

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

UNITED STATES CAN COMPANY

Employer

and

Case 6-RC-12232

GRAPHIC COMMUNICATIONS INTERNATIONAL
UNION, LOCAL 24, AFL-CIO

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, United States Can Company, operates a factory that applies coatings and imprints on metal can products in New Castle, Pennsylvania, where it employs approximately 41 employees. The Petitioner, Graphic Communications International Union, Local 24, AFL-CIO, 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 all full-time and regular part-time production and maintenance employees employed by the Employer at its New Castle, Pennsylvania, facility; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act. A hearing officer of the Board held a hearing and the Employer filed a timely brief with me.

As evidenced at the hearing and in the brief, the parties disagree on only the following issue: Whether three group leaders are supervisors within the meaning of Section 2(11) of the Act. The Employer contends that the three group leaders are statutory supervisors and therefore should be excluded from the bargaining unit. The Petitioner, contrary to the Employer, contends that the group leaders are not supervisors within the meaning of the Act and thus seeks to include the group leaders in the bargaining unit. The unit sought by the

Petitioner has approximately 34 employees, while the unit the Employer seeks would include about 31 employees. There is no history of collective bargaining in the petitioned-for unit.

I have considered the evidence and the arguments presented by the parties on this issue. As discussed below, I have concluded that the Employer has met its burden of establishing that the three group leaders are statutory supervisors.¹ Accordingly, I have directed an election in a unit that consists of approximately 31 employees.²

To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

The Employer operates a factory located in New Castle, Pennsylvania, where it coats and prints images on large metal sheets. These metal sheets are then shipped to other facilities of the Employer where the sheets are formed into cans and containers.³ At the New Castle facility, the Employer employs approximately 41 employees.

¹ At the hearing, an issue was also raised regarding employee Bill Porter, who fills in on occasion as group leader when one of the three regular group leaders is on vacation. However, the Employer takes the position in its brief, and the record reflects, that Porter does not act as a group leader on a regular basis, and that even when he is an acting group leader, he is not vested with the indicia of authority of the regular group leaders. Accordingly, I find that Porter is not a supervisor within the meaning of the Act, and thus he is eligible to vote in the election directed herein.

² At the hearing, the parties stipulated, and I find, that senior quality control technician Jodi Hartle and quality control technician Jason Nuzzo share a community of interest with the other employees in the bargaining unit and, accordingly, are included in the bargaining unit and are eligible to vote in the election directed herein. The parties also stipulated, and I find, that Laverne Hartle, shipping coordinator/human resources assistant, and Monica Bagnell, accountant, are office clerical employees and thus are excluded from the unit found appropriate herein.

³ The Employer's headquarters is located in Lombard, Illinois. The Employer also operates several other manufacturing facilities, including one in Elgin, Illinois; one in Horsham, Pennsylvania; one in Weirton, West Virginia; two in Maryland; and one in Ohio. The only facility at issue herein is the Employer's facility in New Castle, Pennsylvania.

The overall operations of the Employer at the New Castle facility are the responsibility of its plant manager, Jim Dupree. Reporting directly to the plant manager are operations manager Mark Hritz, pre-press manager Steve ReSavage and production-planning supervisor Cindy Bucey. The three group leaders, Gregg Burkes on first shift, Gary Flamino on second shift and Randy Baker on third shift, report to Hritz. Two office clericals, Monica Bagnell in cost accounting and Laverne Hartle, shipping coordinator/human resources assistant, report to Bucey. In addition, Jack Wertman, the Employer's regional managing director of human resources, has his office at the New Castle facility, although he is responsible for human resources at several of the Employer's facilities.

The New Castle facility has a 24-hour per day operation, with first shift from 7:00 a.m. until 3:00 p.m., second shift from 3 p.m. until 11:00 p.m., and third shift from 11:00 p.m. until 7:00 a.m.. There are approximately 15 employees working on the first shift, about 11 employees on the second shift, and about nine employees on the third shift.⁴ The Employer operates three press lines.

All employees receive the same benefits, including short-term disability insurance, long-term disability insurance, health insurance, life insurance, vacations, holidays and the right to take part in a 401(k) plan. There is an employee handbook that applies to all employees and a progressive discipline system, which ranges from verbal warning to written warning, suspensions and termination. The Employer has several salary ranges for employees. Entry-level employees are paid between \$9.50 and \$13.00 per hour. The salary ranges increase, with the highest range applying to the group leaders, from \$17.00 to \$24.00 per hour.⁵ The highest range below group leader is from \$16.00 to \$21.00 per hour. Senior pressmen and electronics technicians are in this salary range.

