

Delta Mills, Inc.¹ and Charles C. Rivenbark, Petitioner, and Amalgamated Clothing and Textile Workers Union, AFL-CIO, CLC. Case 11-RD-405

16 December 1987

DECISION AND DIRECTION OF ELECTION

BY CHAIRMAN DOTSON AND MEMBERS JOHANSEN AND STEPHENS

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Janet H. Branch on 16, 17, and 18 April 1985. Following the hearing, pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedures, this case was transferred to the National Labor Relations Board for decision. Thereafter, the Employer, J. P. Stevens, the Petitioner, and the Union filed briefs. On 28 July 1986 Delta Mills, Inc. filed a motion requesting that its name be substituted for the Employer. On 30 July 1986 the Employer filed a motion requesting that its name be dismissed from this case. The Union filed a response to these motions on 25 August 1986. The Employer filed a response to the Union's response. Thereafter, the Board filed a Notice to Show Cause. On 22 July 1987 the Union filed a response.

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

The Board has reviewed the hearing officer's rulings made at the hearing and finds that they are free from prejudicial error. The rulings are affirmed.

On the entire record in this case, including the briefs, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner, an employee of the Employer, asserts that the Union, a labor organization, is no longer the exclusive bargaining representative, as defined in Section 9(a) of the Act, of the employees covered by the petition.

3. A question of representation affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. The Petitioner seeks to decertify the Union as the

representative of all production and maintenance employees employed at the Employer's Carter plant, Holly plant, and warehouses at Wallace, North Carolina, including plant clerical employees, watchmen, computer programmer in the dye house, electrical technician, and plant driver, excluding office clerical employees, professional employees, cloth store clerk, managerial employees, guards, and supervisors as defined in the Act. The Union contends that the petition should be dismissed because the unit in which the Petitioner seeks an election is not coextensive with the existing collective-bargaining unit and, therefore, is not appropriate for decertification. The Union also contends that the shop section leaders at the Holly and Carter plants are supervisors, as defined by Section 2(11) of the Act. The Petitioner and the Employer claim that the petitioned-for bargaining unit is the appropriate unit in which an election should be held. The Petitioner asserts that Holly shop section leader John Stallings is not a supervisor and takes no position regarding the Carter shop section leaders. The Employer contends that the shop section leaders are not supervisors.

4. The record shows that an election was conducted on 19 February 1975 in the following unit:

All production and maintenance employees at the employer's Carter plant, Holly plant and warehouses at Wallace, North Carolina, including plant clerical employees, watchmen, computer programmer in the dye house, electrical technician, and plant driver, excluding office clerical employees, professional employees, cloth store clerk, managerial employees, guards and supervisors as defined in the Act.

Thereafter, the Board found that the Employer engaged in objectionable conduct and unfair labor practices and issued a bargaining order.² The United States Court of Appeals for the Fourth Circuit enforced the Board's Order in January 1982.³ Thereafter, the Employer and the Union entered into a collective-bargaining agreement on 28 November 1982 covering the employees in the above-described unit.

On 24 April 1983 the Employer and the Union signed a contract covering employees at the Employer's plants in Roanoke Rapids, North Carolina.⁴ During negotiations for this contract, the

² 244 NLRB 407 (1979).

³ 668 F 2d 767

⁴ This was the second contract negotiated by the parties covering the employees at the Roanoke Rapids plants. The first contract was signed at the same time the parties entered into the 1980 National Settlement Agreement. Par 1 of the National Settlement Agreement states the following

¹ Unless otherwise indicated, "the Employer" in this decision and direction of election is J. P. Stevens and Co., the employer at the time of the April 1985 hearing on which the decision on the merits rest. For reasons described in fn 12, supra, Delta Mills will be substituted for J. P. Stevens and Co., Inc. hereafter

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Union proposed tearing up the Wallace contract, signed in November 1982, and negotiating one contract covering the Roanoke Rapids and Wallace plants.⁵ The Employer's employee relations director, Robert C. Lemert, testified that he rejected this proposal outright because, inter alia, the Employer would never agree to it. The concept was thereafter dropped. Lemert stated that he agreed to identical expiration dates for the contracts in the alternative to get some consistency between the two agreements. Thus, the contract negotiated by the parties in April 1983 applied only to the Roanoke Rapids plants and the separate Wallace contract remained in full force and effect.

