

Complete Auto Transit, Inc., Employer-Petitioner and Truck Drivers, Chauffeurs & Helpers Local Union No. 100, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 9-RM-704

October 30, 1974

DECISION ON REVIEW AND DIRECTION OF ELECTION

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

On December 18, 1973, the Acting Regional Director for Region 9 issued a Decision and Order in the above-entitled proceeding in which he dismissed the petition on the ground that the seven individuals whom the Union claims to represent are supervisors as defined in the National Labor Relations Act. Thereafter, pursuant to the provisions of Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Union filed a timely request for review of the Acting Regional Director's Decision on the grounds that, in finding six of the individuals involved to be supervisors, he departed from officially reported Board precedent and made findings of fact which are clearly erroneous. The Employer filed a brief in opposition thereto.

By telegraphic order dated February 28, 1974, the request for review was granted. Thereafter, the Employer filed a brief on 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.

The Board has considered the entire record in this case with respect to the issues under review, including the arguments in the request for review, the brief in opposition thereto, and the brief on review, and finds that 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, for the following reasons:

The Union contends that the Regional Director erred in finding that the six¹ disputed individuals it claims to represent have similar responsibilities and authorities; particularly, that all assign and direct work using their own initiative, initiate discipline proceedings, and effectively recommend hiring and firing of employees.

¹ Charles Adams, the seventh individual whom Petitioner sought to represent, is now conceded by it to be a supervisor

The Employer is engaged in the interstate transportation of new cars by truck trailer for General Motors Corporation, herein called GM. Its Norwood and Sharonville, Ohio, terminals alone are here involved. The Norwood terminal, located near a GM plant, is the center of these operations. The Sharonville facility, 8 miles distant, covers about 13 acres. Cars are shuttled there on five-car carriers from the nearby GM plant, or are sent there by rail from other GM plants, for storage prior to being transported by the Employer. There are only 5 employees assigned to work at Sharonville, while approximately 225 work at or out of the Norwood terminal. Apart from nine unrepresented office clerical employees and the six individuals here in dispute, the remaining employees have a history of collective bargaining. The Union currently represents a unit of drivers, yardmen, checkers, inspectors, gas men, rail unloading employees, and dispatchers employed at these operations; and International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 804, herein called IAM, represents a unit of mechanics, helpers, garage servicemen, washers, and porter-janitors at the Norwood terminal.²

The individuals sought herein by the Union, and found by the Acting Regional Director to be supervisors, are Lynn Cromley and Ray Storm, classified as shop foremen; Frank Courtney, the parts manager; Larry Steele, the operations supervisor; and Edward Reddick and Roy Mason, classified as dock foremen. Occupying agreed supervisory positions are Branch Manager Robert Lewis, who has overall responsibilities with regard to the operations involved; Operations Superintendent John Walker; Maintenance Superintendent Ken French, responsible for two-shift truck maintenance operations at Norwood; and Charles Adams, branch supervisor, responsible for loading and unloading operations.

Storm and Cromley, shop foremen at Norwood, report to French. Storm has 11 mechanics, a tireman, and a porter working under him on the first shift, 6 a.m. to 2:30 p.m.; Cromley has 5 mechanics under him on the afternoon shift, 2:30 to 11 p.m. French testified that the shop foremen write up work orders, determine what work is to be done, issue it to a mechanic, and oversee the work. If problems arise requiring diagnosis, the shop foreman determines what work is to be done and what not done. On the basis of these facts, we find that Storm and Cromley responsibly direct the employees under them on their respective shifts and are therefore supervisors as defined in the Act.

² IAM intervened solely to protect its interest in employees it currently represents. It does not claim to represent any of the individuals whose status is here in dispute.

Courtney, the parts manager, works on the 6 a.m. to 2:30 p.m. shift at Norwood under the supervision of Shop Foreman Storm and Maintenance Superintendent French. Courtney supplies parts to mechanics, maintains an inventory of parts valued at \$25,000 to \$35,000, and makes purchases annually at a value of approximately \$133,000. However, Courtney testified that he is not authorized to purchase even "proven" items which are on sale without first obtaining the approval of French. Although from time to time Courtney directs the tireman and the porter to perform tasks for him, these men perform similar tasks for all "supervisors" at Norwood. French testified that Courtney is placed in charge of the shop when he and Storm are absent. However, Courtney testified, without contradiction, that to date he had worked only one Saturday and one Sunday full time in the shop as a substitute for Storm and that he otherwise substituted for Storm once or twice a month for but 5- or 10-minute periods.

