

**Wolff and Munier, Inc. and Robert Campione. Case
22-CA-10279**

14 November 1986

**SUPPLEMENTAL DECISION AND
ORDER**

**BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN AND STEPHENS**

On 29 July 1986 Administrative Law Judge D. Barry Morris issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

On the basis of the judge's supplemental decision and the entire record, the National Labor Relations Board reaffirms its Order issued 21 June 1982 [262, NLRB 333] and orders that the Respondent, Wolff and Munier, Inc., Newark, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Marta Figueroa, Esq., for the General Counsel.

Lee D. Unterman, Esq. (Whitman & Ransom), of New York, New York, for the Respondent.

John A. Craner, Esq. (Craner, Nelson, Satkin & Glazner, P.A.), of Scotch Plains, New Jersey, for the Charging Party.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. On 6 November 1981 Administrative Law Judge Thomas T. Trunkes issued a decision finding that Wolff & Munier, Inc. (Respondent) engaged in certain unfair labor practices in violation of Section 8(a)(1) and (3) of the Act. On 21 June 1982 the Board issued its Decision and Order affirming the rulings, findings, and conclusions of Judge Trunkes. Thereafter, the Board filed a petition with the United States Court of Appeals for the Third Circuit seeking enforcement of its Order. On 31 November 1984 the Court remanded the case to the Board for further proceedings consistent with its opinion. On 12 July 1985 the Board issued its Order Remanding Proceeding to Administrative Law Judge for the purpose of determining whether the Joint Conference Committee's findings were a resolution of a statutory inquiry whether the discriminatees were supervisors within the meaning of Section 2(11) of the Act and whether those findings warrant

deferral under *Olin Corp.*, 268 NLRB 573 (1984); and *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955).

Pursuant to the Board's remand, a hearing was held before me on 3 March 1986. The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by all the parties. On the record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

Pursuant to a grievance filed with the Union, a Joint Conference Committee meeting was held on 5 November 1980. At the hearing held before me three witnesses testified as to what transpired at this meeting. The three witnesses were Robert Campione, one of the three alleged discriminatees; William Bulman, executive director of the Mechanical Contractors Association; and Francis Chang, executive vice president of Respondent.

Campione testified that he, Ralph Campione, and Walter Dowd, the other two alleged discriminatees, addressed the committee and told them their versions of what transpired on 9 September 1980, the day of their discharge. Thereafter, two of Respondent's representatives testified before the committee, giving their reasons for the discharge. In this connection, Emil Le Doux, Respondent's superintendent, accused the three generally of nonproductivity. Campione testified that either Chang or Le Doux stated at the meeting that, "[w]e failed to work the men."

Campione testified that he, his brother, and Dowd tried to "interject and clarify points" as they were being presented by Chang and Le Doux. However, the meeting was cut short when it was mentioned that charges had been filed with the Board.

Bulman testified that at the committee meeting, Le Doux:

. . . described the fact that they were foremen and that . . . one of them was a general foreman [and] the other two were foremen. And he described incidents where he told them certain things to do and they didn't carry them out. . . . [T]he Campiones and Mr. Dowd . . . identified themselves as foremen on the job.

The Joint Conference Committee consisted of five mechanical contractors and five union officers. When asked whether there was any elaboration of what the alleged discriminatees were supposed to do as foremen, Bulman replied, "[y]ou're dealing with people who are pretty well versed in what a foreman is supposed to do with four or five contractors and four or five union people."

At the hearing on remand, Campione credibly testified that there was no discussion at the Joint Conference Committee meeting concerning the alleged discriminatees' duties or responsibilities. In addition, there was no discussion about their authority to hire, fire, lay off, discipline, reprimand, reward, or promote employees. Concerning the assignment of work, Chang credibly testified that there was a discussion at the committee meeting that because the alleged discriminatees were the foremen:

[T]hey are the men to direct the people and to follow the order [sic] and the work that they have to do; assign the work, and keep the job moving. . . .

Bulman testified, as follows:

Q. . . . and you testified before that Mr. Le Doux talked about the fact that these people were foremen, right?

A. Sure.

Q. But he didn't go into what their duties and responsibilities are as foremen, right?

A. Yes, he did. In describing what they didn't do.

Q. What specifically did he talk about there?

A. Didn't carry out his orders [sic] his instructions.

Q. That they didn't carry out his instructions?

A. Well he was the superintendent. . . . They would work under him.

Q. So as foremen, what they were supposed to do is transmit his instructions to the men?

A. Sure, they were supposed to be foremen.

Q. . . . Did he give you . . . any examples?

A. I think I said that he made frequent reference to that they did not carry out his instructions or they didn't do it in a timely manner.

Bulman testified that after the hearing the Joint Conference Committee met in executive session, that their decision was unanimous and thereafter he drafted the committee's decision. He testified that the most important factor considered by the committee in reaching its decision was that the "men were not doing their job as foremen."

Discussion

The purpose of the remand is to determine "whether the Joint Conference Committee's findings were a resolution of a statutory inquiry as to whether the discriminatees were supervisors within the meaning of Section 2(11) of the Act" and whether those findings warrant deferral.

It is clear that the committee was apprised of the fact that the alleged discriminatees were foremen. Campione testified that the alleged discriminatees stated that they were foremen and Bulman testified that Le Doux in-

formed the committee that one of the three was a general foreman and that the other two were foremen. That, however, does not end the inquiry. The fact that an employee has the title of foreman does not automatically mean that he is a supervisor within the meaning of Section 2(11) of the Act. *Berger Transfer & Storage*, 253 NLRB 5, 10 (1980), enfd. 678 F.2d 679, 688 (7th Cir. 1982).

The evidence in the record shows that the specific duties and responsibilities of the foremen were not discussed at the Joint Conference Committee meeting. No evidence was presented before the committee regarding their authority to hire, lay off, fire, or discipline employees. While Chang testified that he told the committee that these men were foremen, whose duties were "to direct the people," to "assign the work," and to "keep the job moving," according to Bulman, Le Doux stated before the committee that the alleged discriminatees did not perform their jobs as foremen because they failed to transmit Le Doux's instructions to the men.

To constitute supervisors under Section 2(11) of the Act it is necessary in assigning work that there be the exercise of independent judgment. The record shows that Respondent believed that the alleged discriminatees did not perform their jobs as foremen because they failed to transmit the superintendent's instructions to the men. Thus, the foremen were not exercising independent judgment but were merely acting as conduits for Respondent by transmitting orders. See *Vanport Sand & Gravel*, 267 NLRB 150 (1983); *Humes Electric*, 263 NLRB 1238, 1241-1242 fn. 2 (1982), enfd. 715 F.2d 468, 472 (9th Cir. 1983). Therefore, the fact that the Joint Conference Committee may have considered and decided that their duties as foremen included directing the men pursuant to Le Doux's orders, such decision was not a resolution of whether the employees were supervisors within the meaning of the Act.

Conclusion

Based on the foregoing, I find that the Joint Conference Committee did not consider or resolve the statutory inquiry whether the alleged discriminatees were supervisors within the meaning of Section 2(11) of the Act. Accordingly, I believe that there should be no deferral under *Olin Corp.*, 268 NLRB 573 (1984), and *Spielberg Mfg. Co.*, 112 NLRB 1080 (1955).