

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

GERDAU AMERISTEEL U.S., INC.¹

Employer

and

Case No. 11-RC-6695

UNITED STEEL, PAPER AND FORESTRY, RUBBER, MANUFACTURING,
ENERGY, ALLIED INDUSTRIAL AND SERVICE WORKERS INTERNATIONAL
UNION, AFL-CIO, CLC²

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Employer, Gerdau Ameristeel U.S., Inc. (hereinafter "the Employer"), is a Florida corporation with a facility located in Charlotte, North Carolina, where it is engaged in the manufacture of steel products. The Petitioner, United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC (hereinafter "the Petitioner"), seeks to represent a bargaining unit comprised of all production, maintenance, and hourly employees including truck drivers at the Employer's Charlotte, NC facility, but excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

The Employer employs a total of approximately 53 unit and non-unit positions. The parties agreed that the following classifications, along with the numbers of employees in each classification, are appropriately included in the unit: five benders, one maintenance mechanic, one master maintenance mechanic, two stock handlers, two rebar benders, four shipper checker-

¹ The name of the Employer was amended at the hearing.

² The name of the Petitioner was amended at the hearing.

loaders, two shear shakerout bundlers, five shearline operators, two welding machine operators, and three tractor/trailer drivers for a total of 27 employees. The parties agreed to exclude the following classifications as supervisors: shop superintendent, second shift supervisor, operations manager, region manager, engineering manager, location sales manager, regional human resources manager, and safety manager.

A hearing officer of the Board held a hearing, and both parties filed post-hearing briefs, which have been carefully considered. As evidenced at the hearing and in the briefs of the parties, the sole issue for determination is whether the two shift coordinators, Gary Craven and Stephen Ashley, are supervisors as defined by Section 2(11) of the Act. The Employer contends that the shift coordinators are supervisors under the Act, and that they should be excluded from the unit. The Petitioner contends otherwise.

I have considered the evidence and the arguments presented by the parties on the issues. As discussed below, I have concluded that the shift coordinators are supervisors as defined by Section 2(11) of the Act. Accordingly, I shall direct an election in the unit described below. To provide a context for my discussion of the issues, I will provide a brief overview of the Employer's operations. I will then provide a detailed discussion of the shift coordinator's duties, after which I will provide my analysis and conclusions regarding this issue.

I. The Employer's operations

A. Overview

The Employer sells custom fabricated reinforcing steel to 75-80 different job sites involved in concrete construction. The Employer receives the steel in a standard size from its mill group and stores it, cuts and bends the steel based on customer specifications, and then loads the steel on trucks to deliver to its customers. During its production process, the Employer

customizes the steel by varying its length, diameter, and by making bends in the steel, where appropriate. The production process is managed through a three-day cycle schedule prepared by a customer service representative which encompasses the time involved to prepare an order up through the delivery of that order to a job site. Interspersed within the three day cycle are immediate work orders or “run-ins” that are normally generated by the Employer’s sales group receiving calls from customers in need of the Employer’s products. The Employer’s production operations are essentially divided into the following functions: 1) overhead crane and/or forklift along with conveyors to handle the initial material, 2) shearing function which takes the stock steel and cuts it to a custom length, 3) bending function which will bend the steel into a configuration which is based on the customer needs, 4) loading the final product with overhead cranes and material handling aides onto trailers.

The Employer has two shifts. The hours of the first shift are from 7:00 a.m. to 3:00 p.m., and the hours of the second shift are from 3:00 p.m. to 11:00 p.m. Given the small size of the operations, the employees are cross-trained as much as possible. With the exception of the shift coordinator duties which are fully described below, I will briefly describe the main duties of the other unit production positions. Thus, shearline shakeout bundlers receive steel bars in 60 foot lengths, separate a given amount of bars under the direction of the shear operator, and then put the bars into a roller conveyor. A shearline operator cuts bars to the proper length based on customer requirements, and then places those bars in a cube pocket bin. Benders take the cut bars that need to be bent, operate machinery to bend the bars pursuant to customer specifications, and place them on racks. Approximately 45-48% of the Employer’s material is bent; the remainder is processed as straight material. Rebar benders handle the most intricate and complicated bends. Welding machine operators take a cut bar, run it into a circle, and butt-

weld the ends of the circle together. Shipper checker-loaders move material. They place material to be fabricated, and take it away when it is done, as well as move material when materials get backed up or machines are down. Their primary function is to properly load the product on a flatbed trailer. Stock handlers unload rail cars or trailers as they come in into set, predetermined bins in the Employer's stockyard, and keep shearline personnel supplied with material to shear. Maintenance mechanics are responsible for maintaining the equipment to make sure that it is in proper and safe condition, by doing preset maintenance, or if something breaks down, to fix that equipment. Tractor/trailer drivers deliver the Employer's products to customers.

