

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

IDEAL SOAP & CHEMICAL CO., INC.¹

Employer

and

Case 6-RC-12084

GENERAL TEAMSTERS LOCAL UNION
NO. 249 a/w INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, AFL-CIO²

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Virginia L. Scott, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned Acting Regional Director.³

Upon the entire record⁴ in this case, the Acting Regional Director finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

² The name of the Petitioner appears as amended at the hearing.

³ 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 July 11, 2002.

⁴ The Employer filed a brief in this matter which has been duly considered by the undersigned. The Petitioner did not file a post-hearing brief.

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.

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.

The Petitioner seeks to represent a unit of all full-time and regular part-time drivers and warehousemen employed by the Employer at its Pittsburgh, Pennsylvania, facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, hereinafter referred to as “the Unit”. Although the parties are in accord as to the scope and composition of the Unit, the Employer, contrary to the Petitioner, would exclude James Granny, Jr. (“Granny”), on the ground that he is a supervisor within the meaning of Section 2(11) of the Act, or, in the alternative, that he is a managerial employee.⁵ The Petitioner contends that Granny is neither a supervisor nor a managerial employee and that he should properly be included in the Unit.

The parties agreed that the following employees are appropriately included in the Unit: Paul DeLuca, James Granny, Sr., Robert Hoots, Frank Viscardo and Michael von Geis.⁶ Viscardo works in the warehouse; the other individuals are employed as drivers. There is no history of collective bargaining for any of the employees employed by the Employer.

The Employer is a Pennsylvania corporation with its sole facility located in Wilkinsburg, Pennsylvania. The Employer is engaged in the wholesale sale and distribution of laundry, dry cleaning and janitorial supplies. The Employer’s sole owner is Dr. Nathan Savitz (“Savitz”). In

⁵ Granny is referred to as the “warehouse manager”.

⁶ While agreeing that these employees are appropriately included in the Unit, the parties noted that Viscardo is currently a probationary employee.

addition to the employees named above, the Employer also employs office manager Joanne Morrell⁷, receptionist Stephanie Hicox and an additional clerical employee who works part-time.⁸ Until her discharge approximately two weeks before the hearing, the Employer also employed purchasing agent Suzie Kovell. Savitz's father, Arthur Savitz, a former owner of the Employer, maintains an office at the Employer's facility. Finally, there are four sales representatives.⁹ Arthur Savitz also makes sales on behalf of the Employer.

The Employer's facility consists of a large building, the majority of which is devoted to warehouse space. The facility also contains an office area. In the office area, Savitz, his father, and Morrell each have an office. In addition, there are three offices used by the salesmen or other seasonal office staff. There also is a desk that is used by Granny when he needs to do paperwork. On the desk is a telephone for Granny's use that includes voice mail capabilities to which Granny has access. While Granny testified that the desk is not specifically assigned to him and that other people use the desk, Savitz testified that Granny keeps his personal ashtray on that desk, noting that Granny is the only person allowed to smoke in the office. On an average day, Granny spends about an hour at this desk in the main office.

There is an office in the warehouse, but it has been too cluttered to use for several years. Currently, the office is being cleaned out to make room for a computer terminal which will be used to track shipments. It is anticipated that Granny will be trained to use the computer in the warehouse office.

The Employer operates Monday through Friday, from about 7:00 a.m. until about 5:00 p.m. On occasion, there is work to be done on Saturday. It is the responsibility of those who work in the warehouse to unload trailers, put away merchandise, pull products for the next day,

⁷ Morrell has been employed in this capacity for approximately 10 to 11 years.

⁸ The record merely reflects this part-time employee's first name: Terry.

⁹ The sales representatives are Paul Shapiro, Tom Patterson, Greg Fusca and Mitchell Hoffman. These individuals are not included in the petitioned-for unit.

and load trucks for deliveries. The drivers deliver products both locally and at more distant locations that require overnight stays. The routes serviced by the drivers have been established for many years. Available routes are assigned to new employees.

Granny has been employed by the Employer for about twenty years.¹⁰ He initially worked as a driver, but moved into the warehouse about twelve years ago.¹¹ At that time, one of the previous co-owners, Lawrence Wolf, sold his interest in the business. Wolf had been responsible for the warehouse, although he did not do the physical warehouse work. Granny was assigned to handle the duties which Wolf had previously performed, although Granny has no ownership interest in the Employer.¹² Granny also does more “hands on” warehouse work. He stated that he currently spends about 80 percent of his time doing warehouse work alongside the other warehouse employee. The remainder of his time is spent processing paperwork associated with orders that need to be pulled and assigned to the drivers for delivery, as well as making sure that the trucks are properly marked and safety-checked and that hazardous chemicals are properly noted.

