

**Concourse Village, Inc and Service Employees  
International Union, Local 32E, AFL-CIO  
Cases 2-UC-324-1 and 2-UC-324-2**

27 August 1985

**DECISION ON REVIEW AND ORDER**

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

Following a hearing conducted on 2, 5, 6, 14, 15, and 16 March 1984,<sup>1</sup> the Regional Director for Region 2 on 30 March issued his Decision and Order on the above enumerated petitions, dismissing the first petition on the basis that the record failed to establish that the assistant maintenance director, superintendents, and handymen are supervisors as the Employer alleges, and with regard to the second petition, clarifying lieutenants and sergeants from an existing unit of security guards on the basis of their supervisory status but refusing to exclude from the existing unit the alleged supervisory position of captain. Thereafter, the Employer filed with the Board a request for review of the Regional Director's decision with supporting brief, and the Union filed a brief in opposition. On 30 November the Board granted review.

The National Labor Relations Board has delegated its authority in this proceeding to a three member panel.

The National Labor Relations Board has reviewed the record in light of the exceptions and briefs and has decided to dismiss as moot the Employer's petition in Case 2-UC-324-2 regarding the guard unit,<sup>2</sup> and to reverse the Regional Director's

<sup>1</sup> All dates refer to 1984 unless otherwise indicated.

<sup>2</sup> In our telegraphic order granting review the Board sua sponte raised the question whether our recent decision in *Brinks, Inc* 272 NLRB 868 (1984) which denies the use of Board processes to unions that represent both guards and nonguards would bar consideration of the petition pertaining to the guard unit. The Employer indicated in its supplemental brief that on 19 May it permanently laid off all of its security guards and subcontracted out their work. We have been advised administratively that charges filed by the Union that the layoff violated the Act were dismissed by the Regional Director and that the General Counsel denied the Union's appeal of the dismissal. Accordingly we find it unnecessary to pass on the application of *Brinks* in this case inasmuch as the nonexistence of the unit renders the questions moot and we shall dismiss the petition in Case 2-UC-324-2 on that basis.

Member Dennis does not agree that the present record supports the finding that the questions raised in Case 2-UC-324-2 are moot. Instead Member Dennis finds that the Employer's assertion in its supplemental brief that it no longer employs guards raises factual issues warranting a reopening of the record. Indeed the Employer argues that the case is *not* moot and suggests that it may employ guards again in the future. In these circumstances Member Dennis would remand Case 2-UC-324-2 to the Regional Director for further proceedings including a hearing if necessary concerning the Employer's allegation that it has permanently laid off the security guards and subcontracted out the unit work.

Contrary to our colleague in finding the issue raised in Case 2-UC-324-2 moot we note that the Employer's assertion that it no longer employs guards is uncontroverted and further note that while the Employer states its belief that the case is not moot it admits that it has no plans to

decision on the petition in Case 2-UC-324-1 and to exclude the assistant maintenance director and the superintendents from the unit of maintenance workers.<sup>3</sup>

The record establishes that the Employer is a six building 1872-unit cooperative apartment complex whose maintenance employees have been represented by the Union since 1965. There are 62 employees in the maintenance unit including 6 superintendents, 9 handymen, and numerous porters who are each assigned to particular buildings. In addition to performing certain building repairs themselves, the superintendents oversee and are responsible for the work of the handymen and four porters who work in their respective buildings. Handymen regularly substitute for absent superintendents. Porters in each building are permanently assigned to either the lobby area (porter no 1), floors 1 through 12 (porter no 2), floors 13 through 24 (porter no 3), or the compactor room (porter no 4). All maintenance workers report to the director of maintenance, the assistant director of maintenance, and the site manager.

Superintendents spend 80 percent of their work day performing repairs and servicing machines and 20 percent inspecting the work of handymen and porters. Superintendents must fill out and sign daily inspection reports which detail the work of these employees and the condition of the building. They can compel porters to carry out their regular duties and to redo unsatisfactory work, but the porters' work is largely predetermined and is a function of the area in which they work. Twice yearly when floors are stripped, resealed, and waxed, the superintendent may assign porters to work out of their regular areas. Further, when a superintendent sees a spill in the hallway while making his inspection rounds he may direct the first porter he sees to clean it up or when an emergency such as pipes bursting in an apartment arises, he may pull a porter from an assigned area to do the necessary work. Regarding handymen, the record reveals that they pick up work slips, i.e., repair calls from

employ security guards. Even if the Employer were to employ security guards sometime in the future however we would still find the UC question as to the employees at issue here to be moot. Guards employed in the future will at least at the outset be unrepresented and a union wishing to be certified to represent them must meet the conditions of Sec 9(b)(3). In the event the union meets those conditions, unit scope questions if any will be dealt with in the representation case.