The current managerial structure at the Employer's Charlotte facility is as follows. The Atlantic region manager is David Rosene, who is responsible for profit and loss at this location as well as 3 other locations. The location manager is responsible for production, sales, and engineering, although those specific responsibilities are not further detailed in the record. On the production side, Gary Craven is the shift coordinator on the first shift, and Stephen Ashley is the shift coordinator on the second shift. There has not been a second shift supervisor at this facility since January, 2008,³ and there has not been a shop superintendent since about late March 2008.⁴ Since around late March, 2008, a superintendent from another location has been filling in with respect to the duties of the superintendent and second shift supervisor, but the record does not disclose the extent of those duties. The duties of the shift coordinators are the same on both shifts, and are the same regardless of whether there is a shift supervisor present.

A shift coordinator ordinarily reports to a shift supervisor if there is one; otherwise, a shift coordinator reports to the shop superintendent. The record does not disclose the duties of a

³ Tom Lorello held that position. There has not been a shift supervisor on the first shift for 2 years.

⁴ The Employer is currently looking to fill both of those positions.

shift supervisor. The record reflects that the shop superintendent is responsible for the physical plant, safety of the employees, and the productivity of the plant, but there is limited record evidence regarding the specifics of those duties, except that generally the shop superintendent splits his time among the floor, the building grounds, and various offices, and normally works from 6:00 a.m. to 6:00 p.m. each day. Generally, whether a facility has a shift supervisor, or shift coordinator or both, depends on the size of the facility, the volume of products, the number of employees, and the nature of the Employer's product.

B. Duties of shift coordinators

As noted above, the status of the two shift coordinators is in dispute. Gary Craven is the shift coordinator on first shift; Stephen Ashley is the shift coordinator on second shift. There are 16 unit positions on first shift; of those 11 employees—specifically, benders, rebar bender, shipper checker-loaders, shearline operators, stock handler, welding machine operator, and shear shakerout bundler—report to Craven. The remaining 5 employees on first shift—3 tractor/trailer drivers and the two mechanics—do not report to Craven.⁵ Similarly, the same classifications and the same number of employees report to Ashley on the second shift. The only differences between the shifts in terms of employee composition is that there are 3 benders on first shift, rather than 2 benders on second shift, and there are 2 shearline operators on first shift, compared to the 3 shearline operators on second shift.

At the beginning of a shift, the shift coordinator, and/or shift supervisor if there is one, will review on a table or a central board out in the shop what tasks have been completed, and what work is left to do based on notes written from the prior shift. In addition to written communication, there may also be verbal communications in person or by voice mail regarding assignments and other matters between the coordinators and/or shift supervisor. Unlike other

⁵ The record does not disclose to whom they report.

unit employees, the shift coordinator arrives 15 to 20 minutes before the start of the shift, and stays 15-20 minutes after the shift. In addition to planning, setting up, and coordinating the activities of the groups of employees referenced above, a shift coordinator also performs shipper checker-loader duties at the same time. In those capacities, a shift coordinator is not located at a fixed work station but moves throughout the facility with a remote control radio.

In coordinating and expediting the work flow, a shift coordinator is responsible for determining the priority of tasks, what sequence to do them in, and getting the work completed for on-time deliveries. By 4:00 p.m. each day, the shift coordinator⁶ meets, formally or informally, with the shop superintendent to discuss production issues and deliveries. This meeting can involve other persons as well such as customer service representatives. The purpose of the meeting is to determine before the end of the business day what the status of deliveries is, and whether customers need to be contacted if their orders are not ready.

