

**The Detroit Edison Company and David M. Kus,
Petitioner and Local 223, Utility Workers of
America, AFL-CIO. Case 7-RD-2117**

22 July 1985

DECISION AND DIRECTION

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

The National Labor Relations Board has considered challenges to an election on 11 July 1984 and the hearing officer's report recommending disposition of them.¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally of ballots shows 13 for and 11 against the Union, with 2 challenged ballots which are sufficient in number to affect the results.

The hearing officer issued his report on 11 October 1984 finding David Seever a supervisor and therefore an ineligible voter, and recommending that the challenge to his ballot be sustained. The hearing officer concluded that the remaining challenged ballot of Dennis R. O'Donohue is no longer determinative² and accordingly recommended certification of the Union as the unit employees' collective-bargaining agent.

Thereafter the Employer filed timely exceptions and a supporting brief to the hearing officer's report, and the Union filed a brief in reply.

The Board has reviewed the record in light of the exceptions and briefs and adopts the hearing officer's findings and recommendations only to the extent consistent with this Decision and Direction.

We find, contrary to the hearing officer, that Seever did not exercise the degree of authority over bargaining unit employees during his 19-month occupation of supervisory positions to destroy his voting eligibility or substantial interests as a member of the bargaining unit.

The facts show that David Seever had been engaged in meter-reading work for the Employer for approximately 13 years prior to becoming the group leader in its Ann Arbor meter-reading department in 1978. The meter-reading department is part of the Employer's customer and marketing services division. The meter-reading supervisor reports to General Service Supervisor Hanselman who in turn reports to the director of customer and marketing services, Shelton.

¹ The Board ordered a hearing on the Employer's Objections 1 and 2 and the two challenged ballots. However, prior to the opening of the hearing the Acting Regional Director approved the Employer's withdrawal of its objections. Therefore there are no objections to the election pending before us.

² O'Donohue's voting eligibility was stipulated by the parties at the hearing and found by the hearing officer.

The Ann Arbor meter readers report to the office by 7:45 a.m. to pick up the day's route cards and leave for their respective field assignments in their own or company cars. About 4:30 p.m. they report in by telephone regarding completion of the day's assignment and deliver the cards to the office on the following morning. They are required to dress in company uniforms and safety shoes while reading meters.

In 1978 Seever became a group leader under Meter-Reading Supervisor James Vasher who held that position for many years. As a group leader Seever made route and car assignments by distributing prepackaged route cards and automobile keys to the meter readers. He checked and correlated the prior day's reading cards and forwarded them to the company central billing office. In addition Seever was responsible for assuring that meter readers observed company safety regulations and for reporting reading discrepancies to management.³ He was also expected to perform regular or special meter readings and to be dressed in uniform while performing meter reading.

In accordance with the Employer's established practice of stepping up individuals into supervisory positions on a temporary basis in appropriate circumstances, Seever was asked to substitute temporarily for Meter-Reading Supervisor Vasher on 21 February 1983 while Vasher was participating in the development of an incentive meter-reading program for the Employer. On 14 March Seever was assigned to replace Vasher in the special project when Vasher was unable to continue because of medical and other problems. Special meter reader Forshee was stepped up temporarily to replace Seever as meter-reading supervisor. Seever completed the project assignment on 18 April, but was requested to resume the temporary meter-reading supervisor position as a result of Vasher's decision to retire. Forshee was returned to his special meter-reader duties.⁴

Shelton admonished Seever that he would be stepped up only until the vacancy created by Vasher's retirement was filled and that it would not give Seever any preference in the Employer's selection of a permanent supervisor. The vacancy was posted on 25 April 1983, and Seever was

³ A written discharge action in evidence shows that it was initiated by then group leader Seever's detection and report to Supervisor Vasher that a substantial number of readings by one meter reader were missing. Seever's report touched off an investigation which revealed that the meter reader in question had intentionally destroyed the cards.

