

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

VALSPAR 1/

Employer

and

Case No. 11-RC-6487

TEAMSTERS LOCAL UNION NO. 71 a/w INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, 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 record 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.2/
3. The labor organization(s) involved claim(s) 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. 3/
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:

All full-time and regular part-time production and maintenance employees, team leaders, and quality control employees, employed by the Employer at its Charlotte, North Carolina facility; excluding office clerical employees and guards, professional employees 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(s) 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 unit(s) 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 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, employees

OVER

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

Teamsters Local Union No. 71 a/w International Brotherhood of Teamsters, AFL-CIO

#### LIST OF VOTERS

In order to insure 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 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 hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 11 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, 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 of the National Labor Relations Board, Region 11, 4035 University Parkway, Suite 200, P. O. Box 11467, Winston-Salem, North Carolina 27116-1467, on or before **July 26, 2002**. 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 filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

If you have any questions, please contact the Regional Office.

#### 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, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **August 2, 2002**.

Dated July 19, 2002

At Winston-Salem, North Carolina

/s/Patricia L. Timmins

Acting Acting Regional Director, Region 11

- 1/ The name of the Employer appears as amended at the hearing.
- 2/ The Employer, a Delaware corporation, with a facility located in Charlotte, North Carolina, is engaged in the manufacture and non-retail sale of industrial coating. During the past twelve months, the Employer, in the course and conduct of its business operations, purchased and received goods and materials valued in excess of \$50,000.00 directly from points located outside the State of North Carolina.
- 3/ The Employer filed a post-hearing brief which has been carefully considered. The Employer and Petitioner stipulated at hearing that a unit comprised of production and maintenance employees (including both the quality control and operator positions) constitutes an appropriate unit. The sole issue in this matter is the status of the Employer's six team leader positions. Specifically, the Petitioner contends that the team leader positions are supervisory and, therefore, should be excluded from the unit. In contrast, the Employer asserts that the team leader positions are nonsupervisory and should be included in the unit. There is no bargaining history between the Employer and Petitioner at the Charlotte facility.

Based on the record evidence, as set out more fully below, I conclude that the position of team leader is nonsupervisory and should therefore be included in the bargaining unit.

## **A. The Employer's Operations**

### **1. Production**

The Employer operates a facility in Charlotte, North Carolina, where it manufactures industrial powder coating paint, a dry substance that is mixed, extruded, ground and packaged for non-retail sale. Production of powder coating paint is a seven-step process. First, raw materials are received from outside sources and stored in the raw material warehouse. Second, the materials are weighed inside the warehouse in preparation for staging. The third step is the transfer of the ingredients to staging for mixing preparation. The fourth step is mixing the ingredients. The fifth step is extrusion, whereby the materials are melted and mixed. Following extrusion, the materials are transferred to the mill where the material is ground into a final product. Finally, the ground material is packaged into containers and stored in the finished goods inventory.

### **2. Organizational and Supervisory Structure**

The facility has a "manufacturing team" which consists of a Plant Manager, Plant Chemist, Plant Engineer, Production Manager, three Shift Supervisors, Human Resources Manager, Inventory Manager and Quality Control Manager. The Plant Manager is responsible for the overall supervision of the entire facility. The Production Manager is responsible for the production and manufacture of the coating process and oversees the shift supervisors. As the team leader positions at issue here fall within the production department, the remaining focus will be placed on the production department. The production department currently employs approximately 55 hourly employees and 5 team leaders.

Currently, the Employer runs a 3-shift operation in the production department. Each shift is supervised by a shift supervisor who is responsible for the daily flow of production on the shift. The supervisors are salaried employees, predominantly work in an office, and wear "plain clothes." Among other duties, supervisors are responsible for approving leave, performing reviews of all employees (including team leaders), issuing discipline and directing tasks for the work day.

### 3. Team Leaders

Each shift supervisor has both a mixing and a process team leader. The mixing team leaders oversee the weighing of raw materials, staging and mixing aspect of production. The process team leaders oversee the extrusion, milling and packaging of the final product. There are six team leader positions at the facility.<sup>1</sup> The responsibilities of the team leader include carrying out the instructions of the shift supervisors, such as the assignment of tasks to hourly employees, completing production-related paperwork and providing written accounts of events to supervisors.

The team leader position is very similar to that of an hourly production employee. For example, team leaders report to work at the same time as hourly employees, use the same break and parking facilities, use the same time clock, use the same lockers, wear the same uniforms, receive the same method of overtime pay, receive the same holiday and health benefits packages, and work side-by-side with hourly employees for a majority of their work day. The main difference between team leaders and hourly employees is their rate of pay. Specifically, team leaders are salaried and earn approximately 7% more than hourly employees.

### B. Analysis

Section 2(11) of the Act 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.

It is well-settled that supervisory status is conferred by the possession of any one of the primary indicia listed above, as long as "the exercise of such authority is not routine but requires the use of independent judgment." Vencor Hospital-Los Angeles, 328 NLRB 1136, 1138 (1999). Secondary indicia (i.e. ratio of supervisors to employees or designation as supervisor) can be used as background evidence, but are insufficient by themselves to establish supervisory status when primary indicia are not present. See Baby Watson Cheesecake Inc., 320 NLRB 779, 784 (1996); North Jersey Newspapers Co., 322 NLRB 394, 395 (1996).