According to the Union's witnesses, the 1983 Roanoke Rapids contract, including the changes made from the 1980 contract, was applied in full at the Wallace plants.⁶ Lemert testified that he agreed to change the seniority provision at the Wallace plants to conform with the seniority provision at the Roanoke Rapids plants,⁷ but that not all the agreements reached during the 1983 negotiations for the Roanoke Rapids contract were implemented at the Wallace plants. Bruce Raynor, the Union's southern regional director, admitted that the parties did not negotiate changes in the unit descriptions to combine the Roanoke Rapids and Wallace plants.

Stevens will, upon ratification by the ACTWU members in the applicable bargaining unit, execute a collective bargaining contract as hereinafter set forth covering the bargaining units at High Point, North Carolina, Allendale, South Carolina and West Boylston, Alabama, and any other bargaining unit for which the Union within the one and one-half (1-1/2) year period following the execution of this Agreement acquires bargaining rights either by certification by the NLRB after an election or by a court decision enforcing an NLRB order requiring the Company to recognize the Union, provided, however, that such contract shall be executed by Stevens if the Union obtains bargaining rights covering the bargaining units at Wallace, North Carolina or New Milford, Connecticut by court order within two and one-half (2-1/2) years from the date of this Agreement. The collective bargaining contract to be executed in accordance with this Section shall contain the provisions set forth in Attachment A, except as modifications may be required by differences in local conditions and each such collective bargaining contract shall be for a term of two and one-half (2-1/2) years from the date of its execution. Rates of pay and designated holidays are examples of local conditions. Should either party seek to modify any provision of Attachment A, that party shall establish that such modification is required because of differences in local conditions at the location. Such modifications shall be agreed upon as expeditiously as possible.

⁵ Representatives from the Wallace plants did not participate in negotiations for the contracts at Roanoke Rapids.

⁶ In support of its position, the Union introduced into evidence a copy of the 1983 Roanoke Rapids Agreement with a separate recognition clause pasted on p. 1 which states that the agreement applies to the employees within the bargained-for unit at the Wallace plants. The Union took sole responsibility for altering the recognition clause.

⁷ Lemert stated that he agreed to this change because the union representative who handled matters concerning the seniority provision at the Wallace plants was leaving the area, and a new union representative familiar with the Roanoke Rapids contract was replacing him. Lemert thought that it would be easier for both parties if they used just the Roanoke Rapids provision at both locations.

The record also shows that the Employer and the Union engaged in wage and benefits negotiations in 1983 and 1984-1985 for the Roanoke Rapids and Wallace plants. Both sets of negotiations resulted in wage increases and changes in other benefits which were applied to the Roanoke Rapids and Wallace plants.

The Union contends that the petition should be dismissed because the 1980 National Settlement Agreement mandated standardization of contract terms for all plants represented by the Union; the bargaining history shows that the 1980 Roanoke Rapids contract was applied to the Wallace plants in 1982 and the modifications made in the 1983 Roanoke Rapids contract were installed at the Wallace plants; and the parties have engaged in wage and benefit negotiations on a multiplant basis on two occasions. The Petitioner and the Employer contend that the petitioned-for unit is appropriate for purposes of an election because, notwithstanding the centralized wage and benefit negotiations, the parties have never negotiated a collective-bargaining agreement on a multiplant basis, and the Employer has expressly refused to engage in such contract negotiations.

