

**Hogan Manufacturing, Inc. and International Association of Bridge, Structural and Ornamental Iron Workers, Local 792, AFL-CIO, Petitioner.** Case 32-RC-3256

December 6, 1991

DECISION AND DIRECTION

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT  
AND RAUDABAUGH

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held on June 20, 1990, and the hearing officer's report recommending disposition of them.<sup>1</sup> The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 80 for and 79 against the Petitioner, with 2 challenged ballots.<sup>2</sup>

The Board has reviewed the record in light of the exceptions and briefs and has adopted the hearing officer's findings and recommendations only to the extent consistent with this Decision and Direction.<sup>3</sup>

1. The hearing officer found that Gary Mouldenhauer is a supervisor within the meaning of Section 2(11) of the Act and recommended that the challenge to his ballot be sustained. The Employer excepts, contending that Mouldenhauer neither exercises, nor has the authority to exercise, independent judgment in connection with his duties, and that Mouldenhauer possesses none of the indicia of supervisory status enumerated in Section 2(11) of the Act. We find merit in the Employer's exceptions.

The Employer builds wheelchair lifts for municipal buses and fabricates structural steel products at its

plants 1, 2, and 3 in Escalon, California. The election here was conducted in a unit of employees at these three plants.<sup>4</sup> Mouldenhauer is a certified welder and welding inspector. He works primarily in plant 2 but performs some welding inspection duties in plant 3. He works the same hours, takes the same breaks, and punches the same timeclock as the plant 2 shop employees. He is supervised by Lon Rose, the quality assurance manager and personnel director.

Mouldenhauer's varied duties include inspecting welds, testing welds, writing welding procedure specifications, reviewing blueprints and project specifications, checking dimensions of materials and parts, reviewing welding codes, reviewing mill test reports, and qualifying new welding procedure when a standardized procedure cannot be used. Since July, he has been assigned to do production welding. His duties that gave rise to the finding of supervisory status concern certain welding tests he administers to potential new hires and current employee welders.

The Employer tests the welding capability of potential new hires and also tests its employee welders when their ability is in question or when the need to qualify for a new procedure or for upgrading. The hearing officer's description of Mouldenhauer's test procedure is not in dispute. He found that:

To qualify a welder, Mouldenhauer gives two standard welding tests, a stick test and a flux core wire test. To conduct the test, Mouldenhauer orders test plates which the foreman sets up for the welder who is to be tested. Mouldenhauer gives instructions to the welder before a test and throughout the procedure, as necessary. Mouldenhauer testified it takes a day to test a new hire and that he can spend from one half hour to three hours with an employee who is being qualified. If the welder is not producing a satisfactory weld, e.g., making a flawed "root pass," which is the initial, critical welding pass upon which the entire weld depends, Mouldenhauer interrupts the test informing the welder that his root pass is unacceptable, and/or suggesting practice for a retest. If during testing, the welder appears to be qualifying, Mouldenhauer checks on the weld periodically (observing the process through a welding hood, as it occurs). When the welder completes a satisfactory weld, Mouldenhauer or a brake operator bends the weld test plates; Mouldenhauer may also have the weld plates radiographed. Mould-

<sup>1</sup> All dates are 1990 unless indicated otherwise.

<sup>2</sup> The initial tally showed 80 for and 73 against the Petitioner with 8 challenged ballots. On August 31, 1990, the Regional Director, after investigation of the challenged ballots, recommended that the ballots of Jim Suniga, Ralph Kehano, Jim Sweat, Mike Reichmuth, Michael Nelson, and Steve Castro be opened and counted. No recommendation was made as to the ballots of Jim Nunley and Gary Mouldenhauer as it appeared likely that the opening and counting of the other ballots would render the ballots of Nunley and Mouldenhauer no longer determinative. Pursuant to a Board Order Directing Regional Director to Open and Count Challenged Ballots that issued on September 24, the other ballots were opened and counted on October 3. The final tally as shown above made Nunley and Mouldenhauer's ballots determinative. Accordingly, on October 9, the Regional Director issued a Supplemental Report on Challenged Ballots and Notice of Hearing regarding Nunley and Mouldenhauer's challenged ballots.

<sup>3</sup> In its aforementioned September 24 Order, the Board adopted the Regional Director's recommendation that the Employer's objections be overruled in their entirety. Regarding the Petitioner's objections, the Board noted that in Case 32-CA-11218, the Employer entered into a settlement agreement in which it agreed, inter alia, that should the Petitioner not receive a majority of the valid ballots cast after the challenged ballots are resolved, the election shall be set aside on the basis of the Petitioner's objections, which parallel the allegations of the unfair labor practice charge.

<sup>4</sup> The unit is:

All full-time and regular part-time production and maintenance employees employed at the Employer's Plant Number 1, 2, and 3 (including its machine shop) in Escalon, California; excluding all other employees office clerical employees, draftsmen, engineering employees, watchmen, guards, and supervisors as defined in the Act.

enhauer interprets the test specimen and the radiograph as to whether the test weld passes the required standard. If the call is close, Mouldenhauer asks Rose for a second opinion. If the welder passes the qualifying procedure, Mouldenhauer fills out American Welding Society (AWS) and American Society of Mechanical Engineering (ASME) certification forms, stamps his CWI stamp, and files the certification record in his office.

Mouldenhauer has administered approximately 100 qualifying tests in the past 5 years. More than one-half of the tests were given to potential new hires; approximately a dozen of the potential new hires failed the test and were not hired as welders. Mouldenhauer offered uncontradicted testimony that he believes employee welders have received a pay increase as a result of reclassification.