Our dissenting colleague states that Courtney admittedly occasionally assigns work to at least two employees—a tireman and a porter. However, Robert Lewis, Respondent's manager, testified that he had never seen Courtney direct the activities of the tireman or the porter and that the tireman and porter "pretty much have their jobs laid out, they know what to do when they come in." Furthermore, Courtney testified without contradiction that he does not direct any other employees nor has he ever given any employees instructions on what work to do, except on those rare occasions when he substituted for the supervisors.³

We find that Courtney substitutes for Storm only sporadically and that his occasional direction of the work of the porter and tireman does not require the use of independent judgment. And we conclude, on the basis of the entire record, contrary to the Acting Regional Director, that Courtney is not a supervisor as defined in the Act.⁴

As found by the Acting Regional Director, Steele, the operations supervisor, works from 4:30 to 12 p.m. at Norwood. He reports to Operations Manager Lewis or Operations Superintendent Walker. Steele oversees the loading of trucks. He determines the routes to be used by drivers and arranges special

movements when he deems it necessary. He is in charge of load makeups, and may direct the dispatcher to send out a load even though the driver believes the load cannot be hauled. In the event a driver makes improper deliveries, Steel may recommend that he be given a written reprimand. Steele also directs yard checks for missing units, controls inventory records, and directs the work of a load makeup supervisory trainee, the dispatcher, and the billing clerk. We conclude, upon review of the record, that on the basis of his responsible direction of the work of others, he is a supervisor as defined in the Act.

Reddick and Mason, dock foremen at the Sharonville terminal, are responsible to Branch Supervisor Adams and Operations Superintendent Walker. Reddick works the first shift from 6 a.m. to 2:30 p.m. together with a bus driver and a yardman who assists in the loading and unloading of cars on trailers. Mason works the second shift from 2:30 to 11 p.m. with a bus driver. When a driver arrives at the terminal to pick up his load, the dock foreman records his arrival time. The bus driver transports the driver to the locations of the cars to be loaded on his trailer. On the first shift the yardman assists in the loading of the cars. The dock foreman oversees the loading to insure that safety standards are met. He also verifies the drivers' waiting time, the time spent locating cars, and the loading time. Reddick and Mason testified that they call Norwood to obtain approval for overtime, and to resolve problems which may arise with regard to overheight loads. The record clearly establishes that only the main office may authorize overtime.

Reddick and Mason are classified as supervisors by the Employer, attend managerial meetings, are salaried, and share some of the same fringe benefits as admitted supervisors. Although the dock foremen have on occasion reported an employee for violation of company rules, we find, contrary to the Acting Regional Director, that neither of them has ever recommended any change in the status of employees working with them. Lewis Brown, first-shift yardman, testified that he calls Norwood to request time off; that he considers Adams to be his supervisor; and that he didn't remember Reddick ever telling him to do something. Additionally, Brown and a dispatcher frequently substitute for Reddick and perform the same work. Similarly, Reddick testified that he does not give the yardman or the bus driver instructions on what work they are to do, that their job is to assist the driver in getting the cars out, and it is essentially the same work every day. Furthermore it appears that both the bus drivers and the yardman receive more pay than Reddick or Mason.

³ Our dissenting colleague contends that a memorandum from Lewis to Courtney, dated July 24, 1973, endows Courtney with certain supervisory attributes, thus classifying him as a supervisor, in spite of overwhelming testimony to the contrary. Upon considering the totality of the evidence, particularly Lewis' admissions set forth above, we conclude that the July 23 memorandum falls far short of establishing the "existence" of supervisory authority.

⁴ We conclude also, in view of the limits on his discretion in making purchases of parts in behalf of the Employer, that he is not a managerial employee.