The unit appropriate in a decertification election must be coextensive with either the unit previously certified or the one recognized as the collective-bargaining unit.⁸ After a careful review of the record, we find, for the reasons set forth below, that the parties' bargaining history has not brought about an effective merger of employees represented by the Union at the Wallace and Roanoke Rapids plants into a multiplant contractual unit. Accordingly, we find that the petitioned-for unit is the appropriate unit.⁹

We note at the outset that the 1980 National Settlement Agreement required the Employer to execute collective-bargaining agreements at each of its plants where either the Union had been certified as the bargaining representative or a court-enforced Board order required the Employer to recognize and bargain with the Union. The agreement did not set up a multiplant unit or require bargaining on a multiplant basis. Further, the parties' bargaining history following the 1980 agreement does not establish bargaining on a multiplant basis. In this regard the record shows that representatives from the Roanoke Rapids plants did not participate in negotiations for the Wallace agreement in 1982 and representatives from the Wallace plants did not participate in negotiations for the Roanoke Rapids

⁸ *Campbell Soup Co.*, 111 NLRB 234 (1955).

⁹ Accordingly, we deny the Union's motion to dismiss the petition for failure to seek an election in an appropriate unit.

agreements in 1980 and 1983. Moreover, when the Union proposed multiplant bargaining during the negotiations for the 1983 Roanoke Rapids agreement, the Employer expressly rejected the proposal outright and the concept was immediately dropped. Thus, the issue of multiplant negotiations was raised and rejected, and this put to rest any notion that the parties were engaged in contract negotiations on a multiplant basis. The fact that the Roanoke Rapids and Wallace contracts contained uniform provisions concerning terms and conditions of employment also does not merge the separate units when the evidence shows that the parties have not agreed to extinguish the separate units.¹⁰

Finally, the parties' involvement in joint wage and benefit negotiations in 1983 and 1984-1985 did not change that situation. In view of the evidence discussed above, these joint negotiations were indicative of a practice of centralized bargaining for separate bargaining units rather than bargaining for one overall unit.¹¹ Accordingly, we conclude that the parties were never directed to nor did they mutually agree to bargain on a multiplant basis. Therefore, we find the petitioned-for unit appropriate for purposes of a decertification election.¹²

¹⁰ *Duval Corp.*, 234 NLRB 160 (1978); *Metropolitan Life Insurance Co.*, 172 NLRB 1257 (1968); *Remington Office Machines*, 158 NLRB 994 (1966).

¹¹ *Id.*

¹² Following the transfer of the case to the Board, the Employer filed a motion to dismiss it because it claimed that it sold the two Wallace plants to Delta Mills, Inc on 15 July 1986. Delta Mills, Inc also filed a motion to substitute its name for J. P. Stevens in the case caption and to provide additional facts concerning the sale of the Wallace plants. The Union responded by asserting that the motions should be dismissed because they were not filed in accord with Sec. 9(c)(1) of the Act and several provisions of the Board's Rules and Regulations and, in the alternative, that a hearing should be conducted concerning the alleged sale of the Wallace plants. The Union also restated its position that the petitioned-for unit is not appropriate because the Wallace and Roanoke Rapids plants merged and that the shop section leaders at the Wallace plants are supervisors as defined by Sec. 2(11) of the Act.

On 8 June 1987 the Board issued a Notice to Show Cause why it should not substitute Delta Mills, Inc for J. P. Stevens and requested any additional information to show the changed circumstances at the Wallace plants. In its response to the Notice to Show Cause, the Union repeats the same arguments it made in its response to the motions filed by the Employer and Delta Mills, Inc.

