

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTEENTH REGION

Carthage, Missouri

ADM MILLING CO.

Employer

and

Case 17-RC-12232

BAKERY, CONFECTIONERY, TOBACCO WORKERS AND
GRAIN MILLERS INTERNATIONAL UNION, AFL-CIO, CLC, Local 51G

Petitioner

DECISION AND DIRECTION OF ELECTION

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

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

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.1/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a voting group appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 2/

All full-time and regular part-time lab technicians employed by the Employer at its flour mill located at 323 Meridian Street, Carthage Missouri, excluding production and maintenance employees, truck drivers and hostlers, office and plant clerical employees, professional employees, janitors, watchmen, guards, and supervisors as defined in the Act and all other employees.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the voting group found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the voting group 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. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

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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.

If a majority of valid ballots are cast for the incumbent union, they will be taken to have indicated the desire to be included in the existing unit of all full and regular part-time production and maintenance employees currently represented by Bakery, Confectionary, Tobacco Workers and Grain Millers International Union, AFL-CIO, CLC, Local 51G. If a majority of the employees in the voting group vote against representation, they will be taken to have indicated the desire to remain unrepresented.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, two copies of an election eligibility list, containing the names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned/Officer-in-Charge of the Subregion who 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, 8600 Farley Street - Suite 100, Overland Park, Kansas 66212-4677 on or before November 12, 2003. No extension of time to file this list 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, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by November 19, 2003.

Dated November 5, 2003

at Overland Park, Kansas

Acting Regional Director, Region 17

1/ The Employer is a Delaware corporation with an office and place of business in Carthage, Missouri where it manufactures sells and distributes flour and flour products. Two employees are employed in the voting group found appropriate. There is no history of collective bargaining among these employees.

2/ The Petitioner currently represents a unit of all full-time and regular part-time production and maintenance employees employed by the Employer at its Carthage, Missouri facility. The production and maintenance unit currently excludes all laboratory technicians. The Petitioner now seeks a self-determination election among all of the full-time and regular part-time laboratory technicians to determine whether they wish to be included in the existing production and maintenance unit. The parties stipulated at the hearing that the lab technicians share a sufficient community of interest with the production and maintenance employees to warrant their inclusion in the existing unit.

The Issue

The only issue in dispute is whether lab technician Rose Campbell is a supervisor within the meaning of the Act. The Petitioner claims that Campbell exercises authority within the meaning of Section 2(11) of the Act, and should, therefore, be excluded from the petitioned-for voting group as a statutory supervisor. The Employer asserts that Campbell is not a supervisor within the meaning of the Act, and is therefore eligible to vote in the self-determination election. Based upon the evidence presented at the hearing, I find that Rose Campbell is not a supervisor within the meaning of the Act, and is, therefore, eligible to vote.

Duties and Responsibilities of Lab Technician Rose Campbell

The Employer employs two employees as lab technicians at its Carthage, Missouri facility, Rose Campbell and Patti Jackson. Campbell has been employed by the Employer for

approximately 18 ½ years, and Jackson, has been employed for approximately 2 ½ years. As lab technicians, Campbell and Jackson sample, test and prepare daily reports and certificates of analysis on the flour products produced at the Employer's facility. The lab technicians are directly supervised by Commercial Manager Steve Peterson. The lab technicians also have reporting responsibility to Dr. Donald Sullins, the Employer's Vice President of Product Development, Quality Assurance and Regulatory Affairs.

In addition to her duties as a lab technician, Rose Campbell performs clerical duties in the Employer's office, including the preparation of production reports, processing of orders, setting-up of trucks, preparation of bills of lading, and preparing the load-out schedule. Campbell splits her time evenly between her duties in the lab and her duties in the office.¹

Campbell also serves on a safety committee at the Employer's facility. The safety committee is comprised of both management representatives and unit employees. Campbell's fellow committee members include Plant Manager Stan Speer, Commercial Manager Steve Peterson, Safety/Sanitation Manager Kirk Pierce, Elevator Operator Danny Chandler, and Maintenance A employee Tony Pugh. All members of the safety committee are charged with the responsibility to report safety violations back to the committee. Campbell allegedly told Jackson that, as a member of the safety committee, she had the authority to discipline employees. There is no evidence, however, that Campbell has reported any such safety violations, or what effect such a report would have.