The hearing officer found Mouldenhauer to be a statutory supervisor because he effectively recommends to Personnel Director Rose which welder the Employer should hire and which of the Employer's welders are qualified for reclassification. His finding rests primarily on Rose's testimony that he relies on Mouldenhauer's testing of the welders, that no one retests them after Mouldenhauer, and that job applicants have been denied jobs as welders if they could not pass a welding certification test. The hearing officer also found that Mouldenhauer's recommendations to Rose regarding the Employer welders "appear to equate with Mouldenhauer's also effectively recommending promotions."

Unlike the hearing officer, we find that Mouldenhauer's role in conducting the welding tests and reporting the test results to Rose represents neither a delegation of authority, nor an effective recommendation, to hire or promote. It is undisputed that the tests, with preestablished standards, are designed to determine the technical competence of welders, an area in which Mouldenhauer possesses both expertise and experience. In essence, Mouldenhauer reports on whether the welds passed or failed the particular test. And it is the test result, as indicated in the report, not an independent recommendation from Mouldenhauer, that Rose uses in deciding to hire a welding applicant or promote an employee welder. That this is so, and that Mouldenhauer's exercise of judgment is limited wholly to conducting and grading the test and not recommending hire or promotion, is further demonstrated by the fact that "where the call is close," Mouldenhauer does not make a recommendation for or against hire or promotion but instead asks Rose for a "second opinion" concerning whether the tested individual qualifies as a welder. In these circumstances, Rose's acceptance of Mouldenhauer's reports and his reliance on them without retesting the welders does not bestow on

Mouldenhauer the authority to hire or promote or effectively recommend such action.<sup>5</sup> At most such acceptance and reliance show Rose's confidence in Mouldenhauer's testing procedures and abilities and thus represent a deference to his expertise rather than a delegation of supervisory authority. See *Plumbers Local 19 (Jefferson Chemical)*, 237 NLRB 1099, 1101-1102 (1978).<sup>6</sup>

Finally, no other basis for finding Mouldenhauer a supervisor exists. No evidence was presented to show that any of the Employer's employees are regularly assigned to work under Mouldenhauer's supervision or direction. As to Mouldenhauer's inspection of welds in the production process, as opposed to the testing process, he is required to report defective welds to Rose or a foreman. Rose testified that the foreman, not Mouldenhauer, decides if an employee welder is to be disciplined for a defective weld. Thus, as in the case of testing, Mouldenhauer's inspection of welds is but another example of the application of his technical competence and experience rather than the exercise of supervisory authority.

Accordingly, we find that Mouldenhauer is not a supervisor within the meaning of Section 2(11) of the Act.

2. The hearing officer also found that, if Mouldenhauer was not excluded as a statutory supervisor, the record establishes that he is a technical employee who has a community of interest with the unit employees.<sup>7</sup> We agree with the hearing officer that Mouldenhauer's role in quality control is a vital part of the production process here and that he shares a community of inter-

<sup>5</sup> Although no employee welder was discharged or laid off as a result of Mouldenhauer's testing, assuming they were, we would find, for similar reasons, that the use of the test result, without more, did not confer supervisory status on him.

<sup>6</sup> We reject the hearing officer's attempt to distinguish *Jefferson Chemical*, on the basis that the welding test administered by Riley, whose employee status was at issue there, were given to outside contractors' employees and only affected those employees hired for a particular job and not for a job elsewhere with Riley's employer. The Board's decision did not turn on such considerations. Instead, the Board found that Riley was not a supervisor because any attention paid to Riley's opinions or recommendations was based on deference to his expertise, not to any delegation of authority to him to participate in the hiring process.

That same distinction applies to Mouldenhauer's role in the weld-testing process here. Indeed, Mouldenhauer's role in hiring falls short of Riley's, in that Riley "sometimes recruited welders and made ad hoc recommendations to the Employer's personnel department." No evidence was presented here that Mouldenhauer had any role in recruiting or making ad hoc recommendations, or that his role in hiring extended beyond administering tests to employees or potential hires who were referred to him by the Employer, and reporting those results.

<sup>7</sup> As the hearing officer correctly observed, the Board will not automatically exclude technical employees from units of other employees whenever their placement is in issue. *Livingston College*, 290 NLRB 304, 306 (1988).

est with the unit employees. Accordingly, we direct that Mouldenhauer's ballot be opened and counted.

So too, we agree with the hearing officer, for the reasons stated by him, that employee Jim Nunley, a quality control inspector, has a substantial community of interest with the production and maintenance employees in the appropriate unit here and that his ballot should be opened and counted.<sup>8</sup>

#### DIRECTION

IT IS DIRECTED that the Regional Director, within 10 days from the date of this decision, shall open and

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<sup>8</sup>*Blue Grass Industries*, 287 NLRB 274 (1987); *Owens-Illinois, Inc.*, 211 NLRB 939, 940-941 (1974), and *W. R. Grace & Co.*, 202 NLRB 788, 789 (1973).

count the ballots cast by Gary Mouldenhauer and Jim Nunley, and prepare and cause to be served on the parties a revised tally of ballots. If, based on that tally, Petitioner has received a majority of the votes cast, the Regional Director shall issue a certification of representative. If the Petitioner has not received a majority of the votes cast, then the election shall be set aside based on the Petitioner's objections and a new election shall be held whenever the Regional Director deems it appropriate.

IT IS FURTHER DIRECTED that this proceeding is remanded to the Regional Director for the purpose of taking actions consistent with this Decision and Direction.