⁴ The Employer utilizes a temporary agency to fill in openings due to vacations, disabilities, and so forth.

⁵ No employee earns the highest hourly rate. The highest paid employee in New Castle is group leader Gregg Burkes, who earns \$21.75 per hour.

II. SUPERVISORY STATUS OF THE GROUP LEADERS

As described above, each shift has one group leader who has overall responsibility for the production on that shift. During the day shift, there are management personnel present at the facility, but after the first few hours of the second shift, and during the entire third shift, the group leader is the only person in authority present. The job duties of the group leaders are similar on all three of the shifts. The group leaders usually work overtime each day so that they can confer with the oncoming group leader to discuss what had occurred during the shift. They are not required to ask or receive authorization to work overtime.

The group leaders share an office that is above the production floor. The office has windows through which they can observe the work being performed below. The group leaders share a computer in this office, on which they send and receive emails and memoranda to and from management and headquarters, enter data regarding production levels each day, and enter other data relating to the employees on their shift and production. Each day, the group leaders enter data onto an Excel program that generates daily production reports. They also review, initial and approve the time records kept by each employee.

The group leaders make decisions regarding the need to hire temporary employees, who are sent by a temporary employment agency. They may have the office clerical employees place the Employer's own advertisements in newspapers as well as contacting the agency. When a candidate for temporary employment is sent, or responds to a newspaper advertisement, the group leader alone may interview the person and decide whether or not the person should be hired.⁶ Likewise, if a temporary employee from the agency is not working satisfactorily, the group leader has the independent authority to call the agency and inform the agency that the person should no longer be sent to work at the Employer's facility.

⁶ When the group leader decides that a person interviewed should be hired, he contacts the temporary agency, which then hires the individual for referral to the Employer.

The group leaders spend the remainder of their time on the production floor, advising employees regarding the work being performed, checking on the quality of the production, assigning tasks and occasionally assisting with the production work. The group leader can decide to make some adjustments to the production schedule, but cannot independently stop one order and switch to another, inasmuch as this type of decision involves major changes in the setup of the production. The group leaders wear navy blue polo shirts with black slacks, while the production and maintenance employees wear striped shirts with their names on them and navy blue work pants. The production and maintenance employees cannot decide if or when they will work overtime; it is assigned by the group leaders.

Analysis and Resolution of the Supervisory Issue

Before examining the specific duties and authorities of the three group leaders, I will review the requirements for establishing supervisory status. Section 2(11) of the Act defines the term 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 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 the definition of supervisor in Section 2(11) of the Act, 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. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. Harborside Healthcare, Inc., 330 NLRB 1334 (2000).

The burden of proving supervisory status lies with the party asserting that such status exists. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001); Michigan Masonic Home, 332 NLRB 1409 (2000). 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 at 1409. 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).

Possession of authority consistent with any of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g. Fred Meyer Alaska, Inc., 334 NLRB 646, 649 (2001); Pepsi-Cola Co., 327 NLRB 1062, 1064 (1999). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See Michigan Masonic Home, supra at 1410; Chevron U.S.A., 309 NLRB 59, 61 (1992). 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 (1997); Chicago Metallic Corp., 273 NLRB 1677 (1985).

As discussed below, the group leaders at issue herein possess several of the indicia of supervisory authority, and, consequently, I find that they are supervisors within the meaning of the Act.

Hiring and Discharge

While the group leaders are not directly involved in hiring permanent employees, they make independent decisions regarding the hiring of temporary employees who are employed by the temporary employment agency. However, it is well established that an individual must possess supervisory authority over employees of the Employer at issue, not only over employees of another employer, in order to qualify as a supervisor within the meaning of the Act. Crenulated Company, Ltd., 308 NLRB 1216 (1992); Fleet Transport Co., 196 NLRB 436, 438 fn. 6 (1972). In this situation,

the group leaders only directly hire employees employed by the temporary agency. Thus, they cannot derive supervisory status from this authority.

However, the group leaders have effectively recommended that temporary employees sent from the agency be hired by the Employer as permanent employees. For example, about a year ago, group leader Gregg Burkes recommended that temporary employee Dean Epperson be offered a permanent position. Based solely on Burkes' recommendation, Epperson was hired by the Employer as a permanent employee. Other permanent employees who were hired after working as a temporary employee from the agency, based solely on the recommendation of the group leaders, are Josh Copper, Bill Sphar and Mason Thomas. Thus, I find that group leaders have the authority to effectively recommend hiring.

