

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

AMPCO SYSTEM PARKING¹

Employer

and

CASE 7-RC-22234

**FEDERATION OF PRIVATE EMPLOYEES,
A DIVISION OF NATIONAL FEDERATION OF
PUBLIC AND PRIVATE EMPLOYEES, AFL-CIO,
AFFILIATED WITH DISTRICT 1 – MARINE ENGINEERS
BENEFICIAL ASSOCIATION, AFL-CIO²**

Petitioner

APPEARANCES:

**Robert J. Finkel, Attorney, of Farmington Hills, Michigan, for the Employer
J. Douglas Korney, Attorney, of Bingham Farms, Michigan, for the Petitioner**

DECISION AND DIRECTION OF ELECTIONS

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

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:³

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

² The Petitioner's name appears as set forth at the hearing.

³ Both parties filed briefs, which were carefully considered.

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.
3. The labor organization involved claims to represent certain employees of the Employer.
4. Questions affecting commerce exist 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. Under contract with Wayne County, the Employer manages about 12,000 parking spaces at various lots at Detroit Metropolitan Airport in Romulus, Michigan. The parties stipulated to the appropriateness of two separate units of nine office clerical and four technical employees, respectively. They disagree as to the eligibility of about 25 *duty managers*, *assistant duty managers*, and *supervisors*, whom the Petitioner seeks to represent in a third unit.⁴ Contrary to the Employer's contention that the disputed individuals are statutory supervisors within the meaning of Section 2(11) of the Act, I find that they lack the requisite independent judgment and are therefore eligible to vote.

The Employer has been the airport parking contractor since September 2000. Its round-the-clock operations are headed by General Manager Thomas Calvird, Assistant Managers Pamela Sikora and Steve Ashker, Revenue Manager Barbara Haddix, Human Resource Manager Angela Harris, and Procurement Manager John Garvin.⁵ The preponderance of the Employer's staff is a group of cashiers, shuttle drivers, parking assistants, and maintenance employees represented by Teamsters Local 283.⁶ The 4 *duty managers* and 21 *assistant duty managers* and *supervisors* at issue are the links in the chain of command between the unionized workforce and upper management.

Duty managers oversee the Employer's daily operations by monitoring the airport parking lots and assuring adequacy of customer service. *Supervisors* and

⁴ In order to distinguish the job title "supervisor" from use of the term in the statutory sense, the former will be italicized.

⁵ I concur in the parties' stipulation that the foregoing individuals are supervisors within the meaning of the Act by virtue of their authority to hire, fire, and discipline employees.

⁶ Local 283 is not a party to this proceeding.

assistant duty managers, both of whom occasionally substitute for absent *duty managers*, observe the lots and the employees who work there, either fix broken gates or summon technical assistance, perform cash drops and deposits, and answer questions. While the disputed employees are the highest on-site managers at nights and on weekends, they are free to pose problems to General Manager Calvird by telephone when the latter is home and have done so about four or five times in the past year.

Transfers, Assignments, and Direction. Assistant Manager Pam Sikora prepares a weekly schedule for the unionized workers, designating their classifications, work areas, and shifts. *Supervisors* bring any errors in the schedule to the attention of Sikora, who with General Manager Calvird sets “minimum” staffing levels. As lots fill and empty, *supervisors* may vary the original work assignments by shifting personnel between lots. The disputed individuals do not decide or schedule vacation requests.

An absent employee is required to call a *supervisor*, who reports the absence to the front office. Whether “points” will be assessed against the employee pursuant to the Employer’s no-fault attendance program is decided only by upper management.

The assignment of overtime is the subject of a pending arbitration between the Employer and Teamsters Local 283. The Employer’s outstanding instruction to *supervisors* has been to tap part-time workers, a practice that, Local 283 argues, contravenes the parties’ contract, the provisions of which call for overtime to be offered in order of seniority to any available worker. In either scenario, *supervisors* are expected to follow a prescribed procedure when absences cause staffing to fall below a specified level.

Supervisors tally the number of hours shown on employees’ timecards. If some irregularity has occurred -- e.g., the employee forgot to punch his card or worked overtime -- the *supervisor* initials the timecard to verify having seen the employee at work.

