

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-SIX**

DANA CORPORATION¹

Employer

and

Case 26-RC-8348

**INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 327**

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Dana Corporation, operates a facility in Gordonsville, Tennessee where it assembles drive shafts for light duty pickup trucks and sport utility vehicles and packages drive shafts repair kits. The Petitioner 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 the Employer's production and maintenance employees at the Gordonsville facility. Following a hearing before a hearing officer of the Board, the parties filed briefs with me.

The sole issue presented at the hearing and addressed in the briefs is whether 27 supplied, or temporary, employees employed at the facility should be included in the petitioned-for unit. The supplied employees are provided to the Employer by Staffing Solutions and Holland Employment. The Petitioner opposes the inclusion of the supplied employees and urges that the unit should be limited to the approximately 203 employees

who are solely employed by the Employer. The Employer contends the supplied employees should be included in the unit.

I have considered the evidence adduced during the hearing and the arguments advanced by the parties in their briefs. As discussed below, I have concluded that the supplied employees provided by the two staffing agencies share such a strong community of interest with the permanent employees solely employed by the Employer, that the supplied employees must be included in the petitioned-for unit. Accordingly, I have directed an election in a unit consisting of approximately 230 employees.

To provide a context for my discussion of this issue, I will first provide an overview of the Employer's operations. Then, I will present the legal framework for the issue, discuss the relevant facts, and set forth the reasoning that supports my conclusion that the supplied employees must be included in the unit.

I. OVERVIEW OF THE EMPLOYER'S OPERATIONS

The Employer's facility in Gordonsville, Tennessee divides its operations into the following five functions: assembly, packaging, storage, shipping, and receiving. Twenty-three of the supplied employees used by the Employer work in the assembly department and the other four supplied employees work in the packaging department. Supplied employees do not work in the storage, shipping or receiving departments.

Staffing Solutions, located in Cookeville, Tennessee, furnishes 10 of the supplied employees while Holland Employment, located in Carthage, Tennessee, furnishes the other 17 supplied employees. Both temporary employment agencies refer employees pursuant to contracts with the Employer. The Employer has used employees referred by temporary

¹ The Employer's name appears as corrected at the hearing.

employment agencies for the past ten years. Nearly half of the Employer's current permanent employees began their employment at the Employer's facility as a supplied employee referred by an employment agency.

II. THE LEGAL FRAMEWORK

The sole issue in this matter is whether supplied employees provided by supplier employers to the user Employer should be included in a unit of the user Employer's permanent employees. The Board enunciated the requisite analysis for that determination in M. B. Sturgis, 331 NLRB 1298 (2000). In Sturgis, the Board held that traditional community of interest factors should be applied to determine whether the supplied employees should be included. Id., slip op. at 8. Since the Petitioner must seek only an appropriate unit, and not the most appropriate unit, the test here is whether the community of interest the supplied employees share with the solely employed employees is so strong that it requires or mandates their inclusion in the petitioned-for unit. Engineered Storage Products Co., 334 NLRB No. 138 (2001).

III. COMMUNITY OF INTEREST

In deciding community of interest issues, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. Kalamazoo Paper Box, 136 NLRB 134, 137-38 (1962); Armco, Inc., 271 NLRB 350 (1984); J. C. Penney Co., 328 NLRB 766 (1999). *See also* M. B. Sturgis, *supra*, slip op. at 8-9.

A. Wages, Hours, Working Conditions

The Employer's supervisors and managers hire and, if necessary, fire the permanent employees of the Employer. Although the supplied employees are hired and referred to the Employer by the temporary employment agencies, Staffing Solutions and Holland Employment, the hiring is based on criteria set by the Employer. The Employer utilizes the same hiring criteria for supplied employees as it does for its permanent employees. Both supplied employees and permanent employees must meet minimum educational standards, possess a certain degree of experience relevant to the particular job classification for which they are hired, and meet the physical requirements for each job classification.

Supplied employees at the Employer's facility must pass a drug screen and background check performed by the temporary employment agencies. Permanent employees hired directly by the Employer must pass the same tests. Both groups of employees receive the same training in production and safety from the Employer's supervisors and managers.

The Employer's supervisors and managers determine whether the work of a supplied employee satisfies the Employer's requirements. As they do with the Employer's permanent employees, the Employer's supervisors counsel and discipline supplied employees. Similarly, the Employer's supervisors recommend whether supplied or permanent employees should be terminated.

The Employer discharges its permanent employees directly, and its supplied employees indirectly. If a supplied employee does not perform satisfactorily, the Employer notifies the appropriate temporary employment agency that it no longer requires

the services of that employee. The appropriate temporary employment agency then advises the individual employee that he or she will no longer be referred to the Employer.

