

Westlake United Corporation and International Ladies' Garment Workers' Union No. 109, Petitioner.
Case 4-RC-12902

June 21, 1978

DECISION ON REVIEW

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND MURPHY

On December 9, 1977, the Acting Regional Director for Region 4 issued a Decision and Direction of Election in the above-entitled proceeding in which he found appropriate the Petitioner's requested unit of all production, maintenance, and plant clerical employees at the Employer's Mayfield, Pennsylvania, facility; excluding all other employees, office clericals, guards, and supervisors as defined in the Act. In his decision, the Acting Regional Director denied the Employer's posthearing motion to reopen the record to introduce evidence to the effect that subsequent to the hearing it assigned additional supervisory responsibilities to the two shift supervisors, but, in view of the circumstances, he permitted the Employer's two shift supervisors to vote under challenge.¹ Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, amended, the Employer filed a timely request for review of the Acting Regional Director's decision on the grounds, *inter alia*, that he made findings of fact which are clearly erroneous. The Employer also filed an appeal from the Regional Director's denial of its request for an administrative investigation of its allegations of supervisory taint of the Petitioner's showing of interest.

On January 6, 1978, the National Labor Relations Board, by telegraphic order, granted the Employer's request for review and stayed the election pending the decision on review. The Board deferred ruling on the appeal from the Regional Director's ruling on the showing of interest.

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 only issue raised at the hearing herein related to the status of Gary and Dan Allen, brothers, who are shift supervisors or foremen. The Employer, con-

trary to the Petitioner, contended that they were supervisors as defined in the Act. As indicated, subsequent to the hearing, the Employer filed a motion to reopen the record to present evidence of changes in its management structure having a bearing on the supervisory issue raised. In the circumstances, the Acting Regional Director, in his Decision and Direction of Election, deferred resolution of the status of the shift supervisors and permitted them to vote under challenge. On December 16, the Employer filed a written request with the Regional Director to conduct an administrative investigation of its allegation that the Petitioner's showing of interest to support its petition was tainted by the participation of Dan and Gary Allen in the solicitation of authorization cards. On December 22, the Regional Director issued a ruling in which he denied the Employer's request as untimely. The Employer contends that it was an error to deny its request as untimely and to defer resolution of the issue on the status of Gary and Dan Allen as there was substantial record evidence to establish that they were supervisors. We have carefully reviewed the record and find no merit in the Employer's contention.

The Employer fabricates plastic sheets or slab stock at its Mayfield plant. At the time of the hearing the Employer had a salaried plant manager, John Arpin.² Under him were 14 employees, including the 2 individuals whose supervisory status is in issue.

Arpin works the day shift, 8:30 a.m. to 5 p.m., as do a plant clerical and a maintenance man, who report directly to him. Five production employees work the morning shift, 6 a.m. to 2 p.m., under Shift Supervisor Gary Allen; and five work the afternoon shift, 12 to 8 p.m., under Dan Allen.

The shift supervisors, like their crewmembers, are hourly paid, punch a timeclock, and receive overtime pay. The plant has one press which is normally operated by the shift supervisor.³ Preparation of molds for each production "run" of the press involves a number of tasks, such as weighing of materials, cutting of wood, mixing and "cooking" of the materials, raking in of powdered resin, closing in of the molds (the press takes a number of molds), insertion of "shims" to control the gauge of the sheets produced, etc. Of all the tasks involved the one requiring the greatest skill and experience is the operation of the press. Insertion of the shims and raking in the resin also require some degree of proficiency. The shift supervisor, in addition to operating the press, takes part in performing all phases of the operations.

² The Employer's general manager, Richard E. Moore, who testified at the hearing, has an office in Lenape, Pennsylvania, 140--150 miles from Mayfield. He visits the plant two or three times a month.

³ At least two crewmembers on the afternoon shift on occasion operate the press, as does Plant Manager Arpin, when a shift supervisor is absent.

¹ On December 30, 1977, the Regional Director issued an order denying a motion for reconsideration filed by the Employer.

Plant Manager Arpin, according to testimony at the hearing, schedules production for 2 or more weeks in advance, including a substantial amount of overtime hours.⁴ Changes in the schedule, which is posted, may be made only with his approval. Arpin is responsible for checking inventories, the quality of materials, the need for maintenance and repair of equipment, and the "score card" of production; he buys materials and equipment, interviews applicants for employment, and handles other personnel matters. He also substitutes for shift supervisors when they are absent.

Shift supervisors have keys to the plant. They often set earlier shift starting times to accommodate for overtime work requirements, but individual crewmembers themselves decide whether or not they wish to work overtime hours. Thus, some crewmembers may report for work earlier than others in order to perform scheduled overtime work. Before 8:30 a.m., and after 5 p.m., when the plant manager is normally not there, the shift supervisor is responsible for the plant. However, when serious problems arise, the shift supervisor calls the plant manager or consults with a co-owner of the Employer, who is located on adjacent property where he operates another business.