Discipline. The Employer relies upon *supervisors* to act as its eyes and ears with respect to employee work performance and conduct. *Supervisors* discharge this function by furnishing witness statements and incident reports, sometimes upon a form called Progressive Disciplinary Warning. All such reports are submitted to Assistant Manager Sikora or another member of higher management, who decides without further *supervisory* input whether and at what penalty phase to issue discipline. One *supervisor* who has worked at the airport for 18 years testified that management has never discussed her authority to discipline. Her role, she said, is to document a rule violation by forwarding a

report to the office with her signature, after which she plays no part in the disciplinary process.

Although the record does not disclose percentages, it is clear that the making of disciplinary reports by *supervisors* does not necessarily result in the issuance of discipline by upper management. The disputed individuals cannot help determine the level of punishment because they lack information about employees' disciplinary histories, nor do they participate in pre-decisional disciplinary investigations that upper management sometimes conducts.

There is no evidence that *supervisors*, *duty managers*, or *assistant duty managers* make recommendations regarding formal suspensions and discharges. One witness claimed that *supervisors* may unilaterally eject a worker for fighting or threatening violence; another testified that even then, *supervisors* are first required to notify someone in higher management.

According to written job descriptions contained in the Employer's standard operating procedures, *supervisors* and *duty managers* are responsible for assuring compliance with the Employer's rules and regulations, including the Local 283 contract. The job descriptions have never been distributed to the described individuals. The record is silent as to how *supervisors* and *duty managers* may effect compliance with rules, other than by fulfilling the reporting role set forth above.

All disciplinary notices must be approved and signed by a member of upper management. When directed to do so, the *supervisor* presents an employee with a notice and solicits his signature acknowledging receipt.

Reward and promotion. Wages, raises, bonuses, and promotions of the unionized staff are subject to collective bargaining and fall outside the province of the disputed individuals. Assistant Manager Sikora testified that *duty managers* assist her in computing merit raises of *supervisors*. However, the record does not reveal whether the role that *duty managers* play is reportorial or recommendatory, and if the latter, what influence the recommendations yield in the final raise decisions.

Adjustment of grievances. The disputed persons attended a seminar last fall, and have also watched training videotapes, intended to enhance their management skills. Employer witnesses testified to a hope that *supervisors* resolve problems to avoid the filing of contractual grievances. When asked to illustrate the nature of problems that *supervisors* are authorized to resolve, Assistant Manager Sikora cited only the correction of patent errors as to employee

shifts or job classifications that she is apt to make in preparing the weekly schedules.

The disputed individuals do not conduct grievance meetings on behalf of the Employer with Local 283. The only evidence of their participation is that a *duty manager*, for undisclosed reasons, attended a grievance meeting one year ago along with higher management personnel.

Recommendations regarding retention. The disputed persons do not hire workers, make hiring recommendations, or interview prospective employees. Nor do they evaluate the job performance of employees who have passed probation. However, all *supervisors*, whether or not they have personal knowledge, are given a one-page evaluation form for each probationary employee in Local 283's unit. If the *supervisor* has had no contact with the probationary employee, he so indicates. Otherwise, he grades the worker "good," "fair," or "poor" in up to 10 categories and makes a recommendation to retain or terminate the worker. Assistant Manager Sikora testified that the Employer "usually" follows the "majority" recommendation of the *supervisors* who submit completed evaluations. There is no evidence as to how many *supervisors* generally complete the entire form for a given probationary worker; whether the evaluation of the worker's direct *supervisor* is given special weight; numerically how often the Employer adopts the majority's recommendation; upon what other sources of information, if any, the Employer relies; or under what circumstances the Employer will overrule the majority's opinion.

Managerial duties. The Employer adduced evidence that a *supervisor* may on his own authorize the deduction of one day's parking fee from a customer's bill if the vehicle has been the target of excessive avian waste. One Petitioner witness said that he was never informed of this authority; another testified that *supervisors* are instructed to direct all dissatisfied customers to General Manager Calvird. The Employer also presented evidence that *supervisors* determine when to summon snow-removal contractors to plow the lots, decisions that result in charges of \$15,000 to \$30,000. The record does not indicate who makes the decision when multiple disputed individuals are on duty, or whether upper management needs to be consulted in the decision.