⁴ Subsequently, Forshee and Seever cast unchallenged ballots in a Board-conducted representation election on 11 May 1983, which the Union won. Thereafter, Seever became a dues paying member of the Union and retained his unit seniority in accordance with the provisions of the collective-bargaining agreement negotiated between the Union and the Employer.

among the applicants for that position. Thereafter, on 11 November, Shelton informed Seever that Doris Low from customer service had been selected as the permanent supervisor. Shelton requested that Seever continue in the role of temporary supervisor because of his wealth of knowledge concerning the work of the meter-reading department and Low's lack of knowledge or experience with meter reading. On 5 March 1984 Shelton decided to create a second permanent supervisor position because of the 26-to-1 employees-to-supervisor ratio in Ann Arbor compared with the 11- or 13-to-1 ratio in the other company meter-reading departments. Shelton again asked Seever to step up temporarily to that position until a permanent supervisor could be selected. The job was posted on 24 May, but no selection had been made by the time of the hearing on 27 September 1984.

Shelton testified that Seever performed essentially the same duties as temporary meter-reading supervisor as he had as group leader, i.e., planning, directing, coordinating, and checking the work of the meter readers.⁵ He was emphatic in his testimony that he had instructed Seever not to discipline or deal with employee grievances or problems, but rather to refer them to Hanselman or himself. Shelton explained that because Seever obviously stood a very good chance of going back to his permanent group leader job, "I didn't want to jeopardize his [Seever's] relationship with his peer group" by granting Seever such authority. Shelton testified that he instructed Seever merely to check with Hanselman or Shelton with respect to employee requests for vacation or emergency leave and prior to sending any employee home. Shelton further testified that he requested Seever to sit in on one or two Company-Union meetings about meter-reading issues because of Seever's superior knowledge and experience in that area, and that he permitted Seever to attend in Hanselman's stead a few meetings with supervisors from other company locations for the purpose of carrying information to the meeting and bringing information back to Ann Arbor.

Meter reader Joyce Frierson testified that she regarded Seever as her boss, that he gave her an appraisal which recommended no pay increase,⁶ and

⁵ The major difference, according to Shelton, was that as a supervisor Seever was not permitted by the Union's contract to perform unit work of reading meters

⁶ The appraisal form in evidence is signed by Seever and states
Joyce has only worked 16 days since May 1, 1983, I have no appraisal at this time I recommend no pay increase at this time
This is the sole employee evaluation proffered into evidence We find that the foregoing statement indicates only that the employee did not work sufficiently long to be eligible for either an appraisal or an increase in pay, rather than constituting an appraisal and recommendation on her merits

that he scheduled her vacation leave.⁷ Frierson further testified regarding a few incidents in which Seever had reprimanded her prior to taking her to Hanselman's office, describing her conduct to Hanselman, and remaining while Hanselman questioned Frierson regarding her version of the incidents. Hanselman testified that, whenever Seever reported safety infractions or employee misconduct to him, Hanselman always conducted his own investigation into the matter. He further testified that he did not issue any written warnings to any employee based solely on what Seever reported to him. Hanselman specifically testified that he did not issue any discipline to Frierson based on reports and factfinding discussions initiated by Seever with respect to Frierson.⁸

Union Representative Krukowski testified that Seever advised Low on one occasion to send home employees without pay, and that the matter was the subject of a union grievance. Hanselman testified with respect to that incident as follows: On Saturday, 21 January 1984, three individuals who had volunteered to work overtime arrived at the office individually and advised Supervisor Low that they would not read meters that day because of the subzero weather. Low telephoned Hanselman without success, then reached Seever who explained that the company policy was to send the employees home and he did not think that they would be paid for showing up. On the following Monday, Low reported the incident to Hanselman, and he confirmed that her actions were correct. Accordingly, the Employer denied the Union's grievance. On 18 April 1984 the Union filed a grievance demanding that the Employer either refrain from hiring contract meter readers or return Seever to his group leader position.

