

Somerset Welding & Steel, Inc and United Steel workers of America, AFL-CIO-CLC, Petitioner Case 6-RC-9822

November 29 1988

DECISION AND DIRECTION

**BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND CRACRAFT**

The National Labor Relations Board by a three member panel has considered determinative challenges in an election held May 15 1987 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 62 for and 58 against the Petitioner with 15 challenged ballots¹ a sufficient number to affect the results of the election.

The Board has reviewed the record in light of the exceptions² and brief and has adopted the hearing officer's findings³ and recommendations only to the extent consistent with this decision.

The hearing officer found that leadmen Donald R. Hauger, Alexander Weir, James Gooden, David Mishler, and Vincent Flannery are supervisors within the meaning of Section 2(11) of the Act. The Employer excepts contending that these leadmen neither exercise independent judgment nor have the authority to exercise independent judgment in connection with their duties and that their duties are routine and clerical and therefore do not establish supervisory status. We find merit in the Employer's exceptions.

The Employer is engaged in the manufacture, installation, and repair of truck bodies and trailers at three separate facilities. Company President S. William Riggs, Vice President of Production Guy Rush, and Chairman of the Board Sidney Riggs are the only individuals involved in the formulation and determination of management and labor relations policies. Rush is responsible for the hiring and discharging of employees and also the determination of employee wages. Each of the three Somerset facilities has at least two supervisors whose status is not in dispute. Daily production meetings

are held to set work priorities, assign and schedule orders, and discuss the production process.

The hearing officer found that the five leadmen have basically the same authority. They are responsible for inspection of work and can order it redone if necessary. Employees are expected to follow their leadmen's instructions and leadmen report to Guy Rush if an employee fails to do so.

Leadmen do not attend production meetings and cannot alter the production schedules. However, they are responsible for ensuring that production schedules are met. The leadmen do not have authority to hire, fire, discipline, promote, transfer, reward, or lay off employees, or to effectively recommend that. Further, as the hearing officer found, leadmen do not have authority to grant time off for vacations or authorize overtime. Leadmen cannot alter policies set by management. They spend the majority of their time performing unit work and receive the same benefits as unit employees and like those employees are paid hourly and overtime pay.

Leadmen attend monthly safety meetings along with several supervisors and two unit employees. Safety committee members communicate safety regulations to employees and report safety violations. Safety committee notices, manuals, and meeting minutes have referred to committee members as supervisors.

The hearing officer found that these five leadmen are supervisors within the meaning of Section 2(11) based on their authority to direct employees in their work. The hearing officer also found that the work being performed by the employees requires daily more than routine hands-on supervision. Finally, the hearing officer found that the leadmen's ability to report employee infractions and disobedience is more indicative of supervisory than employee status. The Employer excepts to the hearing officer's findings, arguing that the leadmen do not possess or exercise independent judgment and authority in any aspect of their work. We agree.

It is well established 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 provided that the authority is exercised with independent judgment on behalf of management and not in a routine or sporadic manner. Thus, the exercise of some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status on an employee.⁴

¹ At the hearing the Petitioner withdrew its challenges to the eligibility of Neil Berkley, Jeff Lohr, and George Reese. The parties stipulated to their employment at the time of the election and to their eligibility.

² In the absence of exceptions, we adopt pro forma the hearing officer's recommendation that the challenges to the ballots of Calvin H. Mowry, Dale S. Leslie, Thomas P. Fletcher, Larry Sarver, Larry Livenood, Richard Edmunds, and Todd Walker be overruled and their ballots be opened and counted.

³ The Employer has 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.

⁴ See *Feralloy West Co.* 277 NLRB 1083, 1084 (1985).

Contrary to the hearing officer we conclude that the preponderance of the evidence fails to show that the leadmen exercise independent judgment in directing the work force. Rather the record evidence indicates that leadmen direct employees in a routine manner and the responsibility to direct the work was given to them based on their higher level of skill and greater seniority.

The hearing officer placed undue reliance on the fact that leadmen have authority to direct employees because they inspect their work. Employees are able to perform their work with a minimum of guidance because the work is routine and predetermined by the production schedule. Thus the leadmen function as quality control employees in inspecting the work of others. If an employee is not performing work properly the leadman reports this to his supervisor. Leadmen do not have authority to effectuate any ultimate personnel decisions including disciplining or rewarding employees for the quality of their work.

Leadmen do not exercise independent judgment but are merely responsible for distributing predetermined work assignments and making sure they are completed to predetermined specifications. Leadmen are in daily contact with a supervisor who distributes their work assignments. The amount of contact a supervisor has with a particular leadman depends on the need for supervision within his department. If a leadman is faced with any significant personnel or production problem he is required to call his supervisor for instruction.

On two occasions a leadman was asked to complete an Employee Evaluation. However as the hearing officer found there is insufficient evidence to establish that management acts on these evaluations without independent investigation or that the evaluations constitute effective recommendations for promotions, wage increases, or discipline. Furthermore the authority simply to evaluate employees without more is insufficient to find supervisory status.⁵

⁵ *Passavant Health Center*, 284 NLRB 887, 890 (1987).

The hearing officer also relied on the leadmen's inclusion on the safety committee as a factor supporting his supervisory finding. However the leadmen's responsibility as safety committee members for ensuring that work is performed safely does not reflect the type of discretion indicative of supervisory status. Further the fact that the documents utilized by the safety committee refer to its members as supervisors is not dispositive of their status. See *Feralloy West Co.* supra at fn 6.

Under these circumstances we find that the Petitioner has failed to meet its burden of producing sufficient evidence to prove that supervisory status in fact exists.⁶ In summary the factors relied on by the hearing officer when reviewed in light of the record fail to establish that the leadmen are supervisors. We therefore reject the hearing officer's recommendation with regard to the leadmen's supervisory status and conclude that the challenges to their ballots should be overruled.

Accordingly as the challenges to the ballots of the leadmen are overruled and as these ballots are sufficient in number to affect the results of the election we shall direct the Regional Director to open and count the ballots to prepare a revised tally of ballots and to take further appropriate action.⁷

DIRECTION

It is directed that the Regional Director within 10 days from the date of this decision open and count the challenged ballots of employees Hauger, Mishler, Weir, Gooden, and Flannery and prepare and serve on the parties a revised tally of ballots.

IT IS FURTHER DIRECTED that this proceeding is remanded to the Regional Director for further appropriate action.

⁶ See *Commercial Movers*, 240 NLRB 288, 290 (1979).

⁷ Both the Employer and the Petitioner filed objections to conduct affecting the results of the election. The Employer's objections were withdrawn with the approval of the Regional Director on June 10, 1987. The Petitioner's objections were consolidated for hearing before an administrative law judge with Cases 6-CA-19922 and 6-CA-20034.