Terms and conditions. The disputed persons are paid hourly, unlike salaried upper management. The low end of the wage range for *supervisors*, *assistant duty managers*, and *duty managers* exceeds the highest Local 283 hourly rate by about \$1.50. Unionized workers, disputed individuals, and upper-level managers participate in the same insurance programs.

The primary supervisory indicia enumerated in Section 2(11) of the Act are read in the disjunctive, so that possession of any one of the 12 listed authorities can invest an individual with supervisory status. The burden of proof rests with the party seeking to exclude the individual as a supervisor. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Benchmark Mechanical Contractors*, 327 NLRB 829 (1999). The Board is mindful not to deprive employees of their rights under Section 7 by interpreting the term supervisor too broadly. *Unifirst Corp.*, 335 NLRB No. 58, slip op. at 8 (Aug. 27, 2001). To separate straw bosses from true supervisors, the Act prescribes that the exercise of supervisory indicia be in the interest of the employer and require the use of independent judgment. This means that neither the discharge of Section 2(11) functions in a routine or clerical manner, nor the use of independent judgment to solve problems unrelated to Section 2(11) functions, qualifies as supervisory. *Alois Box Co.*, 326 NLRB 1177 (1998).

The Employer contends that *supervisors*, *assistant duty managers*, and *duty managers* responsibly direct the unionized workforce. If every minor order made its issuer a supervisor, our industrial culture would be predominantly supervisory. *Providence Hospital*, 320 NLRB 717, 725 (1996), quoting *NLRB v. Security Guard Service*, 384 F.2d 143, 151 (5th Cir. 1967). Assignments and direction of employees do not constitute supervisory authority when exercised in a routine manner or circumscribed by management directives or a collective bargaining agreement. *Chevron Shipping Co.*, 317 NLRB 379, 381 (1995); *Dynamic Science*, 334 NLRB No. 57 (June 27, 2001). No evidence was adduced to establish that *duty managers* or *assistant duty managers* handle personnel matters that are different from or more complicated than those handled by *supervisors*. The decision made by *supervisors* that most affects personnel is whether to open or close a parking lot, a determination rendered simply by counting cars and observing available space. Consequent reassignments of Local 283 workers involve nothing more than following pre-set minimum staffing levels and the constraints of the Local 283 labor contract.

I find that *supervisors*' reassigning cashiers and drivers to different lots based on space capacity and car flow is a routine process and falls "below the threshold required to establish statutory supervisory authority." *Dynamic Science*, supra, slip op. at 1. No specific evidence was presented that *supervisors* have ever faced unusual or non-routine events. While the record is silent on the subjects discussed, General Manager Calvird's testimony that *supervisors* have called him at home implies that *supervisors* contact upper management for assistance and direction when non-routine issues arise. *KGW-TV*, 329 NLRB 378, 382 (1999); *Hausner Hard-Chrome of KY*, 326 NLRB 426, 427 (1998). With respect to the indicium of responsible direction, the key ingredient of independent judgment is not proven on this record.

The responsibility of the disputed individuals in the area of discipline is to serve as conduits by reporting misbehavior and distributing prepared notices. There is no evidence that higher management, which independently determines if misconduct has occurred and decides the penalty therefor, elicits their recommendations in the process. The limited contribution of *supervisors* distinguishes this case from *S & F Enterprises*, 312 NLRB 770, 777 fn. 24 (1993), cited by the Employer, where ground controllers possessed the right to discipline based on their own discretion. The Board has repeatedly held with court approval that a reportorial function as served by the disputed persons here is not a predicate for a supervisory finding. *Ohio Masonic Home*, 295 NLRB 390 (1989); *NLRB v. Attleboro Associates*, 176 F.3d 154, 174 (3rd Cir. 1999); *NLRB v. Grancare*, 170 F.3d 662, 668 (7th Cir. 1999); *NLRB v. City Yellow Cab Co.*, 344 F.2d 575, 580-581 (6th Cir. 1965). Their signing disciplinary warnings on the line for “supervisor” does not alone convey authority under Section 2(11). *Gem Urethane Corp.*, 284 NLRB 1349 (1987) (titles or lack thereof not sufficient).

