

**Tucson Gas & Electric Company and International Brotherhood of Electrical Workers Local Union 1116, AFL-CIO, Petitioner. Case 28-UC-89**

March 19, 1979

**DECISION ON REVIEW**

BY CHAIRMAN FANNING AND MEMBERS PENELLO  
AND TRUESDALE

Upon a petition for clarification of unit requesting that the recently instituted classifications of construction coordination section supervisor (hereinafter CCSS) and construction coordinator (hereinafter CC) be accreted to the existing bargaining unit, a hearing was held on June 26, 1978, before a Hearing Officer of the National Labor Relations Board. On July 27, 1978, the Regional Director for Region 28 issued a Decision and Order in which he concluded that the construction coordinator section supervisor, David Crobbe, and the construction coordinator, Michael Minor, are supervisors within the meaning of Section 2(11) of the Act and excluded them from the existing unit of employees.<sup>1</sup> Thereafter, Petitioner filed a timely request for review of the Regional Director's decision asserting, *inter alia*, that the Regional Director's supervisory findings are clearly erroneous and unsupported by the record evidence. By telegraphic order dated September 12, 1978, the Board granted Petitioner's request for review only with respect to the supervisory status of the construction coordinator, Michael Minor, denying review in all other respects.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

The Employer is engaged in the business of transmitting and distributing electrical and gas energy in the Tucson, Arizona, area. The instant case concerns one job classification in a section of the Employer's electrical distribution department, which is under the supervision of Frederic Finney. As a result of a performance and utilization study done by an independent consulting firm, the Employer, in January 1978, realigned that department into three sections, including the Construction Coordination Section (herein called CCS) under review herein.

The CCS coordinates and schedules the Employer's

gas and electric construction based on a priority and category system developed as an outgrowth of the performance and utilization study. At present, the section is staffed by the CCSS, Crobbe, the CC, Minor,<sup>2</sup> and two schedulers, Gilbert Bracamonte and Benito Alvarez. While Crobbe is directed to report to Finney, the schedulers are organizationally under the control of James Souter, who has some control over all administrative personnel in the administration section. Prior to the establishment of the CCS, a significant portion of its electric construction scheduling duties was performed by the schedulers, Bracamonte and Alvarez.

The major function of the CCS is to process and coordinate the incoming work orders pursuant to the category and priority system established by higher management. Based on this system, the section coordinates the type of work to be done, assigning a completion date to the work order and then distributing it to the necessary parties. After the completion date is assigned to the order, the scheduler logs pertinent information concerning the order on a master schedule. The order is then returned to Minor who coordinates the activities of the various departments to insure timely completion of the work. According to Crobbe, this entire operation reduces to "preparing the packages and funneling it [sic] into their various areas based on what they (the management) have told us."

The Regional Director's attribution of supervisory status to Minor rests on his findings that Minor actively participates in the counseling and disciplining of the schedulers, assigns work to them, evaluates their job performance, schedules their overtime, grants them time off, and is "in charge" of the section in Crobbe's absence. Petitioner, however, directs our attention to certain evidence which it believes more accurately depicts Minor's authority as analogous to that possessed by a leadman. In this regard, Petitioner contends that Minor neither possesses nor exercises any supervisory authority as defined by Section 2(11) of the Act. Upon careful review of the record—cognizant of the fact that the burden of proving that one is a supervisor rests on the party alleging that such status exists<sup>3</sup>—we find, in agreement with Petitioner, that Minor is not a supervisor within the meaning of the Act.

In reaching his conclusion, the Regional Director placed reliance on the fact that Minor had orally reprimanded the two schedulers and that, at Minor's request, a disciplinary counseling session was subse-

<sup>1</sup> The Petitioner, according to the parties' most recent contract, is recognized as the exclusive bargaining representative of all the Employer's employees, except "managerial, professional, technical and administrative employees who because of their work are identified with the executive and supervisory functions."

<sup>2</sup> Minor was hired in April 1978.

<sup>3</sup> *Local No. 636 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, et al. (The Detroit Edison Company and Westinghouse Electric Corporation)*, 123 NLRB 225, 230-231 (1959).

quently convened to discuss the problems<sup>4</sup> with the schedulers. In attendance at this session were Supervisors Crobbe and Souter in addition to Minor and the schedulers. After independently reviewing the circumstances surrounding the oral reprimands, Crobbe and Souter, contrary to Minor's recommendation that the schedulers either be disciplined or discharged, decided that discipline was unnecessary. Instead, there was a general discussion of the section's problems with the meeting ending on an apparently friendly note.

