

Basf Wyandotte Corporation and Local 234, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO, CLC, Petitioner. Case 22-RC-4894

October 14, 1971

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND KENNEDY

Pursuant to a Stipulation for Certification Upon Consent Election executed on February 22, 1971, an election by secret ballot was conducted on March 24, 1971, under the direction and supervision of the Regional Director for Region 22 among the employees in the appropriate unit. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 10 eligible voters, 10 cast ballots, of which 5 were for, and 3 against, the Petitioner, and 2 were challenged. The challenged ballots were sufficient in number to affect the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, the Regional Director, after a preliminary investigation, issued an order on May 14, 1971, directing a hearing on the question of the supervisory status of the two voters, Jorges Reyes and Calvin McAfee, whose ballots were challenged by the Petitioner. Pursuant to said order a hearing was held on June 22, 1971, before Hearing Officer Robert D. Kaplan. The Employer and Petitioner participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

On July 20, 1971, the Hearing Officer issued and duly served on the parties his Report and Recommendations on Challenged Ballots in which he found that Reyes was not a supervisor and recommended that the challenge to his ballot be overruled. He further found that McAfee was a supervisor and recommend that the challenge to McAfee's ballot be sustained. Accordingly, since in such circumstance Reyes' ballot could not affect the results of the election, the Hearing Officer recommended that Reyes' ballot not be opened. Thereafter, the Employer filed timely exceptions to the Hearing Officer's finding that McAfee was a supervisor and a brief in support of said exceptions.

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

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

1. The Employer is engaged in commerce within

the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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

3. A question affecting commerce exists concerning the representation of the 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 warehousemen, including sample men and checker, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

5. The Board has considered the Hearing Officer's report and the Employer's exceptions thereto, and finds merit in said exceptions. In our view neither the factors on which the Hearing Officer relied nor the record taken as a whole warrants a finding that McAfee possessed or exercised any meaningful authority sufficient to constitute him a supervisor within the meaning of the Act.

The Hearing Officer concluded that McAfee is a supervisor substantially on the following grounds: (1) Blumenthal, the warehouse manager, is the only other supervisor in the warehouse; (2) McAfee is paid \$40 a week more than the next highest paid employee; (3) McAfee wears different clothing; (4) McAfee has the use of a private office; (5) McAfee conveys Blumenthal's orders to employees; (6) McAfee has the title of group leader; (7) McAfee decides where he shall work; and (8) McAfee assigns overtime to other employees.

None of these factors justifies a finding of supervisory status. As to (1), there are only 10 employees in the warehouse, and the presence of only one supervisor (the warehouse manager) for this small group is not remarkable. As to (2), although McAfee receives a higher salary, he spends most of his time maintaining the warehouse inventory which is work not done by other employees, and may well justify the salary differential. As to (3), while he is clothed differently, it is only to the extent of wearing a lighter blue shirt, and this difference is at least equally explainable by the fact that such dress is more appropriate to the atmosphere in an office, rather than to indicate supervisory status. As to (4), his use of an office also appears to be necessitated by his inventory work, rather than for the performance of any supervisory duties. Further, that office is not private, but rather is used by the entire clerical staff. As to (5), the finding that McAfee conveys Blumenthal's orders to employees indicates only that he was a conduit for such orders and does not justify the conclusion that he has

supervisory authority. As to (6), the title of group leader is one frequently used for persons not truly supervisory, and the record here does not show that the title implied supervisory authority at this operation. As to (7), it appears that McAfee does decide where he shall work, but that does not differentiate him from other employees. The evidence shows that in filing orders or loading or unloading trucks, other employees also work without detailed instructions as to the precise area requiring their services. Finally, with regard to item (8), overtime, the record discloses that it is Blumenthal who alone decides when and if overtime shall be worked, that he uses a preestablished seniority list to grant overtime on a rotating basis, and that McAfee's only involvement in the process is simply to refer to the list and to mechanically select the next person in line.

In short, none of the factors relied on, when reviewed in the light of this record, establish the existence of supervisory status. We therefore do not adopt the Hearing Officer's finding and recommendation with regard to McAfee and conclude that the challenge to his ballot should be overruled. In the

absence of exceptions, however, we adopt the Hearing Officer's finding and recommendation with regard to Reyes' ballot and overrule the challenge thereto.

Accordingly, as we have overruled the challenges to both Reyes' and McAfee's ballots, and as the said ballots are sufficient in number to affect the results of the election, we shall order the Regional Director to open and count these ballots, to prepare a revised tally of ballots, and to issue the appropriate certification.

ORDER

It is hereby ordered that the Regional Director for Region 22 shall, within 10 days from the date of this Decision, open and count the ballots of Jorge Reyes and Calvin McAfee, the challenges to which have been overruled, and thereafter prepare and cause to be served on the parties a revised tally of ballots, including therein the count of said ballots. Upon the basis of the revised tally, the Regional Director shall issue the appropriate certification in accordance with the Board's Rules and Regulations.