Savitz, his father, Morrell, and Granny each have keys to the facility, and each knows the code to operate the security system.¹³ Granny generally arrives first in the morning, and is therefore responsible for unlocking the building and deactivating the security system. Granny is also responsible for locking up the building and re-setting the security system at the end of the

¹⁰ Granny’s father is the most senior employee, and Granny and Savitz have known each other since childhood.

¹¹ Granny testified that about three years ago, he left the Employer to work for another company for about six months. He returned to the Employer voluntarily and at Savitz’s request.

¹² According to Granny, he was not told at that time that he would have the title of “warehouse manager”, but he stated that over time, the title “stuck”. I note that “[i]t is well established that an employer’s holding out an individual to employees as a supervisor is not necessarily dispositive of supervisory status.” Willamette Industries, Inc., 336 NLRB No. 59 (2001), citing Polynesian Hospitality Tours, 297 NLRB 228 (1989), *enfd.* 920 F.2d 71 (D.C. Cir. 1990).

¹³ No other employees have keys or the security code.

day. Granny does not have keys to unlock Morrell's desk or closet, nor does he have access to the locked safe in the office.

Each of the drivers and warehousemen, including Granny, have uniforms to wear to work, although they do not always wear them. Granny testified that he wears his uniform on a daily basis so as not to ruin his regular clothing. All of the drivers have commercial driver's licenses (CDLs). Granny and Viscardo do not have CDLs.¹⁴

The drivers generally operate the same route from day to day. If a driver is not able to work on a particular day, Granny asks Morrell what route can be held, and which routes need to be serviced. Granny testified that it is Morrell who determines which run is more important, and which run can be held.¹⁵ On occasion, Granny will ask Morrell or Savitz if they would like to have a route serviced on a Saturday in order to reduce backlog.

Granny occasionally requests drivers or the other warehouse employee to stay later than the usual quitting time of 5:00 p.m. He can do this without obtaining authorization from Morrell or Savitz. All of the employees are paid on a salaried basis, however, so there is no cost associated with asking an employee to stay late. Granny stated that he did not have the authority to require employees to stay late; he can merely make the request. When an employee needs time away from work, the request is handled by Morrell.

All of the drivers are subject to periodic drug and alcohol testing. Morrell notifies Granny when the testing is due. Granny either passes the appropriate paperwork to the driver from Morrell, or sends the driver to Morrell to pick up the paperwork directly. Granny is not involved in determining when would be the best time for the driver to go for the test. Morrell keeps track of when the tests should be performed.

¹⁴ Granny testified that he did not have a CDL when he worked as a driver many years ago, as a CDL was not required of drivers at that time.

¹⁵ Granny testified that if a hospital needs to be serviced, or if a customer calls to request their delivery as soon as possible, he would get approval from Morrell to make sure that those routes are serviced. Many times, however, Morrell makes the decision on her own.

The trucks driven by the drivers are leased by the Employer. The company from whom the trucks are leased notifies the Employer of necessary scheduled maintenance. Granny is not involved in making leasing arrangements, and he does not schedule maintenance for the trucks. If other items in the warehouse or used by the drivers need maintenance or repairs, Granny informs Morrell.

The Employer does not use a time clock. All of the drivers and warehousemen, including Granny, are eligible to participate in the Employer's health benefits plan.¹⁶ All employees are eligible for vacation benefits¹⁷ and holiday pay, and full-time employees may participate in the Employer's profit sharing plan. The drivers and warehousemen, including Granny, are salaried employees and are paid on a biweekly basis. The Employer does not maintain job descriptions. The record reflects that Granny is paid approximately 15 percent more than the drivers, and about 40 percent more than the other warehouse employee.¹⁸

Granny is not responsible for maintaining records of employee working hours. He is not involved in setting pay rates. While he has been asked from time to time if he is aware of an individual seeking employment, Granny has never been involved in the decision to hire a particular individual. He does not set up employment interviews and does not review applications for employment. While Savitz often introduces applicants to Granny during their interview, Granny is not involved in the decision to hire a particular applicant. After an individual is hired, however, Granny is responsible for providing training to the new employee.

¹⁶ Granny has elected not to be covered by the Employer's plan.

¹⁷ Morrell handles the scheduling of vacations.