It is clear from the foregoing that Minor's oral reprimands carried no formal weight and, in fact, there is no evidence they were even included in the employees' work record. Rather, his recommendations of discipline, the product of his reprimands, were independently reviewed by higher supervision who, after apparent consideration of the relevant facts, chose not to follow those recommendations. In similar situations, the Board has refused to find supervisory status solely from the issuance of oral reprimands, absent evidence that such reprimands have a significant effect on the employee's employment status or that they impair a reasonably expected employment benefit.<sup>5</sup> In the instant case we are unable to discern any significant impact on the employees' job status and, accordingly, do not view Minor's issuance of oral reprimands as demonstrating the exercise of supervisory authority.

We are also unconvinced of Minor's supervisory status by his alleged authority to evaluate the schedulers. The record shows that the schedulers' final evaluations are prepared by Crobbe and Souter. While it is true that Minor recommended that the ratings of both schedulers for their ability to work with others be lowered in their most recent evaluations, we fail to perceive how this demonstrates exercise of supervisory authority, especially in light of the fact that Crobbe and Souter were aware, as a result of the counseling session, of the schedulers' attitudinal problems. Accepting Crobbe's testimony that Minor effectively recommended the rating reduction, there is no evidence to suggest that this had a significant impact on the schedulers' employment status. We therefore decline to view such an isolated instance as requiring a supervisory finding since the recommended modification was, standing alone, not responsible for any change in their employment.

Nor do we view Minor's assignment of work to the schedulers as being anything more than the exercise of a routine function. This claimed assignment of work, according to Minor's own testimony, involves

the setting of time frames in which the schedulers are to complete their work. Thus, Minor testified that his assignments are keyed to the "urgency with which their work must be completed." This description of the nature of Minor's assignments is, in our opinion, insufficient evidence of the existence of supervisory authority. Even if viewed in isolation, Minor's overall testimony does not support the Employer's position. When viewed in the context of Crobbe's previously noted testimony that the section's operations are fairly routine, it appears that the Employer has failed to meet its burden of showing that Minor's assignments are based on the use of independent discretion. Rather, Minor's assignments appear to relate to and comport with the general time frames mandated by the Employer's established category and priority system. Under these circumstances, we find that the directions and work assignments issued to the schedulers by Minor do not require the use of independent judgment, but are dictated by the established category and priority system.<sup>6</sup>

The Regional Director also found that Minor possesses and exercises the authority to grant time off to the schedulers and to schedule overtime. Bracamonte testified, without contradiction, that he always seeks Souter's permission for time off, including vacations. This is in accord with other testimony that Souter is responsible for assigning replacements for the schedulers and accepting and keeping track of the schedulers' worktime. On only one occasion, when Bracamonte was ill and Souter was unavailable, did Bracamonte notify Minor of his leaving the building. Under these circumstances, we deem Minor's approval in this isolated instance as merely *pro forma* and not indicative of supervisory authority.

We are also not persuaded of his supervisory status by his scheduling of overtime. The record is devoid of testimony indicating that Minor independently, without review by higher supervision, schedules the overtime of Bracamonte and Alvarez. On the contrary, it is undisputed that the schedulers note their own overtime on their time slips and, without review by either Crobbe or Minor, submit them to Souter for processing. And, although Minor apparently did request overtime pay for an employee who stayed an additional half hour so that Minor could complete his training of her as a replacement for Bracamonte, it is uncontroverted that Minor is normally required to bring such matters to Crobbe's attention, who would then discuss the matter with Souter. Furthermore, the employee's receipt of overtime pay in this one instance was not a result of Minor's scheduling of overtime, but rather was the accidental result of an employee remaining later than Minor had anticipated.

<sup>4</sup> Bracamonte was reprimanded for using foul language in the presence of a lady and for making derogatory comments concerning the section's operation. Alvarez was reprimanded for excessive use of the telephone.

<sup>5</sup> See, e.g., *Ball Plastics Division*, 228 NLRB 633 (1977); *Doctors Hospital*, 217 NLRB 611, 613 (1975); *New Fern Restorium Co.*, 175 NLRB 871 (1969).

<sup>6</sup> See *Westlake United Corporation*, 236 NLRB 1114, 1117 (1978); *Raytee Company*, 228 NLRB 646 (1977).