In order to accommodate changing demands or other exigencies with respect to operational needs, a shift coordinator has to frequently change priorities and shift the assignments of employees. As the Employer's customers are in the construction business, their changing needs result in high-priority work orders known as run-ins, which occur throughout the day, and must be taken care of immediately. Although it appears that the superintendent after consultation with the shift coordinator makes the ultimate decision as to the completion time of these orders, the shift coordinator is responsible for redirecting personnel and resources to ensure that the completion time is met.

In addition to run-in orders, numerous other circumstances can cause a shift coordinator to reassign personnel in directing the work flow. First, machine breakdowns can occur. In that situation, a shift coordinator decides whether to move that employee to another piece of

⁶ It is not clear which shift coordinator is present at this meeting, or whether both shift coordinators attend.

equipment or another operation. Second, if an employee is sick or on vacation, a shift coordinator chooses how an absent employee's job vacancy will be filled. Third, a shift coordinator may have to shift priorities and assignments based on changes which impact truck delivery schedules. Generally a truck delivery or hauling schedule is prepared by the shop clerk and contains the time of delivery, the name of the driver, what trailer is going to be used, etc. Work priorities are normally based on the delivery schedules of trucks. However, a delivery schedule is subject to change based on deliveries being rescheduled for a jobsite, or a driver failing to show up to pick up a particular load. In that regard, shift coordinators generally have the discretion to alter truck delivery schedules without consulting with anyone. For example, a shift coordinator may decide to send a customer a short load, or to rearrange delivery, if an order is incomplete. Fourth, a weather emergency is another circumstance which could result in a change in the production schedule in that a shift coordinator can decide whether employees may be sent home. Finally, a shift coordinator in the course of his shipper checker-loader duties, is usually the last person to see a product before it goes on the trailer. A shift coordinator also has opportunities to inspect products during the production process. If in the course of those duties, the shift coordinator sees a product that is not correct, the shift coordinator has the authority to require that the work be redone.

In any of those circumstances outlined above, a shift coordinator generally has full discretion in reallocating duties and assignments, without getting approval from anyone else. There are no specific guidelines as to which employee will be selected by the shift coordinator for a reassignment. In making assignments, a shift coordinator considers such factors as safety, the skills of the employee, customer needs, and a need to reduce inefficiencies in the work place. With respect to the latter factor, a shift coordinator is required to determine the best cutting and

bending sequences for optimum use of materials and personnel, while minimizing scrap and production delays. In some circumstances, a shift coordinator may move an employee to a different task or a different job classification. If an employee stays in a new job classification with a higher rate of pay, for two or more hours, he or she will be paid the higher level of pay. A reassignment may last for a portion of a shift, an entire shift, or longer. There is no time limitation on how long the reassignment can last so long as it is not permanent.

In that regard, the Employer provided several recent examples in which a shift coordinator made a reassignment to an employee which resulted in the employee being placed in a new classification and receiving a higher level of pay. For example on 1/21/08 and again on 1/25/08, an employee was moved to the position of a shearline operator job instead of his usual shear shakerout bundler job, with an increase in wages from \$13.55 an hour to \$16.19 an hour. As another example, on 2/6/08, an employee was assigned to operate a crane for 8 hours at the rate of \$17.67, rather than his usual rate of \$16.19 as a welder operator. In another situation, an employee who normally performed shipper checker-loader duties at an hourly rate of \$17.67, was asked to performance maintenance on an overtime basis on one date at the hourly rate of \$18.76. That same week, the same employee performed maintenance duties for one additional full day, including overtime.

A shift coordinator also has the authority to determine whether there will be voluntary overtime. In that regard, there are no guidelines that dictate the scheduling of overtime, nor are there any guidelines concerning the selection process other than requiring that the employee have the requisite skills and qualifications to perform the job. Overtime is scheduled approximately once a week either in regard to a maintenance issue, or if overtime is needed to get the loads completed depending on customer needs, or due to trucks arriving shortly before the end of shift.

In the latter circumstance, if a truck arrives late, a shift coordinator would make the decision as to whether the truck would be unloaded that night or whether it could wait until the morning, depending on how soon those materials are needed. As another example, if a machine breaks down on second shift,⁷ a shift coordinator has the discretion to decide whether to call in a maintenance employee to perform that work, request another employee to work overtime and fix the machine at a higher rate of pay, or defer the repair until the next work day. Normally, the shift coordinator solicits volunteers for the overtime.⁸ The record reflects that employees may accept or reject the overtime; normally, that is not an issue because there are plenty of volunteers. In overtime situations, the shift coordinator is required to stay through the completion of the overtime. It is unclear whether the Employer requires mandatory overtime in certain circumstances.