¹⁸ I note that the other warehouse employee was a probationary employee at the time of the hearing, which may account, in part, for the great discrepancy between his and Granny's wages.

In large part due to Granny's presence in the warehouse on a regular basis, he reports problems such as excessive tardiness or absenteeism to Morrell and/or Savitz, but he is not responsible for issuing discipline. In addition, he is not involved in preparing work evaluations.¹⁹

Granny testified that he had never attended a supervisory meeting. For the last few months, however, Granny has met with Savitz in Savitz's office on an occasional basis. These meetings last about 15 minutes, and Granny provides Savitz with information about the status of the warehouse. They do not generally discuss employee performance, although Savitz has taken these occasions to inquire about the progress of probationary warehouse employee Viscardo. Granny stated that if employees come to him with complaints there is nothing he can do.

Granny admitted that the drivers and warehouseman treat him "like a boss", but said that he does not consider himself to be a "boss". Granny has been employed by the Employer longer than anyone other than his father, James Granny, Sr. Savitz has known Granny since childhood and placed him "in charge" of the warehouse ahead of more senior employees due to his trust of Granny's loyalty to the Employer. Due to his familiarity with the business and his long relationship with Savitz, Savitz discusses many aspects of the business with Granny, including sales figures, issues regarding what product lines to discontinue, and what supplies are to be ordered. In addition, Granny's experience and length of service with the Employer put him in a position to speak directly to manufacturer's representatives and make recommendations to customers regarding purchases.²⁰

¹⁹ On occasion, Granny has been asked by Savitz about the work habits of employees working in the warehouse, but the information he provides is merely a report; he does not make recommendations regarding an employee's pay or whether an employee should be disciplined or rewarded.

²⁰ Savitz testified that customers perceive Granny to be a supervisor. While this is certainly not dispositive of Granny's supervisory status under the Act, I note that the perception of customers appears to be based, like the perception of the Employer's employees, on Granny's length of service with the Employer as well as his knowledge of the business.

As noted, the Employer contends that Granny is a supervisory within the meaning of Section 2(11) of the Act, and should be excluded from the Unit on that basis. Specifically, the Employer argues that Granny assigns work, responsibly directs employees, effectively recommends that applicants should be hired and that employees should be fired, and that he has authority to transfer employees from one job to another.²¹ In addition, the Employer asserts that Granny possesses certain “secondary indicia” of supervisory status, which support its contention that Granny is a supervisor.

It is well established that the party asserting supervisory status has the burden of proving such status exists. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001); Michigan Masonic Home, 332 NLRB No. 150, slip op. at p. 1 (2000); Tucson Gas & Electric Company, 241 NLRB 181 (1979). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g. Vencor Hospital - Los Angeles, 328 NLRB 1136, 1138 (1999); Bozeman Deaconess Hospital, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. Michigan Masonic Home, supra, slip op. at p. 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). In this case the burden of establishing supervisory status, which rests with the Employer, has not been met.

Before examining the specific duties and authority of Granny, I will briefly review the requirements for establishing supervisory status. Section 2(11) of the Act defines a supervisor as:

[A]ny 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

²¹ There is no evidence or contention that Granny possesses the authority to suspend, lay off, recall, promote, reward or discipline other employees or to adjust their grievances.

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.

To meet this definition, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. Ohio Power Co. v. NLRB, 176 F.2d 385 (6th Cir. 1949), cert. den. 338 U.S. 899 (1949). “To support a finding of supervisory status, an individual must possess one or more of the indicia set forth in Section 2(11) of the Act and exercise that authority in a manner which is not merely routine or clerical in nature. Any lack of evidence in the record is construed against the party asserting supervisory status.” Willamette Industries, Inc., 336 NLRB No. 59 (2001), citing Elmhurst Extended Care Facilities, 329 NLRB 535, 536, n. 8 (1999). The exercise of that authority must involve the use of independent judgment. Harborside Healthcare, Inc., 330 NLRB 1334 (2000).

Each case involving issues of supervisory status turns upon the particular facts involved therein. The United States Supreme Court and the Board have noted that the legislative history of Section 2(11) of the Act reveals that Congress intentionally distinguished between “straw bosses, leadmen, set-up men, and other minor supervisory employees, on the one hand, and the supervisor vested with such genuine management prerogatives as the right to hire or fire, discipline, or make effective recommendations with respect to such action.” NLRB v. Bell Aerospace Company, 416 U.S. 267, 280-281 (1974); Chicago Metallic Corp., 273 NLRB 1677, 1688 (1985), enfd. in relevant part, 794 F.2d 527 (9th Cir. 1986).

