

Latas De Aluminio Reynolds, Inc. and United Steelworkers of America, AFL-CIO, Petitioner.
Case 24-RC-6928

30 September 1985

DECISION AND DIRECTION

BY MEMBERS DENNIS, JOHANSEN, AND
BABSON

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held 29 November 1984, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 56 for and 53 against the Petitioner, with 4 challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs and adopts the hearing officer's findings¹ and recommendations to overrule the challenges to the ballots of Roberto Figueroa Montes, Nelson Santiago, and Jose M. Gonzalez. We do not adopt the recommendation to sustain the challenge to Tomas Rosa Santos' ballot.

The Respondent hired Rosa Santos in March 1982 as a machine operator. He subsequently became a general mechanic, his position at the time of the election. In 1983 Rosa Santos substituted twice, each time for 2- to 3-week periods, for vacationing supervisors. In 1984 he substituted again for a vacationing supervisor, and remained in this role for 4 to 5 months while the supervisor received training after he had returned from vacation. On 26 November 1984, 3 days before the election, the supervisor resumed his supervisory responsibilities. Rosa Santos took a 2-week vacation and then returned to his normal shift as a general mechanic.

On these facts the hearing officer reasoned that Rosa Santos' periods of supervisory authority were frequent and substantial, and concluded that he was

¹ The Employer and Petitioner have excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

a supervisor within the meaning of the Act. We do not agree.

We agree that the appropriate test for determining the status of employees who substitute for supervisors is whether they spend a regular and substantial portion of their working time performing supervisory tasks.² Here, no such regularity existed. In 1983 Rosa Santos substituted for vacationing supervisors twice, and in 1984 only once. Although the 1984 substitution was extended, Rosa Santos was specifically told that he would remain a supervisor only until the regular supervisor finished his training. "It has long been held that sporadic assumption of supervisory duties, e.g., during annual vacation periods of a regular supervisor, is not sufficient to establish supervisory status at other times."³

Buttressing our finding that Rosa Santos' substitutions, including training period, were temporary and sporadic is the fact that Rosa Santos retained benefits afforded the rest of the unit employees. As a unit employee, and unlike full-time supervisors, he was paid on a weekly basis, he was eligible for overtime, he received shift differentials, he punched a timecard, and he was assigned a toolbox. We find that Rosa Santos shared a community of interest with his fellow employees.

For the reasons detailed above, we conclude that Tomas Rosa Santos is eligible to vote, and the challenge to his ballot should be overruled.

DIRECTION

IT IS DIRECTED that the Regional Director open and count the ballots of Tomas Rosa Santos, Roberto Figueroa Montes, Nelson Santiago, and Jose M. Gonzalez, and thereafter prepare and serve on the parties a revised tally of ballots on the basis of which he shall issue the appropriate certification.

² See *Aladdin Hotel*, 270 NLRB 838 (1984) (individuals were statutory supervisors when they substituted for supervisors on the average of at least twice per month); *Honda of San Diego*, 254 NLRB 1248 (1981) (individual who substituted regularly for a supervisor 10 of his 40 working hours each week was statutory supervisor)

³ *Stewart & Stevenson Services*, 164 NLRB 741, 742 (1967).

The only time other than vacation periods that Rosa Santos filled in as a supervisor was when the regular supervisor was in training. Because we find no evidence that Rosa Santos regularly replaced in-training supervisors, we find that it was an isolated instance.