As part of their duties, shift coordinators also prepare operations reports at the end of every shift, and sign them as “supervisors.” Operations reports show the weight of product that is prepared, by operator, as well as documenting any reason for delay during the operation such as meetings or some other reason for delay. Shift coordinators also keep time records on the daily operator’s logs.

If a shift coordinator is absent because of illness, vacation, or for some other reason, the Employer will either select another employee to fulfill those duties, have the other coordinator overlap both shifts, have the shop superintendent spend longer hours on second shift, or do without a shift coordinator, if necessary, for a short period of time. The record does not disclose how often a shift coordinator is absent.

⁷ Any employee has the authority to shut down a machine if it is unsafe.

⁸ The record does not address whether a mechanic has the option to not report if he is called in to fix broken or malfunctioning equipment.

During the first shift, the shift coordinator is the only member of management on the floor for about 60% of the time. The shop superintendent is present at times on the floor during his workday which extends from about 6:00 a.m. to 6:00 p.m. Presently, during the second shift, the shift coordinator is the only management person on the floor from about 6:30 p.m. to 11:00 p.m. The record does not disclose how much time the second shift supervisor spent on the floor during a typical workday when he was employed. As previously noted, since around late March 2008, an interim supervisor has been splitting the duties of a second shift supervisor and superintendent. It appears that the interim supervisor has primarily been stationed on the second shift, but the record does not disclose the nature of that supervisor's duties, or how his time has been apportioned between the second shift supervisor position and the shop superintendent position.

The record demonstrates that shift coordinators, in many respects, make decisions without resorting to a higher authority. If there is no supervisor present, a shift coordinator might have to contact the shop superintendent in certain circumstances when the shop superintendent is not on the premises. In most cases, a shift coordinator would contact the shop superintendent by cell phone, and if the shop superintendent was not available, a shift coordinator would contact the next available manager, up to and including the Atlantic region manager. The record establishes that shift coordinators are generally expected to handle the day-to-day business operations, and that calls to a superintendent while off-duty would be in the nature of reporting an accident, or reporting a major rules violation such as bringing a gun on site.

II. Legal Standard and analysis

A. Legal Standard

The Employer asserts that the two shifts coordinators are supervisors as defined by Section 2(11) of the Act, and should therefore be excluded from the petitioned-for unit. The Petitioner claims to the contrary. Section 2(11) of the Act. Provides as follows:

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 of a merely routine or clerical nature, but requires the use of independent judgment.

This provision is to be read in the disjunctive and any of the enumerated criteria is sufficient to confer supervisory status. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 713 (2001). The exercise of one of the specified criteria or the authority to effectively recommend such action must involve the use of independent judgment. Harborside Healthcare, Inc., 330 NLRB 1334, 1334 (2000). To exercise independent judgment, “. . . an individual must at minimum act, or effectively recommend action, free of the control of others and form an opinion or evaluation by discerning and comparing data.” Oakwood Healthcare, Inc., 348 NLRB No. 37, slip op. at 8 (2006). Judgment is not independent if it is dictated by detailed instructions, whether they be written in company policy, verbal instructions from a higher authority or provisions in a collective bargaining agreement. Id. In short, the degree of discretion must rise above that which is routine or clerical in nature. Id.

The burden of providing supervisor status lies with the party asserting that such status exists, and the lack of evidence is construed against the party asserting supervisory status.

Kentucky River, 532 U.S. at 710-712; Dean & Deluca New York, Inc., 338 NLRB 1046, 1047 (2003). The party seeking to prove supervisor status must establish it by a preponderance of the evidence. Dean & Deluca, 338 NLRB at 1047. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193, 193 (1991).