With regard to discharge, the group leaders do not have the independent authority to discharge any employees. Only the plant manager has the power to make the decision to discharge an employee. Thus, the authority to discharge employees is not one that is vested in the group leaders.⁷

Transfer

The group leaders cannot independently decide to transfer an employee from one shift to another. However, they have effectively recommended that such a transfer take place. For example, both Randy Baker and Gregg Burkes recommended to management that employee Jeff Edgington be transferred from second shift to first shift during the Spring of 2003. They made this recommendation because they observed his skills as a senior pressman and believed that he could be better utilized on the first shift. Management accepted this recommendation without further investigation of Edgington's skills and Edgington is now working on the first shift. Thus, I find that the

⁷ The group leaders do have the authority to effectively recommend that an employee from the temporary agency not come back to work at the Employer's facility. However, as described above, these temporaries are not employees of the Employer; therefore, this authority does not indicate supervisory status within the meaning of the Act. Crenulated Company, Ltd., supra; Fleet Transport Co., supra.

group leaders have the authority, in the interest of the Employer, to effectively recommend the transfer of employees.

Discipline and Suspend

The group leaders have been given the authority to issue discipline, up to and including suspensions, to employees on their shifts. They can issue such discipline without first conferring with or receiving approval from anyone else in management. While both plant manager Jim Dupree and group leader Burkes described the amicable and efficient work environment that has resulted in the need for very few disciplinary warnings, there are instances where group leaders have issued both verbal and written warnings to employees. These disciplinary actions are related primarily to tardiness and/or attendance problems, and, under the established progressive discipline policy of the Employer, can result in termination if continued. Although disciplines issued for attendance and tardiness are primarily ministerial in nature, the record indicates that the group leaders have the authority to issue verbal and written warnings to employees for any disciplinary problem, not only those related to attendance or tardiness, although to date, the group leaders have not had any reason to issue discipline to any employee for any other reason.

While the occasion has not yet presented itself, the record indicates that group leaders have the authority to suspend employees as part of the disciplinary policy. As stated previously, the actual possession of authority consistent with any one of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g. Fred Meyer Alaska, supra; Pepsi-Cola Co., supra. Therefore, I find that the group leaders have the independent authority to issue discipline up to and including suspension to employees as part of the Employer's disciplinary policy.

Promote

While the group leaders cannot independently promote an employee, they have the authority to effectively recommend such action. Gregg Burkes recommended that Dean

Epperson be promoted to senior pressman, and his recommendation was accepted by the plant manager without further investigation. Burkes' recommendation to promote Josh Copper from coater to pressman was also accepted by Dupree without further investigation. Likewise, the group leaders together recommended that employee Burt Effinite be demoted because of unacceptable production. This recommendation was also accepted without further investigation. Consequently, I find that the group leaders have the authority to effectively recommend promotions and demotions.

Assign and Direct Work

The group leaders do not generate the schedule for the assignment of work. This is done by the production supervisor each week, and does not vary greatly, except for vacations or long-term illnesses. However, the group leaders do have the authority to re-assign employees as needed during the shift. If an employee calls off, the group leader can move employees from one assignment to another, in the interests of completing the production work as efficiently as possible. The group leaders can independently decide if it is necessary to assign overtime.

The group leaders also have the independent authority to direct the work of the employees on the shift. They can order an employee to redo work that does not meet quality standards, and can instruct employees as to what tasks to perform as well as when and how to perform them. If a problem arises during a shift where there are no other management personnel present, the group leader can decide to direct the employees to stop a certain task and work on a different one. They also have the authority to permit an employee to leave during a shift for personal errands. Thus, I find that group leaders possess the authority to assign and responsibly direct work.

Reward

The group leaders have the responsibility of evaluating the employees who work on their shift. While these evaluations do not directly result in raises, there have been many instances where a group leader has recommended a raise for an employee on their shift. The

group leaders cannot independently authorize a raise for an employee, but they have recommended such rewards. For example, about six months ago, Gregg Burkes recommended a raise for Jeff Edgington, and this recommendation was accepted by management. Likewise, in November 2002, Gary Flamino recommended a raise, which was given, to Josh Copper and Mason Thomas. Thus, I find that the group leaders have the authority to reward employees by effectively recommend raises for them.

Adjustment of Grievances

The group leaders are vested with the authority to resolve informal grievances at the first step of the Employer's Issue Resolution Procedure. This procedure is outlined in the employee handbook, which is issued to every employee. In the Issue Resolution Procedure, the employee discusses the problem informally with the group leader, and if the issue is not resolved by them, the employee may file a written grievance which is then reviewed by the next level of management or by the human resources manager. The record indicates that this procedure has never actually been used by any employees at the Employer's New Castle facility.

