

Mid-State Fruit, Inc., Employer-Petitioner and General Teamsters Union, Local 406, affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.
Case 7-RM-804

October 22, 1970

DECISION AND DIRECTION

**BY CHAIRMAN MILLER AND MEMBERS
FANNING AND BROWN**

Pursuant to a Stipulation for Certification upon Consent Election executed by the parties on April 29, 1970, and approved by the Regional Director for Region 7 of the National Labor Relations Board, an election by secret ballot was conducted on May 18, 1970, among the employees of the stipulated appropriate unit. Upon conclusion of the election, the parties were furnished with a tally of ballots which shows that 13 ballots were cast, of which 6 were cast for the Union, 5 against the Union, and 2 challenged. The challenged ballots are sufficient in number to affect the results of the election.

Pursuant to a Notice of Hearing on Challenged Ballots issued by the Regional Director, a hearing was held on June 16, 1970, before Hearing Officer James P. Lewis. All parties participated and were given full opportunity to examine and cross-examine witnesses and to introduce evidence bearing on the issues. On July 9, 1970, the Hearing Officer issued his Report and Recommendations on Challenges, recommending that the challenge to the ballot of John Jenema be overruled and that the challenge to the ballot of Robert Barrons be sustained. Thereafter, the Employer filed timely exception to the Hearing Officer's recommendation that the challenge to Barrons' ballot be sustained.¹

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

Upon the entire record of this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Union is a labor organization claiming to represent certain employees of the Employer.

3. 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.

4. The parties stipulated, and we find, that the

following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All truck drivers, mechanics, warehousemen, leadmen, and shipping employees, excluding clericals, professional employees, guards and supervisors as defined in the Act.

5. The Board has considered the Hearing Officer's Report, the Employer's exception, and the entire record in this case and finds merit in the Employer's exception to the Hearing Officer's recommendation that the challenge to the ballot of Robert Barrons be sustained.

The Employer maintains a warehouse and office in or near Cadillac, Michigan, from which it supplies institutions and commercial eating establishments with food and related supplies. The Employer operates from Monday morning (when its night shift comes on at midnight) until the following Saturday. Its president and manager, Judson Besteman, spends Monday through Thursday of each week, and the intervening nights, in Cadillac; on Fridays and Saturdays the assistant manager, Harold Boven, is in charge. A night crew, in summer some 10 or more employees, loads trailers. During the day, truckdrivers take these trailers to various customers in northern Michigan. On the night shift, Barrons has responsibility for produce, Henry Brink has responsibility for poultry, and other individuals are responsible for the freezer and for dry goods.

There is evidence that Barrons tells other employees what to do, including the giving of instructions concerning the filling of orders and loading of trucks. On several occasions Barrons determined whether or not a mechanic was needed in case of a truck malfunction, and he occasionally directed the rearrangement of the order of deliveries and recruited substitute drivers in case of illness.

The Hearing Officer also credited testimony that Barrons, in a meeting of union supporters, had stated that he had fired an employee.

Based on the above factual determinations, the Hearing Officer concluded that Barrons has authority, of more than a routine kind, responsibly to direct the night crew and even, upon occasion, the Employer's drivers. We agree with the facts as found by the Hearing Officer, but, when taken together with the testimony of the president, Judson Besteman,² we must disagree with the conclusion that Barrons exercises a degree of independent judgment and responsibility sufficient to make him a supervisor within the meaning of Section 2(11) of the Act.

Besteman testified as follows: It is he who arranges

¹ No exception was filed to the Hearing Officer's recommendation that the challenge to John Jenema's ballot be overruled. This recommendation is therefore adopted *pro forma*.

² Besteman's testimony was uncontradicted and was never discredited by the Hearing Officer. Barrons did not testify.

the orders from customers and sorts the orders out for trips. He then routes the orders according to the location of the customer and what products are included in each order. When the orders are ready, they are given to the night crew for filling. If any special instructions are required, it is Besteman who gives the instructions, either orally or through written notes. Besteman determines which trucks will be used for which routes and matches up drivers and trucks. Barrons has nothing to do with making up orders or routes.

Besteman further testified that Barrons has no authority to hire and fire employees, nor does he have the authority to discipline employees, recommend disciplinary action, or effectively recommend raises. Barrons does recruit substitute drivers and may occasionally direct an extra delivery to a good customer. However, Besteman is always on call at his motel, and, in fact, Barrons calls him at the motel regardless of the hour. It is common practice for Barrons to call the motel for instructions in matters involving substitution of drivers or any other emergency situation. While Barrons may direct a delivery to a good customer, such a decision is always made on the basis of who the customer is and what he wants rather than on the complete discretion of Barrons. Likewise, Barrons does not have the authority to divert a truck from its route.

Barrons works the same hours and receives the same benefits as other members of the night crew and is required to punch in and out. Barrons is paid an hourly rate which is 15 cents per hour more than a mechanic, and he receives overtime pay for work in excess of 40 hours per week. Besteman further indicated that, while Barrons may have asked certain

employees to work overtime, he did so at the specific instruction of Besteman.

Concerning Barrons' statement that he had fired an employee, Besteman testified that he learned of the incident through Henry Brink, the man who was in charge of the section in which the employee worked, and that Brink informed him that the employee had quit. There is no other testimony about this incident. Therefore, although Barrons claimed to have fired an employee, there is no evidence that he actually did so, and there is undisputed evidence that he does not possess the authority to fire.

It is apparent from the record that Barrons issues instructions and directs other employees in the performance of their tasks. However, it is clear that any such instructions or directions either originated directly with Besteman or conformed to guidelines established by him. In these circumstances, we find that Barrons is not free to use his own independent judgment and therefore does not responsibly direct the work of other employees.

Barrons does not possess any of the other statutory indicia of a supervisor. We find that he is not a supervisor within the meaning of Section 2(11) of the Act. Accordingly, we shall overrule the challenge to his ballot.

DIRECTION

It is hereby directed that the Regional Director for Region 7 shall, pursuant to the Rules and Regulations of the Board, within 10 days from the date of this Direction, open and count the ballots of Robert Barrons and John Jenema, prepare and cause to be served on the parties a revised tally of ballots, including therein the count of said ballots, and thereafter issue the appropriate certification.