¹ Neither party has asserted that Campbell should be excluded from the petitioned-for voting group because of her clerical duties. However, the evidence supports a finding that Campbell regularly performs duties similar to those of the unit employees for sufficient periods to demonstrate that she has a substantial interest in the working conditions of the unit.

There is no evidence suggesting that Campbell has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline, or direct employees or adjust their grievances. Campbell testified that several years ago she recommended to her supervisor, Steve Peterson, that a temporary employee not be retained. Peterson testified that he conducted an independent review of the employee, and decided not to retain the employee. In addition, Campbell testified that she recommended that then-temporary employee Patti Jackson be hired. Peterson testified that he independently interviewed Jackson and made the decision to offer her a permanent position. Finally, Campbell testified that Dr. Sullins contacted her by telephone when he was reviewing Patti Jackson, and consulted her about Jackson's performance. There is no evidence however, about what impact, if any, Campbell's statements regarding Jackson's performance had on Jackson's review. The record does indicate, however, that Campbell was not involved in deciding the amount of Jackson's wage increase in connection with her review; that decision was made by Steve Peterson and Dr. Sullins.

Campbell's Supervisory Status

Section 2(11) of the Act states: "the term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment." It is well established that the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status, provided the authority is exercised with independent judgment on behalf of

management and not in a routine manner. See Hydro Conduit Corp., 254 NLRB 433, 437 (1981). The Board has stated that there is a “duty not to construe the statutory language too broadly because the individual found to be a supervisor is denied the employee rights that are protected under the Act.” Azusa Ranch Market, 321 NLRB 811, 812 (1996).

The burden of proving supervisory status lies with the party asserting that such status exists. Kentucky River Community Care, Inc., 532 U.S. 706, 149 L.Ed. 2d 939, 121 S. Ct. 1861 (2001); Michigan Masonic Home, 332 NLRB 1409 (2000). “Whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” Phelps Community Medical Center, 295 NLRB 486, 490 (1989). 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). Lack of evidence is construed against the party asserting supervisory status. Michigan Masonic Home, supra, at 1409.

A review of the evidence shows that the Petitioner has failed to carry its burden of establishing that Campbell is a supervisor within the meaning of the Act. With respect to Campbell’s alleged authority to recommend hire and discharge, the evidence shows that the Employer conducted independent investigations and interviews before making its decisions, and did not rely upon Campbell’s recommendations. See First Western Building Services, Inc., 309 NLRB 591, 600 (1992). While the Employer admittedly consulted with Campbell during its recent review of employee Jackson, there is no evidence that Campbell’s review was relied upon, or affected, Jackson’s job status. Mere consultation does not constitute a

basis to establish that Campbell exercises supervisory authority. Bethany Medical Center 328 NLRB 1094, 1104-1105 (1999).

At the hearing, the Petitioner elicited testimony that Campbell occasionally signs routine reports as lab manager, and has asserted to unit employees that she is Jackson's supervisor. The record also reflects that Jackson has signed similar documents. It is unnecessary to consider these asserted claims of secondary indicia of supervisory authority, where the Petitioner has failed to provide evidence of the primary indicia of supervisory authority, outlined in Section 2(11) of the Act. See Ken-Crest Services, 335 NLRB 777 (2001) and Training School of Vineland, 332 NLRB 1412 (2000). Petitioner has failed to demonstrate that Campbell exercises any of the indicia in Section 2(11), and has therefore failed to carry its burden of demonstrating that Campbell is a supervisor. Accordingly, I find that Campbell is not a supervisor within the meaning of the Act, and shall be included in the petitioned-for voting group.

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