With respect to the drivers, Reddick and Mason perform basically an inspection job; making sure that the trucks are loaded in compliance within established specifications and safety standards. They do not direct the drivers in the loading but will assist a driver who is having a loading problem by offering suggestions. We conclude, therefore, that Reddick and Mason are not supervisors as defined in the Act.⁵

As we have found that Parts Manager Courtney and Dock Foremen Reddick and Mason are not statutory supervisors,⁶ and as they appear to be the only unrepresented employees other than the office clerical employees, we find that they constitute an appropriate residual unit.

Accordingly, we shall direct an election among the following employees whom we find to be a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

The dock foremen employed by the Employer at its Sharonville, Ohio, terminal, and the parts manager employed by the Employer at its Norwood, Ohio, terminal.

[Direction of Election and *Excelsior* footnote omitted from publication.]

MEMBER KENNEDY, concurring in part and dissenting in part:

I concur in the finding of the majority that Shop Foremen Storm and Cromley and Operations Supervisor Steele are supervisors within the meaning of Section 2(11) of the Act. I dissent from their conclusion that Parts Manager Courtney and Dock Foremen Reddick and Mason are not supervisors. In my view, the Board's Decision issued today in *American Book Division, Litton Educational Publishing, Inc.*, 214 NLRB No. 44, requires adoption of the Regional Director's finding here that Courtney, Reddick, and Mason meet the Section 2(11) test of supervisory status.

⁵ *Janesville Auto Transport Company*, 193 NLRB 874 (1971), *Chase Aircraft Company, Inc.*, 91 NLRB 288, 291 (1950)

⁶ Our dissenting colleague's reliance on the proposed Decision in *American Book Division, Litton Educational Publishing, Inc.*, 214 NLRB No. 44 (1974), is misplaced. The Board stated in that case

Supervisory determinations cannot be made on the basis of any hard and fast rules. Rather, the finding of whether supervisory power in fact exists can only be ascertained as a result of an analysis of the facts of each case.

In *American Book*, the individuals whom the proposed Decision finds to be supervisors assign work, transfer employees, grant time off, and authorize overtime. Moreover, had we not found the three individuals in question in that case to be supervisors, then the only supervisors for 80 to 153 employees would have been the plant manager, the assistant plant manager, and 1 foreman. In the instant case, all the indicia of supervisory authority are lacking with respect to Courtney, Reddick, and Mason, and to find that Reddick and Mason together supervise three individuals who receive greater compensation than their alleged supervisors is unrealistic.

In *American Book* the Board considered the supervisory status of three persons employed in a mail distribution warehouse for educational books. Each of the three had the responsibility of overseeing one facet of the employer's operation: the freight line, the mail line, or the receiving department. The work was routine, essentially involving the sorting, picking, packing, and mailing of orders for educational books. Each of the three spent a significant portion of his time performing rank-and-file work in his department. All of them were responsible to a foreman, who was in charge of picking, packing, and shipping of all orders, and who spent 90 percent of his time on the working warehouse floor. There was testimony on which the Board relied that while the three individuals did not have the authority to hire, fire, or discipline employees, they did assign work and responsibly direct employees. The work assignments were the usual ones of moving employees about as necessary to balance the routine work flow. The Board concluded in *American Book* that these three individuals were supervisors because management had informed the employees that they were; that they had made temporary assignments of work; that they were paid more than the rank-and-file although they were not salaried; that they attended management meetings; and that they had taken outside instruction at management expense (in "how to get along with people").

Yet, chimerically these persuasions no longer carry the supervisory indicia in the instant case, despite the stronger and more abundant presence of them in *American Book*. Dock Foremen Reddick and Mason are the only employees with authority who are permanently stationed at the Employer's terminal in Sharonville, 8 miles from the main facility. There are no other supervisors present during the hours of business from 6 a.m. to 11 p.m. Reddick works the 6 a.m. to 2:30 p.m. shift, while Mason is on the 2:30 p.m. to 11 p.m. shift. While on duty each is in charge of the storage and loading of new automobiles. Reddick oversees the work of a yardman and a bus driver, while Mason directs a bus driver. As in *American Book*, both have been formally designated by the Employer as supervisors⁷ and attend management meetings. Both are salaried⁸ and have the fringe benefits accorded other admitted supervisors, including a bonus plan, salary continuation, and life and major medical insurance programs.⁹ Both Reddick and Ma-

⁷ In *American Book* the supervisors were paid hourly, as were the employees.