The Union has not disputed in any of its responses that the Wallace plants were sold to Delta Mills. Neither has it made any proffer of evidence that would warrant holding a hearing or otherwise reopening the record either on the question of substituting Delta Mills for J. P. Stevens as the Employer in the Wallace plants or on the question of the continued appropriateness of a single Wallace unit composed of the Holly and Carter plants. Had it specifically alleged that, for example, Delta Mills was an alter ego of J. P. Stevens, or had it proffered evidence that specific changes in the operations of the Holly and Carter plants made since the purchase by Delta Mills rendered the single Wallace unit inappropriate, there would be a basis for a hearing. Because the Union has failed to make any such proffer, we are changing the caption of the case to substitute Delta Mills, Inc for J. P. Stevens. Because, for reasons stated below, we find the single Wallace unit appropriate on the basis of the hearing record and because the Union has proffered no evidence of changed circumstances since the purchase by Delta Mills that would call into question that conclusion, we are directing the election in the Wallace unit.

Finally, we note that the substitution of Delta Mills, Inc. for J. P. Stevens as the employer at the Wallace plants provides an additional basis

The Union contends that if the multiplant unit is not found to be appropriate, the employees of the Holly and Carter plants (both part of the Wallace unit) should vote separately in the election because of significant changes in the plants' operations, since the Wallace unit was found to be appropriate. Relying on *Rock-Tenn Co.*,¹³ the Union claims that the change in operations at the Carter plant in 1979 from knitting, dyeing, and finishing tricot fabric to finishing and dyeing single knit fabrics¹⁴ and the reduction in the employee work force at both plants require a finding that separate plant units are appropriate. The Union also contends that the Wallace plants process grievances separately, have separate work schedules, do not honor plant seniority on transfers from the other plants,¹⁵ have their own managerial and supervisory staff, including their own plant managers, handle job bidding and recalls separately, and have no employee interchange.

The Employer and the Petitioner assert that the operational changes do not require finding that a unit of the Wallace plants is inappropriate. We agree.

The record shows that the only "significant" changes that have taken place at the Wallace plants involve the changeover in production at the Carter plant and the reductions in the work force at both plants. The record also shows, however, that there have been no changes in the organizational structure of the Wallace plants. George Strickland has been the personnel manager for both plants since 1980 (but see fn. 17, *supra*) and that Herb Houston processes third-step grievances at both plants. The Wallace plants have always shared warehouse space¹⁶ and split the cost of the officer manager, shift supervisor, and other employees working in that area. Finally, the Holly plant affords preferential hiring status to employees laid off from the Carter plant and vice versa and the record shows that the Holly plant hired many employees on layoff status from the Carter plant in 1983.

On the existing record, the changed circumstances relied on by the Union have not changed

for declining to recognize a multiplant unit composed of the Roanoke Rapids plants and the Wallace plants. They are owned and operated by different employers and even the Union does not contend that there is a multiemployer bargaining unit here.

¹³ 274 NLRB 772 (1985)

¹⁴ The Carter plant has always been engaged in dyeing and finishing automotive fabric

¹⁵ The Wallace plants honor company seniority on transfers between plants

¹⁶ A separate warehouse mentioned in the unit covered by the bargaining order (fn 3, *infra*) was eliminated in the early 1980s, and warehouse space was added at the Holly and Carter plants. Goods are moved between those warehouses, and goods finished at the Holly plant are shipped to customers from the Carter plant

the basic relationship between the Holly and Carter plants. In *Rock-Tenn*, relied on by the Union, the union represented a combined unit of employees working at a paper mill and a partition plant. The two plants were sold to separate companies and the factors of commonality existing before the sale, centralized labor control and single corporate control, ended with the sale. Here, unlike *Rock-Tenn*, centralized labor control remained vested with Strickland¹⁷ and there has been common corporate control of the Holly and Carter plants.¹⁸ We also note that the record demonstrates that the 1982 contract and changes based on the subsequent wage and benefit negotiations were applied equally to the Wallace plants. Moreover, the other factors relied on by the Union appear to have been in existence throughout the bargaining relationship. Finally, the record reflects that at no time before the instant petition was filed did any party seek to modify the existing unit or split it into two units as the Union now contends should be done.¹⁹ Accordingly, we shall direct an election in a unit composed of the Wallace plants.

