

Sylvester's Corp.; d/b/a Gene Sylvester Alarm Co.; d/b/a Gene Sylvester Electric Co.; and d/b/a Gene Sylvester Heating and Cooling and Local Union No. 41, Sheet Metal Workers' International Association, AFL-CIO, Petitioner. Case 25-RC-7260

June 9, 1980

DECISION AND DIRECTION

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND TRUESDALE

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered determinative challenges in an election held February 5, 1980,¹ and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the Hearing Officer's findings and recommendations, as modified herein.

We agree with the Hearing Officer's finding that employee Jack Settlemire has similar wages, hours, and working conditions as unit employees and therefore shares a community of interest with those employees. However, contrary to the Hearing Officer, we find that employee Roger Renbarger also has the same duties and conditions of employment as unit employees and conclude that the challenge to his ballot should likewise be overruled.

Renbarger served as the Employer's job supervisor for approximately 15 months before the petition was filed. In that capacity Renbarger scheduled jobs, assigned work, checked work progress, authorized major job changes, interviewed prospective employees, and fired and disciplined employees. Renbarger worked at a desk and was paid \$8.25 an hour. At the end of August 1979 the Employer's workload increased significantly and Renbarger returned to his former position of installer. Since that time Renbarger has worked exclusively as an in-

staller and has not performed any of the duties that were his responsibility as job supervisor.

The Hearing Officer found that Renbarger's return to installation work was only temporary to complete one job and therefore did not strip him of his supervisory status. The Hearing Officer noted that the complex installation job which created the need for Renbarger's services had not yet been completed and that the Employer did not inform employees that Renbarger was no longer a supervisor. The Hearing Officer also observed that the Employer has continued to pay Renbarger higher wages than other installers and that its president, who supposedly replaced Renbarger as job supervisor, has made infrequent trips to jobsites.

The record, however, shows that Renbarger has worked on numerous jobs since switching to installation work and is paid at a rate comparable with the \$7.25 to \$8 that lead installers earn. The Employer's shop foreman, who voted without challenge in the election, also receives \$8.25 an hour. More important, Renbarger has not exercised any supervisory authority whatsoever since September 1979. He no longer schedules jobs, assigns work, inspects other jobs, or authorizes major job changes. These duties, for the most part, are performed by the Employer's president. Furthermore, there is no evidence whatsoever to establish that Renbarger was only temporarily divested of his supervisory authority to work on one project. In view of the fact that since September 1979 Renbarger has performed installation work exclusively and has not exercised supervisory authority, we find that he has the same community of interest as the unit employees. Accordingly, we overrule the challenge to Renbarger's ballot.

DIRECTION

It is hereby directed that the Regional Director for Region 25 shall, within 10 days from the date of this Decision, open and count the challenged ballots of Jack Settlemire and Roger Renbarger, and thereafter prepare and cause to be served on the parties a revised tally of ballots, upon which basis he shall issue the appropriate certification.

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 12 for, and 11 against, the Petitioner; there were 2 challenged ballots.