The hearing officer found from the record that Seever's status was something more than a temporary supervisor and therefore he was not eligible to vote on that basis.⁹ He noted that Seever lacked

⁷ The vacation schedule in evidence is the unit seniority list with blocks of time juxtaposed beside each employee's name. It shows that Seever's own 1983 and 1984 vacations were scheduled according to unit seniority

⁸ The hearing officer erroneously found that in one instance Seever "initiated disciplinary action that resulted in an employee receiving a written warning for failing to follow his instructions as her supervisor." The only written warnings in evidence are as follows: A Written Record of Oral Warning on 29 March 1983 (while Forshee was temporary supervisor) with respect to Frierson's failure to follow an unnamed supervisor's warning about company regulations against jumping over customers' fences, A Written Record of Oral Warning dated 2 March 1984, signed by Doris Low and pertaining to Frierson's failure to follow Low's instruction to report immediately for medical attention by the Company to her complaint of frostbite

A written warning in evidence dated 2 April 1984 and signed by Low makes no reference to a failure to follow a supervisor's instructions

⁹ *E. I. du Pont & Co.*, 210 NLRB 395 (1974)

actual decision-making authority, but found that evidence that he was the initiator of the disciplinary process and participated in factfinding sessions leading to discipline elevated him to a level of authority within the meter-reading department that isolates him from the interests of the unit members and establishes him a supervisor within the meaning of Section 2(11) of the Act. The hearing officer bolstered his conclusion based on evidence showing, *inter alia*, that Seever was the only meter-reading supervisor for 8 months, that he "trained" a supervisor (and advised her to send employees home), that he made an employee appraisal and recommended no increase, and triggered a written warning to an employee for failing to obey his supervision.

We find quite apart from the issue of Seever's temporary status that the record does not establish that Seever exercised independent judgment in overseeing the work of the meter readers. On the contrary, it is clear that Shelton severely limited Seever's authority to exercise any significant supervision and that he performed primarily ministerial duties. It is plain from Hanselman's testimony that Seever's report of employee misconduct fell far short of effective recommendations for discipline, and that all such reports were the subject of independent investigation by Hanselman. We attach no significance to the fact that Seever was the only supervisor for 8 months in view of the evidence showing the availability and actual participation by Hanselman (and Shelton) in the supervision of the department. Nor do we find that Seever "trained" permanent Supervisor Low in any supervisory aspects of her position. Rather, the record is clear that he merely assisted and familiarized Low with the procedures and necessary background information for running the department. Likewise, we do not read any supervisory direction into Seever's suggestion to Low with respect to sending the employees home on 21 January 1984 after they re-

fused to perform the overtime work. In sum, we do not find evidentiary support for the hearing officer's conclusion as to Seever's exercise of true supervisory authority. Furthermore, the record shows that the Employer and the Union recognized Seever's continuing interest in his group leader position. Thus, the Company retained him in that position on its official records and applied the collective-bargaining agreement to him as a unit employee; as well as admonished Seever as to the temporary nature of his assignments and decision not to select him as a permanent supervisor. The Union maintained Seever's place on the unit seniority list, accepted his dues, and even grieved only 3 months prior to the decertification election for his return to unit work.

We conclude from the foregoing that the record evidence does not establish that Seever possessed or exercised supervisory authority or achieved a level of authority which distinguished his interests from those of the other bargaining unit employees. Accordingly, we find that he was at all times an eligible voter in this election. Furthermore, as the parties stipulated and the hearing officer found that Dennis R. O'Donohue occupied a position in the bargaining unit on the payroll eligibility date and the date of the election and was an eligible voter, we shall order that the matter be remanded to the Regional Director for the purpose of opening and counting the two challenged ballots and issuing the appropriate certification.

DIRECTION

The case is remanded to the Regional Director for Region 7 who shall, within 10 days from the date of this Decision and Direction, open and count the ballots of David Seever and Dennis R. O'Donohue and thereafter prepare a revised tally of ballots, including therein the count of such ballots, and issue the appropriate certification