The burden of proving supervisory status lies with the party asserting that such status exists. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001); Michigan Masonic Home, 332 NLRB No. 150, slip op. at 1 (2000). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protections of the Act. See, e.g. Vencor Hospital - Los Angeles, 328 NLRB at 1138. Lack of evidence is construed against the party asserting supervisory status. Michigan Masonic Home, supra, slip op. at 1. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991).

---

<sup>1</sup> Currently only five of the six team leader positions are filled. The second shift mixing team leader position is currently vacant.

**1. Status of Team Leaders**

With regard to whether the team leaders possess any of the primary indicia listed in section 2(11), no evidence was adduced that team leaders hire, fire, suspend, assign, transfer, layoff, recall, promote, reward and/or adjust employee grievances. Accordingly, I will discuss the role of team leaders in regard to the responsible direction of the work force and ability to effectively recommend employment actions. I will then address the occasional substitution of team leaders for shift supervisors.

a. Authority to Responsibly Direct

Although Petitioner did not submit a post-hearing brief, it appears to contend that the team leaders have the ability to responsibly direct and/or effectively recommend employment actions. I find that Petitioner failed to meet its burden to establish that team leaders have this authority. Specifically, in regard to the team leader's authority to direct employees, the record shows that team leaders function primarily as a conduit for carrying out supervisor instructions. The record establishes that team leaders essentially carry out the instructions issued by the shift supervisors, as opposed to exercising independent judgment. For example, the work assignments that team leaders give to hourly employees are pre-determined by the shift supervisors for the team leaders to merely distribute at the beginning of the shift to the employees. The record clearly demonstrates that team leaders do not possess discretion in assigning tasks to specific employees. The Board has held that routine assignment of tasks, which does not require independent judgment, is not indicative of supervisory status under the Act. See generally George C. Foss, Co., 270 NLRB 232, 234 (1984) (employee acted as a leadman rather than a supervisor when he made work assignments based on instructions received from others), enforced, 752 F.2d 1407 (9<sup>th</sup> Cir. 1985); Hydro Conduit Corporation, 254 NLRB 433, 438-439 (1981) (employee not a supervisor where he assigned tasks from a master schedule prepared by management and occasionally reassigned employees from their normal duties); Southern Industries Co., 92 NLRB 998, 1004 (work assignments were "routine" when priority of work was determined by others even though lead welder had authority to shift a welder to a more urgent job). Accordingly, I find insufficient evidence of the team leader's ability to responsibly direct the hourly employees.

b. Authority to Effectively Recommend Employment Actions

In regard to the authority to effectively recommend employment action, I find that Petitioner failed to meet its burden in establishing that team leaders can effectively recommend employment actions. Specifically, the testimony of the Plant Manager clearly establishes that team leaders may make recommendations or make managerial personnel aware of various employee issues. For example, the Plant Manager testified that a few weeks ago an hourly employee was refusing to carry out assigned duties. That individual's team leader submitted an account of an incident that transpired between the team leader and the hourly employee to the Plant Manager. The write-up only contained a description of the events that transpired, not a recommendation of discipline. In response, the Plant Manager went back to the individual and independently investigated the incident. Once the employee confirmed the team leader's report, the Plant Manager reviewed the employee's personnel file (a file to which the team leader does not have access) and issued a verbal warning for insubordination.

Though in the above scenario the team leader did not recommend a course of action, the record shows that the team leader duties do involve recommending action and/or relaying information regarding inefficiency or employee insubordination to management. These recommendations and/or reports are then independently investigated by higher management who make the final decision as to whether action is taken. However, the ability of team leaders to make recommendations or file reports, with management having final approval and decision authority, is not indicative of supervisory status under the Act. See

[Redacted]

PECO Energy Co., 322 NLRB 1074, 1083 (1997) (when employee has the authority to bring improper behavior and/or violations of work rules to management's attention, yet management ultimately decides the imposition of discipline, that employee's "authority with respect to discipline is merely reportorial" and does not constitute evidence of supervisory authority under the Act); George C. Foss Co., 270 NLRB at 234 (employee not a supervisor where his reports regarding personnel "were in the nature of relaying information to [an admitted supervisor] from which the latter could make a determination...."). Based on the foregoing, I find insufficient evidence that team leaders can effectively recommend employment actions.

c. Occasional Substitution in Supervisory Position

Based on the record, it appears that the Petitioner is also asserting that team leaders are supervisors based on their occasional substitution for shift supervisors. Board law finds that when the employees at issue substitute sporadically and occasionally for supervisors (i.e. once or twice a month) and during those times they are not vested with the authority of a supervisor, they are not found to be supervisors. PECO Energy Co., 322 NLRB at 1083 (employee who occasionally substituted for supervisor was not found to be a supervisor under the Act because the employee was not specifically granted supervisory authority when substituting). In this case, the record shows that though the team leaders may on occasion (i.e. once or twice a month for a couple of hours during the shift) substitute for the shift supervisor, the team leader is not vested with any of the supervisor's authority at that time.<sup>2</sup> Accordingly, I find that the occasional use of team leaders as substitutes for supervisors and their lack of authority during the substitutions, are insufficient to establish supervisory authority under the Act.

**C. Conclusion and Findings**

Based on the above findings, I find that the Petitioner did not meet its burden of establishing that the team leaders are supervisors, and accordingly, I will include team leaders in the unit stipulated as appropriate at hearing.

177-8500-0000-0000

---

<sup>2</sup> The record established that a team leader substituted for a supervisor the entire shift only once during the past year. The Plant Manager testified that such substitutions are infrequent because typically management has 2-week notice when a supervisor plans to be absent.