

**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 3**

In the matter of:

McNeil Security, Inc./Invizion

Employer,

Case No. 3-RC-11751

and

**United Federation of Special Police
and Security Officers, Inc.,**

Petitioner,

and

**International Union, SPFPA
Intervenor.**

**Intervenor International Union, SPFPA's
Partial Exceptions to Hearing Officer's Report on Objections to Election and Brief**

Intervenor International Union, SPFPA files these partial exceptions to the Hearing Officer's Report on Objections with Findings and Recommendations. Intervenor SPFPA concurs with the Hearing Officer's Findings and Recommendations that the Employer's conduct as described in Intervenor's SPFPA's Objections Numbers 1, 2, 3 and 14 violates the Act and demonstrably impacted the outcome of the election. Intervenor SPFPA concurs with the Hearing Officer's Recommendation that Objections 1, 2, 3 and 14 require that the election be set aside and a rerun election should be held.

In addition, however, Intervenor SPFPA excepts to the Hearing Officer's Findings that the Leads are not supervisors within the meaning of the Act. Based upon the evidence adduced at the hearing, and pursuant to applicable Board authority, the Board should find that the Leads

are in fact supervisors within the meaning of the Act. As the Hearing Officer acknowledged in her Report on Objections, if the Leads are supervisors, then Intervenor SPFPA's Objections Numbers 4 and 5 should be sustained. Further, as the Leads are supervisors within the meaning of the Act, they may not be included within the bargaining unit and should be excluded from voting in the rerun election.

Contrary to the Hearing Officer's conclusion, in fact the Leads are supervisors within the meaning of the Act. The Hearing Officer made the following factual findings that establish supervisory status:

Evaluate (Reward)

Leads and other supervisors have access to the electronic review system. Leads and other supervisors may enter notes into the system on employees, and access the evaluations entered by other supervisors. These notes, which may be positive or negative, are reviewed and utilized when conducting the annual evaluation of each employee. The annual review determines whether they will receive a pay raise and if so, how much, and further is used for reference when an employee seeks a promotion. Although many of the annual evaluations are conducted by employees entitled "supervisor," Leads also have conducted the evaluations.¹ (Hearing Officer's Report, pps. 10-12)

Discipline

Leads may verbally correct the conduct of the screeners, and may place a record of that counseling in the electronic review system (referenced above). As with the records entered into the system by the Employer's "supervisors," these records may be utilized by the Employer's deputy site manager or site manager in determining whether to issue more severe discipline against an employee. The record includes evidence that at least one Lead counseled an employee

¹ The Employer refers to the job classification above Leads by the title "supervisor."

for alleged insubordination (although the counseling was withdrawn when a supervisor observing questioned whether the alleged act actually was insubordinate.) Leads and supervisors both may complete “employee action record” forms on subordinate employees, documenting either positive or negative conduct. The Lead or the supervisor who completes the form signs it, and the employee may be given the opportunity to review and comment. These forms are sent up the Employer’s hierarchy to the site manager for review. Unit member Michael West was given a written “counseling” memo by Lead Trieskey that stated on it that it was a “written reprimand.” Mr. West refused to sign the document but later was instructed by Trieskey and supervisor Sharpe to sign it. He refused and was told that he would be marked down on his next evaluation. (Hearing Officer’s Report, pps. 7-9)

Schedule (Assign)

On a daily basis the work schedule is completed by Leads, who write in the various screeners names next to available positions. The written schedule is then given to a “supervisor” who reads it at roll call. The “supervisor” may make changes to the schedule based on particular knowledge of a screener, such as whether a particular screener has a certification for an area or a physical impairment. Work at some assignments is busier than others, requiring more effort on the part of the screeners assigned there. (Hearing Officer’s Report, pps. 6-7)

Other indicia

Leads take over for the floor supervisor when the floor supervisor is at a meeting, at lunch, or on break. In the baggage area, the Leads may take over for the entire shift when there are not enough supervisors in the passenger screening checkpoint. (Hearing Officer’s Report, p. 7)

The Employer conducts weekly supervisory meetings. Leads attend these meetings.
(Hearing Officer's Report, p. 12)

Leads consider themselves to be supervisors. (Hearing Officer's Report, p. 12)

Leads were insignia on their uniforms indicating a higher rank than the screeners. Leads are paid significantly more than screeners, from \$3 - \$5.00 per hour, up to nearly 30% more.
(Hearing Officer's Report, pps. 5, 12)

Contrary to the conclusions of the Hearing Officer, the record evidence establishes that the Leads are supervisors within the meaning of the Act. They wear uniforms with supervisory insignia and are paid substantially more than screeners. Leads attend weekly supervisory meetings. They assign work on a daily basis, determining (subject to review) which screeners will receive which assignment. They complete written and electronic forms about the conduct of employees, both positive and negative. These forms serve the basis for the Employer's annual review, which determines whether a pay raise will be given and if so how much. On occasion the Leads perform the actual Annual Review of the subordinate employee. Additionally, the Leads complete and sign disciplinary forms that may be used as the basis to discipline employees. On occasion the Lead may present these forms directly to the employee without the involvement of any other level of supervision.

Contrary to the recommendation of the Hearing Officer, these supervisory indicia, reviewed separately or collectively, establish that the Leads are supervisors within the meaning of the Act.

In addition, the record evidence establishes that all parties agreed that the ballots cast by the Leads, and challenged by Intervenor as supervisors, should be discarded and not counted. As the Regional Director directed the election to include Leads but not Supervisors, the only basis

for discarding these ballots would be their ineligibility to vote, and the only challenge was to their supervisory status. Otherwise, for no reason, 12 voters' ballots were simply tossed away and those voters were disenfranchised. The Employer's (and Petitioner's) agreement to agree not to count the ballots of the voters challenged as supervisors by Intervenor SPFPA is an admission and acknowledgement of their supervisory status.

Accordingly, as described more fully in the Hearing Officer's Report, the Board should find that Objections to the Election Numbers 5 and 6 have merit and serve as a further basis for setting aside the election. In addition, as the Leads are supervisors within the meaning of the Act, the Board should direct that they not be included within the bargaining unit.

Respectfully submitted,

s/Scott A. Brooks

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Dated: February 9, 2011

Certificate of Service

I certify that I have served a copy of this document today by overnight delivery upon the Regional Director, counsel for the Employer and Petitioner's representative.

s/Scott A. Brooks

Scott A. Brooks

Dated: September 10, 2007