In order for an individual to be found to be a supervisor within the meaning of the Act, the individual must be vested with more than a title and the theoretical power to perform one or more of the functions enumerated in Section 2(11) of the Act. In addition, as noted above, it must be shown that such power is exercised with independent judgment on behalf of management, and not in a merely routine, clerical, perfunctory or sporadic manner. The Board and the courts have recognized that an employee does not become a supervisor merely because he has greater skills and job responsibilities than fellow employees or because he

gives some instructions or minor orders. Byers Engineering Corp., 324 NLRB 740, 741 (1997), citing Chicago Metallic Corp., supra. Further, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, Inc., 280 NLRB 1222, 1224 (1986).

The Employer contends that Granny exercises independent judgment in assigning work and in directing employees. The record does not support this contention. While the Employer suggests that Granny is involved in scheduling and routing trucks, the record shows that the routes have been established for many years. There is no evidence that Granny had anything to do with the establishment of the routes, and his testimony that new drivers are assigned to available routes was not disputed on the record. Moreover, Granny's testimony that Morrell ultimately determines what routes should be run in the event that a driver is not available due to illness or other absence is also undisputed.²²

There is evidence that when Granny is aware that a customer has called and asked for product to be delivered early, he will ask the driver to make this his first delivery. Granny described this as a request that drivers always follow. Granny testified that although it has never happened, if a driver refused the request, he would send the driver to see Morrell or Savitz. The refusal is not a situation Granny would address. Such requests are routine and do not involve the exercise of independent judgement.

With respect to requests for time off, Granny testified that requests of that nature are handled by Morrell. Savitz testified that Granny had the authority to grant time off, but Savitz was able to provide only one example of this occurring, and in that case, Savitz was planning to

²² The Employer pointed to Savitz's testimony regarding an instance when a driver reported that Granny had authorized him to take an overnight run on a day other than the regularly scheduled time for that route. Savitz's testimony, however, was only as to his conversation with the driver and the driver's impression of what had occurred. The evidence does not reflect whether Granny consulted with Morrell before allowing the variation in the route schedule. This testimony, on its own, is not sufficient to support the Employer's contention that Granny has independently authorized a variation in the delivery schedule.

talk to Granny as he did not agree with what Granny had done.²³ I find that the Employer has not established that Granny has the authority to grant time off to employees.²⁴

The assignment of work pursuant to plans and schedules developed by higher management does not establish supervisory status. Arlington Electric, Inc., 332 NLRB No. 74 (2000). Based on the record evidence discussed above, I find that the Employer has not established that Granny utilizes independent judgment in the assignment of the work. Rather, the record indicates and I find that any judgment used by Granny to make assignments is routine and limited by the Employer's established policies and procedures to such a degree that it falls short of the statutory judgment required for supervisory status. Dynamic Science, Inc., 334 NLRB No. 57 (2001); Chevron Shipping Co., 317 NLRB 379, 381 (1995), cited with approval in Kentucky River. See also Greenhorne & O'Mara, Inc., 326 NLRB 514, 517 (1998).

With regard to the direction of work, once again the record fails to establish that Granny exercises independent judgment. Instead, the record indicates that his direction involves routine decisions relating to the storage and movement of products by the Employer. The record demonstrates that the drivers, all of whom are highly experienced, are essentially able to function independently. Moreover, Granny testified that the recently-hired warehouseman "is the kind of guy you tell him once, and you usually don't have to tell him again." It thus appears that Granny's direction of the work of other employees is limited in nature and relates to the performance of specific tasks. Such limited direction of employees in the performance of discrete tasks does not warrant a finding of supervisory authority. Kentucky River, supra at 720; Chrome Deposit Corporation, 323 NLRB 961 (1977).

²³ This was an instance that happened almost immediately before the hearing, and Savitz had not had a chance to discuss the issue with Granny as of the hearing date.

²⁴ In this regard, I note that Savitz spends very little time in the warehouse and may not be well-versed in Granny's practices, and that Morrell did not testify.

The Employer has also argued that Granny has the authority to effectively recommend the hiring and firing of employees. Again, I find that the record does not support the Employer's contention in this regard.

While it is true that Granny is introduced to applicants who are being interviewed, there is no evidence that he plays any role in the decision whether to hire a particular applicant. While Savitz has from time to time asked Granny whether he knew of anyone looking for work, and has hired individuals referred by Granny, there is no evidence that Granny was involved in the hiring decision.