Although *supervisors* may send violent mischief-makers home, the incidents are subject to separate review and investigation by higher management. It appears that no such ejections have occurred. At any rate, possessing authority to take prophylactic action in response to hazards or flagrant violations is insufficient by itself to establish supervisory status. *Phelps Community Medical Center*, 295 NLRB 486, 492 (1989); *Loffland Bros. Co.*, 243 NLRB 74, 75 fn. 4 (1979).

The Employer emphasizes that the disputed individuals are unaccompanied by upper management at night and on weekends. This ignores the evidence that General Manager Calvird is on call. More significantly, nothing in the statutory definition of supervisor suggests that service as the highest-ranking worker on site requires a supervisory finding. *Training School of Vineland*, 332 NLRB No. 152, slip op. at 1 (Dec. 15, 2000). The record does not include any examples of exigent, non-routine circumstances occurring in the off hours requiring the disputed persons to make independent judgments about supervisory matters. Consequently, this factor is not dispositive of their status. *Children’s Habilitation Center v. NLRB*, 887 F.2d 130, 133, 134 (7th Cir. 1989); *NLRB v. KDFW-TV*, 790 F.2d 1273, 1279 (5th Cir. 1986); *NLRB v. Heid*, 615 F.2d 962, 964 (2nd Cir. 1980); *Oil, Chemical and Atomic Workers Intl. Union v. NLRB*, 445 F.2d 237, 241-242 (D.C. Cir. 1971).

While *duty managers* help Assistant Manager Sikora award merit raises to *supervisors*, there is insufficient evidence as to the role that *duty managers* play and what weight is attached to the information they supply. Without more evidence to satisfy the Employer’s burden of showing how recommendations of *duty managers* have led to specific positive or negative results, I must conclude

that their input is not a recommendation of reward, but rather a first-hand progress report. This is not supervisory. *Custom Mattress Mfg.*, 327 NLRB 111 (1998); *Ten Broeck Commons*, 320 NLRB 806, 813 (1996); *Passavant Health Center*, 284 NLRB 887 (1987).

Supervisors' evaluations of probationary employees appear to be little more than progress reports as well. Their significance is diluted further because the *supervisor's* suggestion regarding retention or termination carries no weight unless it reflects the majority opinion. Thus, dissenting voices are destined to make ineffective recommendations. Even if a *supervisor* completes the form and echoes the majority, there is no assurance that his suggestion will be adopted. Curiously, no witness testified as to the fate of the recommendation contained in the one evaluation in evidence. The record also does not establish whether factors beyond the consensus of opinions expressed in the evaluations are considered. Because it is unexplained how frequently *supervisors* choose to express opinions and, when they do, how often their opinions mirror the majority view, the record sheds little light on the efficacy of *supervisors'* recommendations in this area. I find that the Employer has not substantiated its claim that *supervisors* make effective recommendations regarding the tenure of probationary employees. See *Training School at Vineland*, supra, slip op. at 6; *Brown & Root*, 314 NLRB 19, 21 (1994).

In accordance with job descriptions that have never been distributed, *supervisors* and *duty managers* are charged with the responsibilities, *inter alia*, to assure adequate staffing, compel compliance with Employer rules, and submit disciplinary reports and recommendations. The item about recommending discipline conflicts with record evidence regarding the Employer's procedure. The language as to assuring adequate staffing overstates the limited, routine manner by which *supervisors* secure coverage. The reference to enforcing company policy is a vague normative statement that omits how the individuals at issue are to be empowered to effect that goal. The mere articulation of this theoretical authority in unseen job descriptions is an insubstantial basis on which to make a supervisory finding. I am unable to credit the descriptions as conveyances of authority to take actions or make effective recommendations using independent judgment. *Crittenton Hospital*, 328 NLRB 879 (1999); *East Village Nursing & Rehabilitation Center v. NLRB*, 165 F.3d 960 (D.C. 1999).