The Employer reimburses the employment agencies for the use of supplied employees, based on a contractual formula that includes the total number of working hours provided by the agency. The Employer pays different “commissions” to the two temporary employment agencies based on its contract with that agency.

The Employer determines the rate of pay for the supplied employees, who currently earn \$9.25 an hour. The Employer’s supervisors keep the time records of hours worked by supplied employees, which are transmitted to Staffing Solutions and Holland Employment for payroll purposes. Staffing Solutions and Holland Employment then pay the supplied employees pursuant to the Employer’s records. Staffing Solutions and Holland Employment also provide worker’s compensation insurance for the supplied employees, whereas the Employer provides worker’s compensation insurance for the permanent employees on its payroll.

The Employer’s permanent employees receive a salary, rather than an hourly wage, equivalent to \$13.25 per hour. The Employer’s permanent employees also receive benefits such as major medical insurance, dental and vision care insurance, and accidental death insurance. The Employer offers its permanent employees disability and dependent life insurance plans, as well.

The Employer does not offer those same benefits to the supplied employees. Although the Employer’s permanent employees receive both paid vacations and paid holidays, supplied employees do not receive either paid vacations or paid holidays from the Employer.

The supplied employees work the same hours at the Employer's facility as the Employer's permanent employees. Both the Employer's permanent employees and supplied employees are subject to the same plant rules. However, the Employer's permanent employees wear uniforms and the supplied employees do not.

B. Commonality of supervision

Because neither Staffing Solutions nor Holland Employment provides supervisors for supplied employees at the Employer's facility, the Employer's supervisors oversee the work of the supplied employees as well as the Employer's permanent employees. The Employer's supervisors issue discipline, as necessary, to both the supplied employees and to the Employer's permanent employees. Although the Employer's supervisors give the permanent employees performance appraisals, the supervisors do not give job appraisals to the supplied employees.

C. Degree of skill and common functions

Each employee, whether permanent or supplied, must meet the same hiring criteria for the position to which they are assigned. They also must be able to satisfactorily perform the duties associated with their assigned job classification. Supervisors and more experienced employees train less-experienced employees with respect to their work assignments, whether the employee is permanent or supplied.

Permanent and supplied employees occupy the same job classifications and perform the same tasks. Permanent employees and supplied employees work in the same physical environment, and use the same tools and equipment in the performance of their jobs. It is common for a supplied employee to receive an offer of employment from the

Employer. At the time of the hearing, nearly one-half of the Employer's permanent employees previously worked for the Employer as a supplied employee.

D. Frequency of contact and interchange with other employees

Contact between supplied employees and permanent employees begins at the start of the workday, as they use the same parking lot when they arrive at work. The supplied employees use the same restrooms and break rooms as the Employer's permanent employees. The permanent employees interact with supplied employees throughout the workday as they work alongside one another.

Both the supplied and permanent employees work every day, performing the same job each day in the same assigned job classification. They work the same hours, and in the same production areas. Their job duties are interchangeable.

When the Employer holds safety meetings for its permanent employees, the Employer requires that the supplied employees attend the meetings. In addition, the supplied employees participate in celebrations with the Employer's permanent employees, such as holiday parties. The supplied employees also attend Employer-sponsored cookouts and picnics along with the Employer's permanent employees. Such interaction provides a significant interchange between the permanent employees solely employed by the Employer and the supplied employees.

The permanent employees and supplied employees attend the same departmental and plant-wide meetings where they are apprised of plant-wide rules and procedures that apply to both supplied employees and permanent employees. The permanent employees and supplied employees also jointly attend meetings about safety, quality, production issues, and general communication issues.

E. Functional integration

The jobs of supplied employees are integral to the process by which products are received at the facility, and then assembled and packaged by both permanent and supplied employees. Their work is also a significant part of the process of storing and then shipping products to customers.

IV. ANALYSIS

The supplied employees work side by side with the Employer's permanent employees and have common supervision, hours, working location, working conditions, and job functions with the Employer's permanent employees. The Employer determines both the wages and the hiring criteria for the supplied employees. The supplied employees also enjoy the prospect of future employment with the Employer because of the Employer's past practice of hiring supplied employees and because the hiring criteria for supplied and permanent employees is the same. In view of these facts, I find that the 27 supplied employees share such a strong community of interest that they must be included in the petitioned-for unit. Outokumpu Copper Franklin, 334 NLRB No. 39 (2001); Interstate Warehousing of Ohio, 333 NLRB No. 83 (2002).

