

Wolverine World Wide, Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Petitioner. Case 7-RC-10485

April 18, 1972

DECISION ON REVIEW AND CERTIFICATION OF BARGAINING REPRESENTATIVE

BY MEMBERS FANNING, JENKINS, AND KENNEDY

On May 13, 1971, the Regional Director for Region 7 issued a Decision and Direction of Election in the above matter. On June 10, 1971, an election by secret ballot was conducted in the production and maintenance unit found appropriate for collective-bargaining purposes. The tally of ballots indicated that of the 332 ballots cast, 163 were for the 158 against the Petitioner, and 11 ballots were challenged. The challenged ballots were sufficient in number to affect the results of the election. Objections to conduct affecting the results of the election were filed by the Petitioner on June 21, 1971.

In accordance with the National Labor Relations Board Rules and Regulations, as amended, the Acting Regional Director issued a Supplemental Decision on Objections and Challenges, in which he rejected the Petitioner's objections as they were untimely filed and found that the resolution of 10 of the 11 challenges¹ required a hearing. Pursuant to notice, a hearing on said challenges was held on various dates in July 1971 before Hearing Officer Charles F. Morris. On August 30, 1971, the Hearing Officer issued his report recommending that challenges to eight ballots be sustained and that the remaining two challenges be overruled. On September 10, 1971, the Employer filed timely exceptions with respect to seven of the eight challenges which were sustained and on October 4, the Petitioner filed an opposition thereto. On October 15, 1971, the Acting Regional Director issued a Supplemental Decision on Challenged Ballots and Certification of Representative, in which he ruled on the merits of seven of the challenges, sustaining six in accord with the Hearing Officer and overruling one, contrary to the Hearing Officer and in accord with the Employer's position. With respect to the eighth challenge, involving Conrad, the Hearing Officer's recommendation that it be sustained was adopted *pro forma* as the Employer had filed no exception thereto. As 7 of the 11 challenges had been sustained, the Acting Regional Director concluded that the 4 re-

¹ The one challenge excluded from the hearing involved an alleged discriminatee which was being litigated in pending unfair labor practice Case 7-CA-8068.

maining challenged ballots could not affect the ultimate results of the election, even if all were cast against the Petitioner.² Accordingly, the Petitioner was certified as exclusive bargaining representative of employees in the unit.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, the Employer filed a timely Request for Review of the Acting Regional Director's Supplemental Decision, contending that the sustaining of six challenges (two all around men, Wirth and McIntyre, and four floor girls, Garbow, Peterson, Mason, and Smith) was erroneous. Subsequently, the Petitioner filed an opposition thereto.

The Board by telegraphic order dated December 6, 1971, granted the Employer's Request for Review. The Petitioner thereafter filed a Brief Upon Review.

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.

Having duly considered the entire record in this proceeding, including the transcript, the Request for Review, and briefs, the Board adopts the Regional Director's Supplemental Decision with the following additions.

We are persuaded that the record establishes, as the Acting Regional Director found, that the two "all around" men and the four "floor girls" in dispute are supervisors within the meaning of the Act.³

Thus, it appears that all six of the above-mentioned individuals are held out as supervisors to employees by the respective department foremen and the employees are instructed to do as they are told by these individuals. They also substitute for their respective foremen and others. They assign work and transfer employees from one job to another, from machine to machine based on production needs and their knowledge of the employees' capability to perform the work.⁴ They tell employees when to shut down their

² A revised tally would show 163 votes for, and 158 against, the Petitioner and 4 challenged ballots, of which 1 remains unresolved and 3 remain unopened.

³ In support of its position that these individuals have not been given any supervisory authority by management, the Employer notes that an all around man and a floor girl voted in this election without challenge and none of the all around men at its Rockford, Michigan, plant A, were challenged at the election in Case 7-RC-10252. However, this comparison is not meaningful as it is well settled that supervisory status is not based on a title or lack thereof but rather depends upon whether a given individual in fact possesses supervisory duties. This point is here illustrated in the apparent application of the plant manager's policy of urging his subordinates to delegate authority. Thus, the all around man who voted without challenge testified to his almost complete lack of authority in comparison to the authority possessed by one of the all around men in dispute.

⁴ We find no merit in the Employer's contention that these individuals do not have power to transfer employees from one job to another and that in any event such transfers are not made over the employees' objection. A number of employees testified as to the nature and frequency of assignments and reassignments between jobs and machines and occasionally to other departments at the direction of these individuals in dispute. There is also

machines and if there is no work for them to do, they excuse the employees to leave early; if on the other hand, the production requirements have not been met, they instruct employees to continue working beyond the normal workday. They give employees permission to leave work early;⁵ do not work against any production standard;⁶ and perform little, if any, production work. They take defective work back to the operator responsible and with respect to the all around men, they have taken part in formal reprimands of employees due to defective work which in

testimony that when an objection was raised, the foreman would direct the employee to do as the all around man or floor girl had told him, and afterwards he could talk with him about the assignment.

⁵ We find no merit in the Employer's contention that these individuals do not have authority to grant employees permission to leave early. The employee handbook states that time off "must be arranged in advance with the employee's *immediate supervisor*." (Emphasis supplied.) The record reflects numerous instances of employees requesting and obtaining permission from the individuals in dispute to take time off. The record fails to disclose that any employee was ever disciplined for not obtaining such permission from higher authority.

⁶ The Employer argues that there are other unit employees who do not work against a production standard. The record discloses that hourly rated employees are described as "standard" or "non-standard" employees but does not distinguish or explain the types of employees in either category. However, all of the production department employees who testified stated that they had to meet production standards whereas the disputed individuals did not.

one case resulted in a 3-day suspension of the employee.

The floor girls also do considerable training of new employees and teaching of new work to old employees. They have also been recipients of Christmas gifts purchased with money collected by employees in their respective departments for presentation to their supervisors.

Accordingly, as the tally of ballots shows that the Petitioner has received a majority of the valid ballots case, we shall certify it as the exclusive bargaining representative for the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit found appropriate herein for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.