We also do not construe the fact that Minor is responsible for the section's operation in Crobbe's absence, or that the schedulers must notify Minor of their whereabouts, as indicia of supervisory authority. Minor's responsibility for the section extends only for an hour each morning prior to Crobbe's arrival at 8 a.m.<sup>7</sup> The mere fact that one is responsible for an operation does not, in and of itself, constitute that individual as a supervisor, absent some showing that that person is required to exercise independent judgment or responsibly direct employees in their work tasks. As noted, *supra*, we are unable to determine, based on the record before us, that Minor's directions to the schedulers are anything other than routine. Accordingly, we find that Minor's authority, in the form of responsibility for the section, is not of a supervisory nature. In this regard, we are persuaded that whatever authority Minor exercises is limited by the presence of two levels of supervision above him.<sup>8</sup>

Our review of the record herein leads us to conclude that Minor's authority is consistent with and analogous to that of a leadman. In tracing and analyzing the various incidents of alleged exercise of supervisory authority, we have discerned that in each instance the authority exercised was either of a strictly routine nature, not involving use of independent judgment, or independently reviewed by higher supervision. Since the Act expressly requires that the authority of the employee in question be not of a routine nature, we are compelled to find that, at the time of the hearing herein and on the record before us, Minor neither possessed nor exercised any of the statutory indicia of supervisory authority.<sup>9</sup> In so holding, we are cognizant of the fact that were we to find

<sup>7</sup> The schedulers and Minor report at 7 a.m. daily and Crobbe reports at 8. During this period, Minor, according to Crobbe, is "in charge" of the section. It is not clear from the record when Souter reports for work or for how long Crobbe is usually absent from the section. The requirement that the schedulers check in with Minor appears to be nothing more than a natural outgrowth and recognition of the operation requiring the constant attention of employees assigned to a particular work task and not a reflection of supervisory authority.

<sup>8</sup> Based on our reading of the record, it is clear that both Crobbe and Souter share in the supervision of the schedulers. Thus, both Souter and Crobbe were present at the schedulers' counseling session; and it was they who independently reviewed the circumstances and decided on the appropriate course of action—a course of action at complete variance with Minor's recommendation of discipline or discharge. Consideration in this regard must also be given to the fact that Souter is organizationally responsible for the schedulers, receives and reviews their time slips and authorizes their time off, including vacations. It is unclear from the record what role Frederic Finney plays in the supervision of the section's employees.

<sup>9</sup> In a unit clarification proceeding where the disputed classification has been in effect for a short period of time, our review must be based on what the individual in this classification actually does, not what may be speculatively asserted for the future. See *Southwestern Bell Telephone Company*, 222 NLRB 407, 411 (1976).

Minor to be a supervisor, the result would be a highly disproportionate ratio of three supervisors to two employees. Such a ratio is not only unrealistic,<sup>10</sup> but it is also generally incompatible with a finding that Minor is a supervisor. And, while not controlling, we note that Minor's job description fails to vest the position's incumbent with supervisory authority and that Minor receives \$1.68 per hour less than the employees he purportedly supervises.

Having found Minor to be an employee, we must determine whether the classification of construction coordinator should be accreted to the existing bargaining unit. It appears from the record that the scheduling function was previously performed by Bracamonte and Alvarez as part of the existing bargaining unit work. According to Bracamonte, the scheduling function has remained essentially the same although some changes have occurred. Thus, the construction coordination section continues to process and distribute construction work orders, albeit in a more sophisticated manner. Moreover, the parties' most recent contract<sup>11</sup> recognizes the Union's right to represent all employees of the Employer, including the schedulers, except "managerial, professional, technical, and administrative employees, who because of the nature of their work, are identified with the executive and supervisory functions." In view of our finding that Minor is not a supervisor, that the Employer does not dispute the appropriateness of accretion other than arguing that Minor is a supervisor, and that the construction coordination section is an apparent outgrowth of and substitution for the previous scheduling section,<sup>12</sup> we find that the classification of construction coordinator is an accretion to the existing bargaining unit and we shall clarify the unit accordingly.

## ORDER

It is hereby ordered that the existing recognized collective-bargaining unit consisting of all employees of the Employer, except managerial, professional, technical, and administrative employees, who, because of the nature of their work, are identified with the executive and supervisory functions, be, and it hereby is, clarified to include the job classification of construction coordinator.

<sup>10</sup> See *Airkaman, Incorporated*, 230 NLRB 924, 926 (1977) (ratio of one supervisor to three employees excessively high).

<sup>11</sup> This contract expired on November 30, 1978.

<sup>12</sup> See *Westinghouse Electric Corporation*, 173 NLRB 319 (1968).