In Outokumpu Copper Franklin, *supra*, as here, the user employer set the criteria for hiring and the supplied employees performed the same work, on the same shifts, and under the same supervision as the user employer's employees. The user employer's supervisors retained full authority to discipline, discharge, or send home temporaries and evaluated temporary employees for future employment with the user employer as regular employees. The Board concluded that each of those factors showed the supplier's employees maintained a keen interest in working conditions of the user's employees, and

required that the supplied employees be included in the representation unit even though the petitioner had not sought to include them in the unit. Id.

Similarly, in Interstate Warehousing, *supra*, the Board found the working conditions were so interconnected that it included the supplied employees in a unit of user employees. There, the supplied and permanent employees worked side by side, had common supervision, common work functions, common hours, and the same job classifications. In addition, the employer had hired all its permanent employees from its temporary employees.

The Petitioner contends that the contrast between two “core” employment issues -- wages and benefits -- destroys any arguable community of interest between the Employer’s permanent employees and the supplied employees. This argument is similar to that made by then Chairman Hurtgen in his dissent in Gourmet Award Foods, Northeast, 336 NLRB No. 77, (2001). There, then Chairman Hurtgen argued that economic terms are the “bread and butter” conditions of employment and precluded a finding that the supplied employees should be accreted into a unit of the user employer’s employees. *Id.*, slip op. at 6. However, after Sturgis the Board has specifically rejected attempts to use disparate economic terms alone as a basis for excluding supplied employees from representation units. *See* Outokumpu Copper Franklin, 334 NLRB No. 39 (2001); Interstate Warehousing of Ohio, 333 NLRB No. 83 (2002). Rather, the Board has considered whether those dissimilar terms and conditions of employment are outweighed by other terms and conditions of employment shared by the supplied and permanent employees. Outokumpu Copper Franklin, *supra*, slip op. at 2.

Although the supplied employees were not included in the unit in Engineered Storage Products, 334 NLRB No. 138 (2001), two important factors there led to that result. First, the temporary service supplied employees to the user employer based on the *supplier's* hiring criteria, not the employer's. Using its own hiring criteria, the supplier employer hired and fired the employees it supplied to the employer and set their wages and benefits, which were lower than those of the employer's regular employees. The second factor was the lack of prospect of permanent employment with the Employer. The user employer had not permanently hired any temporary employees for over two and one-half years, had never permanently hired an employee from this temporary employment agency, had not informed any supplied employees that it had plans to permanently hire them in the future, and appeared to have no interest in hiring supplied employees at that time. Thus, the supplied employees had little expectation that the user's working conditions would apply to them, or that permanent employment might be offered. Their wages, benefits, and certain key working conditions were set by the supplier employer, and that was unlikely to change.

Accordingly, here I find that the dissimilar terms and conditions of employment – wages and benefits - are substantially outweighed by the many common terms and conditions of employment shared by the permanent and supplied employees. Outokumpu Copper Franklin, 334 NLRB No. 39, slip op. at 2 (2001). I will therefore include the 27 employees currently supplied by the temporary employment agencies in the petitioned-for unit.

V. CONCLUSION AND FINDINGS

Based on the entire record in this proceeding, I conclude and 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:

INCLUDED: All production and maintenance employees and plant clericals, customer quality coordinator, PPAP coordinator, packaging/labeling coordinator, customer contacts, purchasing clerks, export packaging clerks, traffic coordinators, production schedulers, quality technicians, packaging technicians, pride teams, shipping and receiving clerks, production support, assembly technicians, balance lead technicians, maintenance technicians, machinists and group leaders, including employees supplied by Staffing Solutions and Holland Employment;

EXCLUDED: Professional employees, office clerical employees, guards, and supervisors² as defined by the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not

² Based on the record evidence, as well as the stipulation of the parties, I find that the following positions are supervisory within the meaning of Section 2(11) of the Act, and that the individuals who hold those positions are ineligible to vote in the representation election directed herein: Plant Manager Michelle Hards, Administrative Assistant Treva Bowman, Procurement and Sourcing Specialist Mikey West, Production Manager Jeff Enochs, Production Control Manager John Cox,

they wish to be represented for purposes of collective bargaining by the International Brotherhood of Teamsters, Local 327. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before 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 began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) 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 (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure 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, which may be used to communicate with

them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before November 5, 2002. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (901) 544-0008. Since the list will 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. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the

election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. 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. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on November 12, 2002. The request may **not** be filed by facsimile.

Dated at Memphis, Tennessee, this 29th day of October 2002.

/S/ _____
Ronald K. Hooks, Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627

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