My determinations herein are guided by the principles set forth in the Oakwood Healthcare, and two companion cases, Croft Metals, Inc., 348 NLRB No. 38 (2006), and Golden Crest Healthcare Center, 348 NLRB No. 39 (2006), all of which issued on the same date. In those decisions, the Board refined its analysis for assessing supervisory status in light of the Supreme Court's decision in Kentucky River. In Oakwood Healthcare, the Board adopted definitions of the terms "assign," "responsibly to direct," and "independent judgment." As shown below, I have concluded that the shift coordinators in the present case have the authority to assign and responsibly direct employees, and thus are supervisors under the Act. Accordingly, they shall be excluded from the unit herein.

B. Assignment of Work

In Oakwood Healthcare, Inc., the Board defined assignment of work as "the act of designating an employee to a place (such as a location, department, or wing), appointing an employee to a time (such as a shift or overtime period), or giving significant overall duties, i.e. task, to an employee." Id. slip op. at 4. The Board concluded that "assign" in the 2(11) sense referred to the designation of "significant overall duties to an employee" rather than an "ad hoc instruction that the employee perform a discrete task." Id.

As shown above, changing working conditions require a shift coordinator to frequently reassess priorities necessitating the reassignment of employees to new tasks which sometimes

includes a new job classification. These reassignments can result from a number of factors including daily high priority run-in orders, machinery breakdowns, delivery delays, employee absences, and other factors. In making assignments, a shift coordinator is using discretion in the first instance to determine the sequence of work, as well as discretion in determining who should perform that work based on his consideration of employee skills, customer needs, safety issues, and a desire to reduce workplace inefficiencies. Reassignments can last for a short time, an entire shift, or longer. It is significant that if an employee remains in a new classification for 2 or more hours which has a higher pay level, the employee will receive the higher pay.

The record shows that in making these reassignments, the shift coordinator is assigning and reassigning employees based on changing needs, without generally consulting anyone, and in the absence of any detailed guidelines or instructions. For run-in orders it appears that although the Shop Superintendent determines the completion date after consulting with a shift coordinator, a shift coordinator has full discretion to allocate personnel and resources as he sees fit, in order to meet that completion date. The evidence demonstrates that the nature of a shift coordinator's assignments may have a substantial impact on the employee's terms and conditions of employment, including the payment of higher compensation in some circumstances. For example, the record showed a reassignment of one employee from his regular classification of a welder operator to a temporary assignment of operating a crane for one day. There are obviously significant differences between crane operation and welding including the skills required, and the safety considerations involved. In sum, the record shows that the shift coordinators assign significant overall duties to employees, and in doing so, their discretion in making those

assignments is not routine or clerical. In those circumstances, I conclude that the shift coordinators assign work using independent judgment within the meaning of Section 2(11).⁹

C. Responsibly to Direct

As stated in Oakwood, the term “responsibly to direct” is “not limited to department heads.” Id. slip op. at 6. Rather, “[i]f a person on the shop floor has ‘men under him,’ and if that person decides ‘what job shall be undertaken next or who shall do it,’ that person is a supervisor provided that the direction is both ‘responsible’ . . . and carried out with independent judgment.” Id. The Board further held that “for direction to be ‘responsible,’ the person performing the oversight must be accountable for the performance of the task by the other, such that some adverse consequences may befall the one providing the oversight if the tasks performed are not performed properly.” Id., slip op. at 7.

As shown, based on operational needs, shift coordinators clearly determine what jobs will be undertaken next, and by whom, in order to ensure that jobs are completed in a timely fashion. For the same reasons discussed above in connection with their authority to assign work, shift coordinators’ directions to employees involve the matching of tasks with their skills and abilities, and also include directives to take shortcuts to improve efficiencies during the process. In addition, the record shows that shift coordinators inspect work and have the authority to have the work redone if necessary.

⁹ Although a shift coordinator uses his discretion in determining whether to grant overtime, and if so, which employees to select, I note that these overtime assignments are merely requests rather than a mandatory requirement that employees work overtime. I further note that there no showing in the record that mandatory overtime is required by even admitted supervisors. However, the Board has recently held that the ability to “request” a certain action, rather than “require” that a certain action be taken, does not constitute supervisory authority. Golden Crest Healthcare Center, slip op. at 3 (2006). Compare that to the Board’s decision in an earlier case, where such authority was indicative of supervisory status. Heat Research Corp., 243 NLRB 206, 208 (1979) (ability to select employees for overtime when the number of volunteers exceeds the slots establishes supervisory authority), *enfd.* mem. 666 F.2d 590 (5th Cir. 1981). In these circumstances, I do not rely on the shift coordinator’s authority to request voluntary overtime as indicative of supervisory authority.