The Union alleges that the shop department section leaders at the Carter plant²⁰ and John Stallings, the maintenance shop department section leader at the Holly plant, should be excluded from the unit because they are supervisors under Section 2(11) of the Act. The Employer contends that these employees are not supervisors but are part of the unit. The Petitioner contends that Stallings is not a supervisor and takes no position concerning the section leaders at the Carter plant.

Stallings has worked at the Holly plant since 1968. He has been a preventive maintenance inspector since 1980 and a section leader since 1982 and is the only employee employed in the preventive maintenance section. Stallings is the highest paid hourly employee in the plant and he receives the same benefits as the other hourly paid employees. Stallings testified that he spends half his time performing preventive maintenance inspections and the other time working in the shop, including sweeping and cleaning the floor, hauling trash, and cleaning equipment. The maintenance work in-

¹⁷ It appears that Strickland was not personnel manager for both plants for a short period in 1983. Tony Sumner, who worked under Strickland, was personnel manager at the Holly plant for an undetermined time. However, Strickland testified that at the time of the hearing he was currently the personnel manager at both Wallace plants.

¹⁸ See *Batesville Casket Co.*, 283 NLRB 795 (1987). This common corporate control continues under Delta Mills, Inc.

¹⁹ *Id.*

We further note that the Union's contention that the employees at the Holly and Carter plants should vote separately is at odds with their primary contention that the Wallace plants together were part of a multi-plant unit.

²⁰ The Union seeks to exclude Thomas B McNeil, Adrian F. Powell Jr., James R. Boney, Ray M. Munn, and Jimmy Lee Smith.

volves checking equipment for defective parts or any other problems that need attention. Stallings writes his findings and recommendations on a pre-typed work order which he gives to his supervisor, James English. If the equipment needs to be repaired, Stallings describes the work needed to be done, gives it a priority, and checks a box on the work order corresponding to the appropriate craft, i.e., mechanic or electrician. English then assigns the work to a particular employee. Stallings testified that he does not assign work to other employees, and he does not know which employee gets a particular work order. Stallings also testified that he does not hire, fire, or discipline employees or recommend individuals for hiring, firing, or disciplinary action. He also cannot grant time off or direct an employee to work overtime.

The Union relies primarily on the testimony of Luby Albertson to support its contention that shop section leaders at the Carter plant are statutory supervisors. Albertson, on layoff status at the time of the hearing, had worked 14 years at the Carter plant. He testified that he received work assignments from First-Shift Supervisor Odell Powell or section leader Jimmy Lee Smith, and that Powell told him to see Smith if he had a problem or needed assistance. However, Smith never issued Albertson any warnings or reprimands and would not check his work. Moreover, when Smith issued instructions to Albertson, he specifically said that the instructions came from Powell. Albertson further testified that Department Head Taylor never talked to him about his relationship with Smith and that he was never told that Smith had authority over him. The record shows that on one occasion Smith asked Albertson to change jobs because Albertson was the only employee familiar with the particular equipment that needed repair. Albertson also testified that he would contact Odell Powell if he expected to be late or when he needed time off.

It is well settled that the possession of any one of the indicia of supervisory authority specified in Section 2(11) of the Act is sufficient to confer supervisory status on an employee,²¹ provided that authority is exercised with independent judgment on behalf of management, and not in a routine manner.²² However, the exercise of authority to assign or direct work, when exercised in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status on an employ-

²¹ See *Auto West Toyota*, 284 NLRB 659 (1987); *George C. Foss Co.*, 270 NLRB 232 (1984), aff'd 752 F.2d 1407 (9th Cir. 1985); *NLRB v. Edward G. Budd Mfg. Co.*, 169 F.2d 571 (6th Cir. 1948), cert. denied 355 U.S. 908 (1949).

