals that the QA Lead may participate in compliance inspections performed by both regulatory agencies and by the Employer's customers. The QA Lead may accompany the inspectors and has authority to correct deficiencies. Testimony established that the QA Lead could approach a department manager to correct a deficiency.

I cannot conclude, on this record, that the QA Lead's contacts and interaction with various governmental and other inspectors have cloaked her with supervisory status. While the QA Lead performs an important function in the inspection of products, and may exercise independent judgment in correcting problems, the authority does not rise to the level of supervisory authority.²

² See, e.g., *Bechtel, Inc.*, 225 NLRB 197 (1976), wherein the Board rejected the employer's contention that QC inspectors were supervisors or managers. The subject employees conducted inspections along the path of pipeline construction. They checked work against

I am, likewise, unpersuaded that the ratio of supervisors to rank-and-file employees indicates that the QA Lead should be accorded supervisory status. There are only seven employees (six full-time and one part-time) in the department. Seven employees, therefore, operate under the direct supervision of the QA Manager. Supervision of seven employees is not so disproportionate or onerous as to imply that the QA Lead possesses supervisory authority.

G. Conclusion

I find that the Employer, as the party asserting supervisory status, has not met its burden in proving that the QA Lead has the authority to carry out any of the functions set forth in Section 2(11) of the Act, or to effectively recommend such functions and to utilize independent judgment in the execution of such functions. Therefore, I find the QA Lead is not a statutory supervisor but rather an employee properly included in the bargaining unit.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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 in this case.
3. The Petitioner 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:

written specifications. If specifications were not met, the QC inspector would confer with the contractor's foreman to have the work corrected. QC inspectors had the authority to halt construction until problems were corrected. The Board found that the inspectors lacked a significant degree of discretion in performing their jobs and that their decisions were predicated on written specifications.

All full-time and regular part-time Quality Assurance employees, including the Quality Assurance Lead Technician, employed by the Employer at its Fort Payne, Alabama facility, excluding office clerical employees, production and maintenance employees, truck drivers, guards and supervisors as defined in the Act.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570. This request must be received by the Board in Washington by October 25, 2002.

Dated: October 11, 2002, at Atlanta, Georgia

/s/ Martin M. Arlook

Martin M. Arlook, Regional Director
National Labor Relations Board
Region 10

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