The record further shows that shift coordinators are held accountable for the performance of their crew. Thus, the record reflects, that on one occasion, shift coordinator Ashley received a verbal warning on 3/19/2008 for his failure to solicit help to complete 5 deliveries beyond his shift, and for his failure to notify the shop superintendent after previously indicating that those deliveries would be complete and on time. In addition, the yearly performance reviews of the shift coordinators show that they are evaluated on a numerical basis with respect to such criteria as “fully understands priorities and has ability to keep personnel focused,” “fully aware of personnel’s abilities and limitations to properly delegate tasks,” “monitors and ensures personnel is working on priorities,” “reminds and aggressively stays on top of personnel when material flow slows down,” “personnel assignments based upon current production requirements,” and “handles unplanned job situations well.” According to the Employer, a failure of the shift coordinators to meet these job expectations could lead to discipline, a demotion, or a transfer to another position. See generally Croft Metals, Inc., 348 NLRB at slip op. at 6 (discipline of lead persons for failure to meet production goals or for some other shortcomings of their crews satisfies the Oakwood standard of accountability for purposes of demonstrating responsible direction). Based on the above, I conclude that the shift coordinators responsibly direct using independent judgment within the meaning of Section 2(11) of the Act.

D. The record does not establish that the shift coordinator meet other Section 2(11) primary criteria

There is no contention that the shift coordinators have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, and reward or discipline other employees. However, the Employer urges that additional primary indicia of supervisory status are present. More

specifically, the Employer asserts that shift coordinators adjust grievances, and effectively recommend promotions, discipline, hiring, and firing of employees. I reject those contentions.

With respect to the adjustment of grievances, the record shows that although a shift coordinator may be the first contact to resolve an employee issue, those matters typically get referred to the shop superintendent. Neither of the examples presented demonstrate that shift coordinators have authority to adjust grievances. In the first example, the Employer contends that a shift coordinator could resolve an employee's complaint that he needed a fan. Resolution of that type of concern does not require any independent judgment. In the second example, the Employer asserts that a shift coordinator could move one employee away from another employee to resolve a minor dispute or a personality conflict. The Board has held that the authority to resolve "squabbles" between employees is insufficient to establish supervisory status. St. Francis Medical Center-West, 323 NLRB 1046, 1048 (1997). Accordingly, I find that the Employer has not met its burden in establishing that shift coordinators adjust grievances.

There is similarly no merit to the Employer's contention that shift coordinators effectively recommend promotions, discipline, or the hiring and firing of employees. I find that in all of these matters the Employer's evidence is conclusory without supporting details. Thus, in regard to the Employer's assertions that shift coordinators recommend that employees be fired, promoted, or disciplined, the Employer was unable to provide any specific examples where that had occurred.

Moreover, the record is hampered by the Employer's failure to set forth the processes of hiring, firing, promotions, and discipline, in order to demonstrate the role of shift coordinators and whether they were exercising independent judgment in those matters. Thus, in regard to discipline, the Employer merely asserted that a shift coordinator could notify the superintendent

and there would be an investigation, but was unable to provide any instances of discipline, nor confirm whether a shift coordinator's recommendations were accepted or not. Similarly, the Employer's mere assertion that during a two-year period, on one occasion, shift coordinator Craven's recommendation that a temporary employee (name unknown) was hired, lacks sufficient details to assess whether that amounted to an effective recommendation to hire.¹⁰ In sum, in matters of discipline, promotion, hiring, and firing, the Employer did not provide specifics regarding the extent of the shift coordinator's input, the Employer's consideration of that input, what other factors were taken into account, or describe how the process worked. Accordingly, in those circumstances, I find that the Employer's non-specific and conclusory evidence regarding these factors has failed to satisfy its burden that the shift coordinator exercises supervisory authority with respect to the effective recommendation of hiring, firing, promoting, and disciplining. See generally Golden Crest Healthcare Center, 348 NLRB at slip op. at 5 ("purely conclusory evidence is not sufficient to establish supervisory status").