A job description for the "shift supervisor" position, prepared in September 1977, describes it as primarily one of leadership of a production team. It states that the shift supervisor is responsible for all production during his shift and assigns tasks to crewmembers to that end; that he hears grievances and resolves them if possible within existing policy, trains crewmembers, recommends rate reviews, raises or decreases, as appropriate, and recommends for employment any qualified personnel; that he is particularly responsible for discipline, proper work performance, and general work habits; that he has authority to take corrective action, including temporary dismissal, when a crewmember is not functioning in his assigned job, which action is to be made known to the plant manager and/or owners as soon as practicable. It adds that, whenever necessary, the shift supervisor will join in the physical work required by the particular job as scheduled by the plant manager for the shift. Finally, it states that in the absence of the plant manager the shift supervisor will assume responsibility for the operation of the plant. A job description was also created at the same time for a "mold set-up" position, which essentially covers all aspects of shift production work other than operation of the press, and states that mold set-up personnel report directly to the shift supervisor.

⁴ Dan Allen testified that the schedule sets forth what "runs" to make, what materials to use, and generally what has to be set up.

Although the record shows that the shift supervisors, consistent with their job description, coordinate the activities of their crews in following the posted production schedule, the testimony of General Manager Moore and Plant Manager Arpin was in conflict with that of Dan Allen with regard to whether the shift supervisors exercised any independent judgment in directing employees and making work assignments. Contrary to conclusional testimony of Moore and Arpin that independent judgment was involved, Dan Allen testified that all shift employees knew from their training and experience working as a team what had to be done to complete a production run and that he acted merely as a leadman.

There was testimony that Gary Allen had recommended the employment of five individuals: his brothers Dan and Wally, Matthew Allen, and two friends. However, these individuals were interviewed by Arpin and only after meeting with his approval were they hired. Arpin testified that he interviewed everyone before they were hired and that, if he was not satisfied with the interview, he would not hire them. Also, the record clearly shows that the Employer does not advertise for employees but hires mainly through people who know someone.

Arpin testified that shift supervisors have authority to discipline employees on a day-to-day basis, giving as examples of exercise of such authority, "where one of the supervisors will say come on, we've got to get those molds loaded . . . we got this coming out in 20 minutes . . . let's watch it when you cut this wood next time . . . I want it the right size . . ." Both Moore and Arpin testified they were told of one instance involving an employee who was drinking a cup of tea after punching in for work and was told by Gary Allen to leave the work area while drinking his tea. Though the employee did so, when he attempted to return to the work area after finishing his tea he was told by Gary Allen he would have to wait until the half hour to punch in again.⁵ An argument ensued, following which the employee, on his own, punched out and went home.

The record shows that the plant manager was responsible for wage review and increases. Dan Allen testified that shift supervisors do not get involved in these matters, but acknowledged that he did recommend a raise for one employee to bring his pay to a level commensurate with his seniority. Arpin testified that after Dan Allen's recommendation he reviewed the employee's pay rate in relation to that of others and his work habits, and, on the basis of his findings, recommended to the Employer that the employee be given a raise.

⁵ There was evidence of a plant rule that if an employee arrives for work after the hour he must wait until the half hour to punch in.

Although Moore stated that shift supervisors have the authority to grant time off, Arpin testified that employees must seek his approval, that only in his absence may they ask shift supervisors for time off, and that even then the shift supervisor usually informed him. Likewise, Arpin testified that changes on timecards must be approved by him.

Based on the foregoing and our review of the entire record, we conclude that the evidence is insufficient to establish that at the time of the hearing the shift supervisors possessed or exercised any of the statutory indicia of supervisory authority. We find that the directions and work assignments they gave to their crewmembers, including the assignment of overtime, did not involve the use of independent judgment but were dictated by the posted production schedule and the established procedures followed in implementing the scheduled production runs. Their directions and work assignments were analogous to those given by skilled workers to apprentices and helpers working with them.⁶ Nor does the evidence cited above demonstrate that the discipline administered by the shift supervisors went beyond oral reprimand having no significant effect on employee sta-

⁶ See *Thayer Dairy Company, Inc.*, 233 NLRB 1383 (1977); *United States Gypsum Company*, 148 NLRB 1640, 1641-44 (1964); *Southern Bleachery and Print Works, Inc.*, 115 NLRB 787, 791-796 (1956).

tus.⁷ Likewise, any recommendations made by the shift supervisors with regard to hire or wage increase are not shown to have been effective recommendations, as the evidence is clear that Arpin made these decisions and all others affecting employee status on the basis of his own independent investigation.

Based on the above, we find the record herein establishes that the shift supervisors were not supervisors as defined in the Act as of the time of the hearing. Also, we conclude that the Acting Regional Director correctly denied the Employer's motion to reopen the record, and that he did not err in allowing the two shift supervisors to vote under challenge in view of the alleged change in conditions. In the circumstances, we hereby deny the Employer's appeal from the Regional Director's refusal to conduct an administrative investigation of the alleged participation of the shift supervisors in obtaining the showing of interest submitted by the Petitioner to support its petition.

Accordingly, consistent herewith, the case is remanded to the Regional Director in order that he may conduct an election pursuant to the Acting Regional Director's Decision and Direction of Election, except that the eligibility payroll period therefor shall be that ending immediately before the date of issuance of this Decision on Review.⁸

⁷ See *Ball Plastics Division*, 228 NLRB 633 (1977).

⁸ [Excelsior footnote omitted from publication.]