⁸ The fact that Reddick's and Mason's net pay is less than some nonsalaried employees is of little importance, since they, unlike the employees, have greater pay security by virtue of their salaried status.

⁹ The designation is written, and specifies the authority to approve overtime, correct employees' work, and to recommend discipline of employees.

son wear uniforms distinctive from those of the regular employees. They direct the loading of the trucks and determine when the loaded truck is in a proper condition to leave the terminal. They are responsible for overseeing the drivers' waiting time and loading time, and they authorize overtime. They can, and have, recommended disciplining of employees for violation of company rules. They are also required to know and account for the condition and location of the expensive inventory of automobiles, a matter of considerable responsibility.

Much the same is true of Parts Manager Courtney. Courtney admittedly occasionally assigns work to at least two employees—a tireman and a porter. The majority cites no evidence to support their conclusion that Courtney's direction of the tireman and porter does not require the use of independent judgment, nor does there appear in the majority's opinion any reason for finding any less independence of judgment than was exercised by the three individuals working on the routine assembly line operation in *American Book*. Furthermore, as in the *American Book* case, the Employer has formally classified Courtney as a supervisor. He is the designated substitute for Maintenance Superintendent French and Shop Foreman Storm, both of whom are supervisors, and he has in fact performed these duties. By his memorandum to Courtney of July 24, 1973, Manager Lewis described to Courtney his managerial responsibilities.¹⁰ That memorandum states:

This is a reminder to you that, as a Company Supervisor, you have the authority to direct the work activities of those employees you oversee and also have them correct their work if not done properly.

You must also approve overtime work by the employees such as initialing time cards, having them stay over the normal work tenure to complete a job, etc.

¹⁰ These responsibilities as outlined in the July 24 memorandum were the same as those held by Courtney's predecessor. This memorandum was still in full force and effect at the time of the hearing herein.

It is also your responsibility to make recommendations as to disciplining an employee as well as congratulating them on a job well done. Often we leave these responsibilities up to other people and, as part of management, this responsibility belongs to you.

The majority err in relying upon their finding that "Courtney substitutes for Storm only sporadically," because they confuse sporadic *exercise* with sporadic *existence* of supervisory power. It is "the mere existence of power [which] determines whether an individual is an employee or a supervisor." *James H. Matthews & Co. v. N.L.R.B.*, 354 F.2d 432, 434 (C.A. 8, 1965).¹¹

Courtney has also represented his Employer at National Automobile Transportation Association road checks. On behalf of his Employer, Courtney negotiates for the lowest prices and the best warranties on the parts he buys for the Employer at the rate of \$133,000 per annum. As with Reddick and Mason, Courtney attends management meetings, and he has his own desk and working area. While it is true that he has in the past consulted with his superiors about his decisions to buy goods for the parts room, there is evidence that this is because he is not yet fully experienced in the Employer's operation. Nevertheless, it is clear that he has more authority to responsibly direct and assign work to employees than at least one of the individuals found to be a supervisor in *American Book*, and that he and Dock Foremen Reddick and Mason bear far more of the supervisory indicia relied on so heavily by the Board in *American Book* than did any of the employees which the Board found to be Section 2(11) supervisors in that case.

I do not disagree with the majority's enunciated principles for deciding the issue of supervisory status in *American Book* and in this case. But I do regret, and must therefore dissent from, their failure to apply them consistently here with *American Book* to these individuals who clearly exercise far more authority to responsibly direct and assign work to employees than did those persons found to be supervisors in *American Book*. I would affirm the Regional Director's decision to dismiss the petition.

¹¹ See also *Arizona Public Service Co v. N.L.R.B.*, 453 F.2d 228, 230 (C.A. 9, 1971); *Ohio Power Company v. N.L.R.B.*, 176 F.2d 385 (C.A. 6, 1949).