E. Secondary indicia

As shown above, I have found the shift coordinator to be supervisors based on primary indicia. I have also considered evidence as to secondary indicia. It is settled that once there is evidence, as here, that the disputed classification meets at least one primary factor, secondary indicia such as higher pay and attendance at management meetings may be considered, although such factors, in themselves, do not establish supervisory status. See Sheraton Universal Hotel, 350 NLRB No. 84, slip op. at 2, slip op. JD at 18 & n.35 (2007). Some of the record evidence supports a finding of supervisory status.

As a practical matter, shift coordinators are the managerial authority most apparent to employees on a daily basis, and for a significant portion of their shifts are the highest-ranking

¹⁰ The Employer acknowledged that anyone could recommend an employee for hire.

authority present. With the exception of the master maintenance mechanic which pays \$22.49, the shift coordinator position is the highest paid hourly position at \$18.76 per hour.¹¹ The remaining unit positions range from a pay rate of \$13.55 per hour to \$17.67 per hour. In addition, at least one shift coordinator attends scheduling and planning meetings with the shop superintendent on a daily basis. Unlike other unit employees, shift coordinators arrive before their shift starts, stay late after their shift ends, and also remain with unit employees when they perform voluntary overtime. I also find that shift coordinators conduct safety alerts when necessary by meeting with employees to review near-misses and recordable accidents which have occurred at the Employer's other facilities. Shift coordinators also attend monthly resource group meetings, and annual training meetings, at which only a small number of selected rank-and-file employees are present. Finally, shift coordinators fill out daily operations reports and sign those reports as "supervisors."

Like other unit employees, a shift coordinator punches a time clock, and is hourly paid on a weekly basis, and is eligible for overtime compensation. Shift coordinators and unit employees receive across-the-board pay raises by classification based on wage surveys. Shift coordinators, the former admitted second shift supervisor, and all unit employees¹² wear the same uniforms and safety equipment. There is no specific badge or button designating a shift coordinator or second shift supervisor. Shift coordinators and the second shift supervisor share break rooms and bathrooms with other unit employees, and share the same lunch break schedule. Shift coordinators, the second shift supervisor, and all employees share the same benefits.

I note that there are differences between shift coordinators and the former admitted second shift supervisor. That position is salaried and paid between \$57,000-58,000 per year.

¹¹ The maintenance mechanic position is also paid \$18.76 per hour.

¹² Tractor/trailer drivers wear different uniforms.

Contrary to the shift coordinators and rank-and-file employees, the second shift supervisor did not punch a time clock, was paid on a bi-monthly basis, was ineligible for overtime, was evaluated on a different form from unit employees and the shift coordinators, and received pay raises based on performance.

In sum, some secondary indicia support a finding of supervisory status, while others do not. In light of my finding above, that shift coordinators possess two primary indicia of supervisory status, I conclude that the Employer has met its burden of proving that the shift coordinators are supervisors within the meaning of 2(11) of the Act. Accordingly, I shall exclude those positions from the unit found appropriate herein.

III. CONCLUSION AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find 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 purpose of the Act to assert jurisdiction in the case.
3. The Union 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 following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production, maintenance, and hourly employees including tractor/trailer drives, employed by the Employer its

Charlotte, North Carolina facility; but excluding shift coordinators, office clerical employees and guards, professional employees and all 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 the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC. 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 discharge 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 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, 4035 University Parkway, Suite 200, P.O. Box 11467, Winston-Salem, NC 27116-1467 on or before **April 25, 2008**. 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 336-631-5210. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need to 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 to Election provided by the Board in areas conspicuous to potential voters for a minimum of three working days prior to the date 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 full working days prior to 12:01a.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 estops employers from filing objections based on nonposting 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 St. N.W. Washington, DC 20570 and received by the Board in Washington by **May 2, 2008**. The request may not be filed by facsimile.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file on of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlr.gov. On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-file your documents. Detailed E-filing instructions explaining how to file the documents

electronically will be displayed.

Dated at Winston-Salem, North Carolina, on the 18th day of April 2008.

Patricia L. Timmins, Acting Regional Director
National Labor Relations Board
Region 11
4035 University Parkway, Suite 200
P.O. Box 11467
Winston-Salem, North Carolina 27116-1467