Likewise, while Granny has occasionally reported to Savitz that certain employees have attendance problems, there is no evidence that Granny effectively recommended discharge, or that Savitz consulted with Granny before making the ultimate discharge decision. The Board has held that where oral or written reports simply bring substandard performance to the Employer's attention without recommendations for further discipline, and where an admitted supervisor conducts an independent investigation, an employee's role in advising the supervisor of the conduct is merely a reporting function, not an exercise of supervisory authority.

Williamette Industries, Inc., supra; Waverly-Cedar Falls Health Care Center, 297 NLRB 390, 392 (1989), enfd. 933 F.2d 626 (8th Cir. 1991); Passavant Health Center, 284 NLRB 887, 891 (1987).

In the instant case, the evidence does not support the Employer's contention that Granny effectively recommends that individuals be hired, or that employees be discharged. I find that Granny merely exercises a reporting function, and does not possess these indicia of supervisory status.

The Employer has further asserted that Granny possesses the authority to effectively recommend that employees be transferred from one position to another. In support of this assertion, the Employer pointed to the transfer of employee Paul DeLuca from the warehouse to

a driver classification.²⁵ Savitz initially testified that he relied solely on Granny's recommendation in transferring DeLuca to the driver's position. Upon further questioning, however, Savitz described how DeLuca accompanied other drivers on their routes so that he could learn the routes, and to allow him to gain experience with the trucks. Savitz considered the drivers' reports of DeLuca's abilities as well as Granny's report in considering whether to transfer DeLuca. There is no suggestion that anyone other than Savitz made the ultimate decision to transfer. I find that this does not establish Granny as a supervisor as defined in the Act.

The Employer argued that in addition to the types of supervisory authority specifically enumerated in Section 2(11) of the Act, Granny possesses secondary indicia of supervisory authority that supports its claim that Granny is a supervisor as defined in the Act. As already described above, I find that Granny does not possess any of the primary indicia of supervisory status under the Act. In this regard, the Board has repeatedly found that "[w]hen there is no evidence presented that an individual possesses any one of the primary indicia of supervisory status enumerated in Section 2(11) of the Act, secondary indicia are insufficient by themselves to establish supervisory status." Ken-Crest Services, 335 NLRB No. 63, slip op. at p. 3 (2001), citing General Security Services Corp., 326 NLRB 312 (1998), *enfd.* 187 F.3d 629 (8th Cir. 1998).

The Employer suggests that Granny attends "management meetings", but the record does not support this assertion. As described more fully above, Granny meets with Savitz occasionally to report on the status of the warehouse. In addition, he frequently discusses business with Savitz and Morrell when he is in the office. These discussions, however, do not focus on wage rates, disciplinary actions or other matters related to employee performance.

²⁵ Evidently DeLuca transferred from the warehouse to become a driver on two occasions, the latter being after DeLuca worked in the warehouse during a period of time when his driver's license was suspended. Savitz testified about DeLuca's initial transfer out of the warehouse.

The Employer also points to other benefits which Granny enjoys, including a higher wage rate, the availability of a telephone with voice mail capabilities, and his possession of keys to the facility as well as knowledge of the security codes.²⁶ However, as noted, the receipt of these benefits, without more, does not establish that Granny is a supervisor as defined by the Act. Ken-Crest Services, supra.

Similarly, I reject the Employer's argument that if Granny is not a statutory supervisor, then the unit employees are unsupervised. As noted previously, most of the unit employees are highly experienced and require little direction. Moreover, most of the Employer's work is performed during the normal workday, when Savitz and Morrell are available to provide direction should unusual situations arise. In addition to these factual considerations, the Board has noted that "nothing in the statutory definition of 'supervisor' implies that service as the highest ranking employee on site requires finding that such an employee must be a statutory supervisor." Ken-Crest Services, supra, slip op. at p. 3, n. 16.

In sum, I find that the Employer has not established that Granny possesses any of the indicia of a supervisor as defined by Section 2(11) of the Act. It appears from the record that any perception by other employees of his authority is due primarily to his length of service and knowledge of the business, rather than to any actual authority Granny may exercise. Accordingly, based on the above and the record as a whole, I find that Granny is not a supervisor as defined in the Act, and therefore should not be excluded from the Unit on that basis.

The Employer has argued in the alternative that Granny should be excluded from the Unit because he is a managerial employee. It has long been established that managerial employees are excluded from coverage under the Act. NLRB v. Bell Aerospace Co., 416 U.S.