The authority given to the group leaders herein to adjust grievances is very similar to the issue in Ken-Crest Services, 335 NLRB No. 63, slip op. at 2 – 4 (2001). In that case, as in the instant one, the alleged supervisor only hears minor complaints that can be put in written form to be heard by higher management if not resolved. In that case, the Board found that this adjustment of minor grievances was insufficient to prove supervisory status. *Id.* In the instant case, there were no specific examples presented of the adjustment of any grievances by the group leaders, even at this preliminary level. Consequently, I find that there is insufficient evidence that the group leaders herein have the authority to adjust grievances.

Layoff and Recall

The Employer has not had any layoffs or recalls in recent years. Thus, these indicia of supervisory authority are not applicable to the group leaders herein.

Based on the record as a whole, it is clear that the group leaders do not perform the work performed by the production and maintenance employees.⁸ Rather, the group leaders are responsible for directing and assigning work, issuing discipline, effectively recommending rewards, hiring, promotions, demotions and transfers of the production employees.⁹ The group leaders spend their time partly in an office overlooking the production floor, or moving about the production floor at their own discretion to monitor the work. They can choose where they need to be as well as how long they need to work overtime in order to complete the tasks expected of them. In addition, the first and second shift group leaders attend regularly held weekly meetings with the plant manager, operations manager, pre-press manager, production-planning supervisor, cost accounting employee and shipping coordinator.

Based on the foregoing and the record as a whole, and having carefully considered the arguments of the parties both at the hearing and in the Employer's brief, I find that the Employer has met its burden of proving that the group leaders are statutory supervisors.¹⁰ I find that they exercise independent judgment in making decisions regarding the assignment and direction of

⁸ At the hearing, the Petitioner asserted that the group leaders perform the same work as the production workers. I find that this assertion is not supported by the record. On sporadic occasions, a group leader may assist with production work, often while the Employer is waiting for a temporary employee to arrive from the employment agency. However, this is not done regularly or for extended periods of time. The Petitioner also questioned Gregg Burkes regarding his assignment on a press for several weeks in 2003. Burkes explained that the Employer had sent him to visit a factory in England where a new press was being built for the Employer. When the press arrived, there were many problems with its initial operations. Consequently, Burkes worked on the press for several weeks as a pressman in order to get the press running properly. Once Burkes felt confident that the other pressmen could handle the new press, he ceased operating it. This is the only instance where a group leader performed production work for an extended period, and it is not anticipated that it will occur again in the foreseeable future. Thus, I find that this example of the period when Burkes operated the new press was a unique event, and is not typical of the work performed by the group leaders.

⁹ There have been no instances where a recommendation by a group leader has not been accepted regarding promotion, hiring, rewards, and so forth.

¹⁰ At the hearing, the Petitioner entered the collective-bargaining agreement of another facility of the Employer, located in Weirton West Virginia, in which the group leaders are included in the bargaining unit. However, that facility has approximately four times as many employees as the New Castle, Pennsylvania facility. Moreover, at the Weirton, West Virginia, facility, there are supervisors on each shift in addition to the group leaders. Thus, the management at that facility is completely different from the facility in New Castle. Accordingly, I find the information regarding the Employer's facility in Weirton, West Virginia to be irrelevant to the determination in this matter.

work, including the assignment of overtime, and that they have the authority to effectively recommend hiring, transfer, rewards, promotions, demotions and discipline. They spend virtually all of their time either in their office performing tasks on the computer, or monitoring the work of the employees on their shift on the production floor. Accordingly, I conclude that the group leaders are supervisors within the meaning of Section 2(11) of the Act and I shall exclude them from the unit found appropriate herein.

III. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude 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 matter.
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 purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed by the Employer at its New Castle, Pennsylvania, facility; excluding all group leaders, office clerical employees and guards, professional employees and other supervisors as defined in the Act.

IV. 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 they wish to be represented for purposes of collective bargaining by Graphic Communications International Union, Local 24, AFL-CIO. 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. Employees engaged in an 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. 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 seven (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, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **July 17, 2003**. 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 412/395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two (2)** 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 of Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day 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 five (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 precludes employers from filing objections based on non-posting of the election notice.

V. 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 (EDT), on July 24, 2003. The request may **not** be filed by facsimile.

Dated: July 10, 2003

/s/ Gerald Kobell

Gerald Kobell, Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
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