²² See *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981).

ee;²³ and employees who are merely conduits for relaying management information to other employees are not true supervisors.²⁴

Applying these principles to the facts here, we find that the Union has failed to demonstrate that either John Stallings or the section leaders at the Carter plant are supervisors under the Act. The Union claims that Stallings in effect assigns work to other employees. The record shows, however, that Stallings does not assign, direct, or transfer employees. Stallings receives instructions to inspect certain machinery and thereafter reports his findings on pretyped work orders. Any assignment of repair work to employees is done by English. Thus, Stallings has no contact with other employees in this regard. Moreover, Stallings stated that he does not even know which employee gets a particular work order. Therefore, Stallings' role as maintenance inspector appears to be limited to a routine exercise of work judgment rather than an exercise of supervisory authority.²⁵ That Stallings is the most experienced and highest paid employee at the Holly plant is also insufficient to confer supervisory status.²⁶

The evidence also fails to show that the section leaders at the Carter plant are statutory supervisors. Albertson testified unequivocally that he was never told that Smith had authority over him and that he was aware that any instructions Smith gave Albertson came from Smith's supervisor, Odell Powell. Albertson was therefore aware that Smith was serving as a conduit of management²⁷ and not

as a supervisor.²⁸ The record also shows that the one time Albertson recalled being assigned to another job by Smith, Albertson was the only employee capable of repairing the equipment. Thus, Smith's exercise of authority to assign work was limited at best.²⁹ Finally, Albertson testified that Smith never issued any warnings or reprimands or told him that he was doing anything wrong.³⁰ Accordingly, we find that the Union has failed to demonstrate that John Stallings and the shop section leaders at the Carter plant are statutory supervisors.³¹

Accordingly, we find that the decertification petition does not state a unit inconsistent with the present collective-bargaining structure and we shall direct that a decertification election be held at the Wallace plants in the following appropriate unit:

All production and maintenance employees at the employer's Carter Plant, Holly Plant and warehouses at Wallace, North Carolina, including plant clerical employees, watchmen, computer programmer in the dye house, electrical technician, and plant driver, excluding office clerical employees, professional employees, cloth store clerk, managerial employees, guards and supervisors as defined in the Act.

[Direction of Election omitted from publication.]

²³ Cf. *NLRB v. Chicago Metallic Corp.*, 794 F.2d 527 (9th Cir. 1986).

²⁴ See *Bowne of Houston, Inc.*, supra, *Feralloy West Co.*, supra.

²⁵ Albertson testified that in 1981 Munn had the same authority that Smith has now. Accordingly, we do not find that Munn is a statutory supervisor for the same reasons we find that Smith is not a statutory supervisor. We also find that McNeil's title as head of the preventive maintenance program at the Carter plant does not confer supervisory status. See *Advanced Mining Group*, supra.

Finally, the Union claims that if the Carter plant section leaders are not found to be statutory supervisors, the plant is without supervision for two-thirds of the time. We find that the Union has failed to present sufficient evidence supporting this contention and, in any event, this fact, even if true, does not automatically confer supervisory status on the section leaders *Vanport Sand & Gravel*, supra.

³¹ In view of this conclusion, we find no supervisory taint in the showing of interest

²³ See *Munford, Inc.*, 266 NLRB 1156 (1983); *Advanced Mining Group*, 260 NLRB 486 (1982).

²⁴ See *Bowne of Houston, Inc.*, 280 NLRB 1222 (1986), *George C. Foss Co.*, supra.

²⁵ See *Auto West Toyota*, supra; *Feralloy West Co.*, 277 NLRB 1083, 1084-1088 (1985); *Ferland Management Co.*, 233 NLRB 467 (1977).

²⁶ See *Vanport Sand & Gravel*, 267 NLRB 150 (1983); *Ferland Management Co.*, supra.

²⁷ See *Vanport Sand & Gravel*, supra; *Artcraft Displays*, 262 NLRB 1233 (1982).