²⁶ The Employer also argued that Granny may leave work early without penalty. The record reflects that this benefit is accorded to other employees as well, however.

267, 288-289 (1974). I find, however, that Granny is not a managerial employee, and therefore should not be excluded from the Unit on that basis.

“Managerial employees” are defined as those employees who have authority to formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer’s established policies. Tops Club, Inc., 238 NLRB 928, n. 2 (1978), quoting Bell Aerospace, 219 NLRB 384 (1975), on remand from the Supreme Court in NLRB v. Bell Aerospace Co., supra. Indeed, managerial employees are considered to be so “much higher in the managerial structure” that Congress found it unnecessary to mention them in the exclusionary provisions of the Act. NLRB v. Yeshiva University, 444 U.S. 672, 682-683 (1980). The purpose, then, of excluding managerial employees from bargaining units is to ensure that employees who exercise discretionary authority on behalf of their employer “will not divide their loyalty between employer and union.” Id. at 687-688.

It is not an employee’s job title that determines his or her managerial status, but the employee’s actual job responsibilities, authority and relationship to management. Bell Aerospace Co., supra at 290, n. 19. Nor do employees acquire managerial status by making some decisions or exercising some judgment “within established limits.” Holly Sugar Corporation, 193 NLRB 1024, 1026 (1971). Further, employees whose discretion and latitude for independent action takes place within the confines of the employer’s general directions are not managerial employees. See Bell Aerospace Co., supra at 288, n. 16.

In the instant case, the Employer contends that Granny is a managerial employee on the grounds that his interests are more closely aligned with management than with bargaining unit employees, that his responsibilities are managerial in nature, and that he is held out as a representative of the Employer. I disagree. Rather, the record evidence establishes that Granny performs his duties within the confines of established Employer policies and procedures, so as to render him eligible for representation by the Petitioner.

While the Employer asserts that Granny meets with Savitz to discuss various aspects of the Employer's business, Savitz testified that he informs Granny of certain sales information so that Granny can perform his responsibilities in the warehouse with respect to making sure that products are appropriately stocked. There is no evidence to suggest that Savitz has sought Granny's input on business policy.

Granny's responsibilities in the warehouse include signing for shipments and approving customer credit for returned goods. While Granny may perform these responsibilities without specific direction, they are performed within parameters set by the Employer. Granny testified that when something out of the ordinary occurs, he consults with Savitz or Morrell, indicating that he cannot make decisions on his own which are out of the normal course of business.

While there is evidence that Granny has ordered supplies for the warehouse, the mere authority to make limited expenditures on behalf of the Employer does not render one a managerial employee. See Simplex Industries, Inc., 243 NLRB 111 (1979).

Finally, Granny has access to records which are not available to other employees, but he needs these records, including sales information, to maintain appropriate stock in the warehouse. There is no evidence that Granny uses this information to set Employer policy.

In sum, based on the above and the record as a whole, I find that the evidence does not support the Employer's contentions that Granny is either a supervisory or a managerial employee, and he therefore is appropriately included in the Unit.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers and warehousemen employed by the Employer at its Wilkesburg, Pennsylvania, facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.²⁷

²⁷ Although the parties stipulated that the Petitioner seeks to represent certain employees at the Employer's "Pittsburgh, Pennsylvania" facility, the parties also stipulated that the Employer's sole facility is located in Wilkesburg, Pennsylvania. I take administrative notice of the close proximity of these two

DIRECTION OF ELECTION

An election by secret ballot will be conducted by the Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.²⁸ Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, 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 and employees 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.²⁹ Those eligible shall vote whether

cities. In determining the appropriate unit herein, therefore, I will infer that the parties intended to refer to the Employer's Wilkesburg, Pennsylvania, facility in their stipulation regarding the petitioned-for unit, and therefore direct that the appropriate unit includes the above-described employees of the Employer at its Wilkesburg, Pennsylvania facility.

²⁸ Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least three (3) full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

²⁹ In order to assure 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 the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and Direction of Election. The Regional Director shall 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, Room 1501, 1000 Liberty

or not they desire to be represented for collective bargaining by General Teamsters Local Union No. 249 a/w International Brotherhood of Teamsters, AFL-CIO.

Dated at Pittsburgh, Pennsylvania, this 27th day of June 2002.

/s/Stanley R. Zawatski

Stanley R. Zawatski
Acting Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222

177-2401-6750
177-8520-0800
177-8520-2400
177-8580-5100

Avenue, Pittsburgh, PA 15222, on or before July 5, 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 requirement here imposed.