<sup>3</sup> The Employer requests that the Board reopen the record and admit into evidence an arbitrator's decision relating to a superintendent's responsibility for equipment that issued after the close of the hearing in this case. We grant the Employer's request to reopen the record for this purpose but in view of the basis for finding superintendents to be supervisory as set forth below we find it unnecessary to consider the arbitrator's decision.

individual units and perform whatever work is required in the unit.

On the basis of the foregoing, the Regional Director concluded that superintendents do not engage in any substantial assignment or direction of work. We agree.<sup>4</sup> The duties of porters and handymen are predetermined, performed daily, and routine. No significant direction of their work is either required or undertaken.

The record also establishes that superintendents issue disciplinary warnings to maintenance employees for such infractions as lateness, insubordination, and failure to clean their areas. These warnings, although sometimes issued at the directive of the director of maintenance and other management officials, have also been issued independently by superintendents. They are placed in the employee's personnel file. Site Manager Winnie Jennings, who is responsible for the day-to-day operation of the complex, testified that she implemented a rule shortly after her hire in 1983 that three disciplinary warnings would result in the employee's discharge. This rule change occurred after superintendents complained that the warnings they issued seemed to have little effect on employees' behavior, and superintendents were advised of the new rule.

The Regional Director found with respect to the issuance of these written warnings that superintendents were mere "conduits" and stated that the record was "devoid" of evidence concerning the impact the warning had on employees' tenure. Contrary to the Regional Director, we find that the superintendents' possession of authority to issue such warnings on their own initiative is evidence of their supervisory status. The indicia of supervisory status listed in Section 2(11) of the Act are set forth in the disjunctive, and it is well settled that the existence of only one is necessary to support a finding that an employee is a supervisor within the meaning of the Act. The record discloses that superintendents have exercised the authority to discipline employees and particularly that the disciplinary warnings will have a definite and severe effect on employment status. We find that, superintendents are supervisors and we shall exclude them from the maintenance unit.

At the hearing the Employer raised the issue that the classification of assistant maintenance director

should also be excluded from the unit. As noted above, the superintendents report to the individual who occupies this position or to two others whose supervisory status is conceded. At the time of the hearing, one of the superintendents was the acting assistant maintenance director, and he testified that he maintains and inspects employee timecards and work schedules. He also checks with superintendents to determine whether employees have reported for work and ascertains whether maintenance employees are in full uniform with identification before clocking in for duty.

Employees who breach these policies may be disciplined by the assistant maintenance director and the record indicates that at least one written warning has been issued. As stated above with respect to superintendents, these disciplinary warnings, which according to the Employer's established policy may result in discharge, are sufficient basis for concluding that the classification of assistant maintenance director is supervisory and we shall likewise exclude this position from the maintenance unit.<sup>5</sup>

Handymen, as alluded to earlier, regularly substitute for superintendents on the latter's days off, sick and personal days, and when they are on vacation. While substituting, handymen perform their normal duties of answering service calls, but also attend management meetings in place of the superintendents and fill out the daily inspection reports usually done by superintendents. Handymen receive a stipend for the hours they replace superintendents. There is no evidence, however, that substituting handymen have authority to issue written disciplinary warnings, and the record does not establish that they possess any other supervisory authority. In view of these facts, we find that despite any regularity with which handymen substitute for superintendents, they do not assume any supervisory authority during this time. Accordingly, we find that handymen are employees within the meaning of the Act and we shall not exclude them from the unit.

## ORDER

It is ordered that the current collective-bargaining unit described in Case 2-UC-324-1 be clarified as follows:

All maintenance employees, including handymen, porters, utility porter, dispatcher, truck driver, stock clerk, boilerman and touch-up

<sup>4</sup> We also agree with the Regional Director's findings that superintendents do not have authority to hire, fire, transfer, promote, or reward handymen and porters. In view of the fact that their recommendations regarding hiring and retention were not followed or did not form the basis of employment decisions and in light of the site manager's vague testimony regarding the use of employee evaluations performed by superintendents, we also agree with the Regional Director's finding that superintendents do not possess the authority effectively to recommend these actions.

<sup>5</sup> In finding these positions supervisory we note the inordinate supervisor-to-employee ratio (2-to-60) that would result if superintendents and the assistant director were found to be employees within the meaning of the Act. See *Albany Medical Center*, 273 NLRB 485 (1984).

## DECISIONS OF NATIONAL LABOR RELATIONS BOARD

painter, and excluding Assistant Maintenance  
Director, superintendents and all other em  
ployees

IT IS FURTHER ORDERED that the petition in Case  
2-UC-324-2 is dismissed