Although the Employer characterizes *supervisors* as its front line protection against a proliferation of employee grievances, the record fails to demonstrate that it has accorded them discretion to remedy problems. Conclusionary statements without supporting evidence do not establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Assistant Manager Sikora testified that *supervisors* use independent judgment, but the only example adduced was ministerial correction of errors in a published schedule. Lacking evidence that the

disputed individuals may effect solutions by interpreting, applying, or modifying company policy, I find little basis for concluding that they exercise independent judgment in adjusting employee grievances.

The claimed ability of *supervisors* and *duty managers* to make managerial decisions affecting the Employer's credit and revenue does not constitute primary supervisory authority. Their greater compensation relative to Local 283 unit workers is another secondary indicium. This evidence, without more, is not dispositive. The ratio of admitted supervisors to employees should the disputed persons be found non-supervisory is a secondary factor that does not compel a supervisory finding. The routine, round-the-clock nature of the Employer's business persuades me that a stark ratio with relatively few statutory supervisors is not, in fact, unrealistic. *Hospital Shared Services*, 330 NLRB 317, 326 (1999) (high ratio not surprising where employer is manned 24 hours every day and employees are not closely supervised).

For the reasons set forth above, I find that the Employer has not sustained its burden in establishing that *supervisors*, *assistant duty managers*, and *duty managers* are supervisors as defined in the Act.

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

Unit A

All full-time and regular part-time office clerical employees, including auditors, accounts payable employees, payroll clerks, receptionists, and human resources personnel, employed by the Employer at its facilities located at Detroit Metropolitan Airport in Romulus, Michigan; but excluding all other employees, and guards and supervisors as defined in the Act.

Unit B

All full-time and regular part-time technical employees, including revenue control technicians, employed by the Employer at its facilities located at Detroit Metropolitan Airport in Romulus, Michigan; but excluding all other employees, and guards and supervisors as defined in the Act.

Unit C

All full-time and regular part-time duty managers, assistant duty managers, and employees denominated as supervisors, employed by the Employer at its facilities located at Detroit Metropolitan Airport in Romulus, Michigan; but excluding all other employees, and guards and supervisors as defined in the Act.

Those eligible to vote shall vote as to whether or not they wish to be represented for collective bargaining purposes by Federation of Private Employees, a division of National Federation of Public and Private Employees, AFL-CIO, affiliated with District 1 - Marine Engineers Beneficial Association, AFL-CIO.

Dated at Detroit, Michigan, this 31st day of May, 2002.

/s/ William C. Schaub, Jr.

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

177-8520-4700
177-8520-7800
177-8520-2400
177-8520-3900
177-8520-1600

DIRECTION OF ELECTIONS

An election by secret ballot shall be conducted under the direction and supervision of 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 employees 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 service 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 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:

FEDERATION OF PRIVATE EMPLOYEES, A DIVISION OF NATIONAL FEDERATION OF PUBLIC AND PRIVATE EMPLOYEES, AFL-CIO, AFFILIATED WITH DISTRICT 1 – MARINE ENGINEERS BENEFICIAL ASSOCIATION, AFL-CIO

LIST OF VOTERS⁷

In order 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); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that **within 7 days** of the date of this Decision, **2 copies** of an election eligibility list, containing the full names and addresses of all the eligible voters for each unit described above, shall be filed by the Employer with the undersigned who shall make the lists available to all parties to the election. The lists must be of sufficient clarity to be clearly legible. The lists may be submitted by facsimile transmission, in which case only one copy need be submitted. In order to be timely filed, such lists must be received in the **DETROIT REGIONAL OFFICE** on or before **June 7, 2002**. No extension of time to file said lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by **June 14, 2002**.

Section 103.20 of the Board's Rule concerns the posting of election notices. Your attention is directed to the attached copy of that Section.

⁷ If the election involves professional and nonprofessional employees, it is requested that separate lists be submitted for each voting group.