

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

SHERRIFF GOSLIN COMPANY

Employer

and

CASE 7-RC-22355

**LOCAL 547, INTERNATIONAL UNION OF
OPERATING ENGINEERS, AFL-CIO**

Petitioner

APPEARANCES:

**Timothy J. Ryan, Attorney, of Grand Rapids, Michigan, for the Employer
J. Douglas Korney, Attorney, of Bingham Farms, Michigan, for the 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.

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

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.

¹ The Employer and Petitioner filed briefs, which were carefully considered.

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.

5. The Employer is a residential and commercial roofing contractor. The parties stipulated to the appropriateness of the petitioned-for unit of approximately eight full-time and regular part-time office clerical employees at the Employer's main office in Battle Creek, Michigan; but excluding temporary employees, professional employees, office manager, sales people, managerial employees, guards and supervisors as defined in the Act, and all other employees. They disagree as to the eligibility of two department heads, Clarence McComb and Ruth Parrish, whom the Employer contends are supervisors. I am persuaded that the Employer has met its evidentiary burden that department heads are supervisors within the meaning of the Act based on their authority to make effective recommendations regarding wage increases, and the hiring and discipline of unit employees.

The Employer has 24 facilities in Michigan, Ohio, and Indiana, and one main office in Battle Creek, Michigan. Its operations are headed by Chairman Bill Ticknor, President Skip Sherriff, Executive Vice President Steve Ticknor, and Office Manager Tracie McKeiver. All of the Employer's clerical employees work at the main office. The clerical employees are organized into four departments: payroll, cost accounting, accounts payable, and accounts receivable. The payroll, cost accounting, and accounts payable departments each have a department head. Ruth Parrish is the department head for the payroll department. Payroll assistant Connie Watson is the only other employee within the payroll department. Clarence McComb is the department head for the cost accounting department, which also includes cost accounting assistant Cindy Preston and Cindy Lou Hensley. Hensley does not have a formal title. The department head position for the accounts payable department is currently vacant. Rhonda Herpin and Jodi Rose staff the accounts payable department. Sandy Bryant is the only employee in the accounts receivable department.

Hiring: The Employer obtains its new employees through a temporary service, Work Force Strategies, Inc. The office manager² usually decides when a new employee is needed, often with the input of the department head. On occasion, however, the department head will call Work Force directly to obtain a needed employee. Depending on how soon the employee is needed, Work Force will either select the employee itself or send resumes for the office manager to review with the department head. The office

² Tracie McKeiver is the office manager. The parties stipulated to exclude the office manager from the bargaining unit and I find based on the record that the office manager is a statutory supervisor because of her authority to hire, fire, and discipline employees.

manager and department head interview candidates, and the office manager asks the department head which candidate he or she would prefer. The office manager hires based on the department head's preference. After 90 days, the office manager decides, based on the department head's recommendation, whether to hire the temporary as a direct employee.

Reward: Every year management decides on a base rate for wage increases for the clerical staff, including department heads. The department heads are then asked, or can volunteer to the office manager, if there is a basis to deviate from the base rate increase for individual employees in their department. For example, in January 1997 employee Cindy Preston was given a 26% raise, rather than the base rate increase of 4%, based on McComb's recommendation. In 1999, McComb recommended to the office manager that Preston receive a higher raise, and that recommendation was adopted. Conversely, department heads can recommend that an employee receive less than the base rate. In 2000, for instance, the accounts payable department head recommended that an employee not be given a raise, which was adopted by management. The final decision concerning the amount of wage increase for clerical employees rests with the office manager.

Firing and discipline: All department heads have recommended discipline, up to and including discharge, and management has adopted the recommendations. In one instance, McComb recommended to the office manager that Tracey Wixson, an employee, be removed from his department because her computer skills were deficient. As a result, Wixson was removed by the office manager. Sometime in 2000, the former accounts payable department head told the office manager that an employee in her department, Gladys Shaffmaster, was not performing her duties and recommended that she be placed on a 30-day probation. The office manager adopted the recommendation. When Schaffmaster's job performance did not improve, the department head told the office manager that it was necessary to discharge Schaffmaster, and she was discharged. Parrish recommended that employee Amy Maine be discharged because she was not performing the work Parrish asked her to do, and her recommendation was implemented. There is no evidence that the office manager independently investigated any of these situations before acting upon the recommendations of the department heads.

Scheduling: The department heads have authority to direct employees to work overtime. They do not need to obtain permission from management to direct overtime. Department heads also approve or deny vacations.

Terms and conditions: Department heads and clerical employees are paid hourly. Parrish and McComb both earn \$21 an hour. Both have over 30 years of seniority. The former accounts payable department head earned over \$12 an hour, with 11 years of seniority. All other clerical employees earn between \$9 and \$12 an hour. The

department heads and the clerical employees participate in the same profit-sharing plan and health insurance program. Vacation time is determined by seniority.

Analysis

Section 2(11) of the Act defines a “supervisor” as:

...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 responsibility 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.

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).

The record in the instant case supports a finding that department heads are statutory supervisors by virtue of their authority to make effective recommendations regarding the hiring of employees. Department heads interview job candidates and make effective recommendations as to which candidate should be hired. *Lovilia Coal Co.*, 275 NLRB 1358 (1985). Further, after a newly hired employee completes 90 days as a temporary employee, whether he or she is retained or released is based solely on the recommendation of the department head. Indeed, there is no evidence that the department heads’ recommendations concerning hiring are overturned. Such decisive input constitutes effective recommendatory authority sufficient to vest department heads with supervisory status. *Detroit College of Business*, 296 NLRB 318 (1989). Compare *Kendall School of Design*, 279 NLRB 281, 293 (1986) (hiring recommendations adopted only occasionally).

I further find that department heads make effective recommendations concerning wage increases. *El-Tech Research Corp.*, 300 NLRB 522 (1990). In fact, the record shows only one instance of management failing to adopt a department head’s wage adjustment recommendation. The record also supports a finding that department heads can effectively recommend discipline, up to and including discharge. I am not persuaded by the Petitioner’s argument that department heads merely perform a reporting function to a higher decisionmaker. Rather, the record shows several examples of management adopting *pro forma* the department head’s recommendation regarding discipline.

Compare with *Illinois Veterans Home at Anna L.P.*, 323 NLRB 890, 890 (1997) (merely reporting incidents resulting in discipline is not indicative of supervisory status); *Quadrex Environmental Co.*, 308 NLRB 101, 101-02 (1992) (where lead's role in relaying problems is "merely that of a conduit," supervisory status is not shown). In addition, secondary indicia of the department heads' supervisory status includes their authority to direct employees to work overtime and approve vacation requests without input from their superiors. *Sheet Metal Workers Local 141 (Glenway Investments)*, 270 NLRB 1350 (1984).

Based on the foregoing factors, I am persuaded that the department heads are "so allied with management as to establish a differentiation between them and the other employees in the unit." *Detroit College of Business*, supra. The foregoing conclusions render all department heads ineligible as supervisors.

5. Accordingly, I find that the following employees 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 office clerical employees employed by the Employer at its facility located at 10 Avenue C, Battle Creek, Michigan; but excluding temporary employees, professional employees, office manager, department heads, sales people, managerial employees, guards and supervisors as defined in the Act, and all other employees.

Those eligible to vote shall vote as to whether or not they wish to be represented for collective bargaining purposes by Local 547, International Union of Operating Engineers, AFL-CIO.

Dated at Detroit, Michigan, this 6th day of December 2002.

(SEAL)

/s/ Stephen M. Glasser

Stephen M. Glasser, Regional Director
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