

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 11

Strategic Resources, Inc.

Employer

and

Case 11-RC-6747

International Brotherhood of  
Electrical Workers, AFL-CIO, Local 553

Petitioner

**ACTING REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Petitioner seeks to represent a unit of employees who perform a range of duties related to the updating and issuance of common access cards (CAC's) at the Employer's (SRI) operation at the United States Army military installation located in Ft. Bragg, North Carolina. The CAC's, which serve to verify the identity and other information related to the cardholders, are used for gaining access to the installation as well as for access, in some instances, to computers, and to certain privileges including purchasing items at the commissary. The petitioned-for employees are referred to as CAC Operators VO, which stands for Common Access Card Operators, Verifying Officials. The Petitioner also seeks to include all lead persons and assistant lead persons at the Employer's Ft. Bragg operation in the proposed unit.

SRI raises three basic issues in opposition to the petition as filed. First, it contends that it is not subject to the jurisdiction of the National Labor Relations Board, because it is a retail operation for which there is no legal jurisdiction, as there is no direct inflow or outflow across

state lines. Second, it argues that jurisdiction does not lie under the Act because its operations at Ft. Bragg do not have a substantial impact on the national defense, as the majority of CAC's produced are for the relatives of military personnel or for non-military government contractors. Third, SRI contends that both the project lead and assistant project lead are supervisors under Section 2(11) of the Act and, therefore, should be excluded from the appropriate unit.

The parties have filed briefs, which have been carefully considered. As set out in detail below, I find that the Employer is subject to jurisdiction of the Board under the Act. I find further that the project lead is a supervisor within the meaning of Section 2(11) of the Act, but that the assistant project lead is not. Accordingly, I shall direct an election in the unit set out below. There are 17 employees in the unit found appropriate herein.

#### **I. OVERVIEW OF THE EMPLOYER'S OPERATIONS**

SRI describes itself as an international corporation, with International Organization of Standardization (ISO) certification, and principal offices located in McLean, Virginia. It provides services to the United States Army at military facilities throughout the United States, as well as to other firms and entities at multiple locations. It began its operations at the Ft. Bragg Army base on September 3, 2010, under a contract with the Army that runs for ten months. During the duration of the contract, it will provide services to the Army at Ft. Bragg valued in the amount of \$630,000.

In a nutshell, SRI provides the labor for the updating and mechanical creation of CAC's for both military and non-military personnel at Ft. Bragg. Using computer equipment and other supplies that are provided by the Army, SRI employees have access to a database identified in the record as Defense Enrollment Eligibility Reporting System (DEERS), which contains information about individuals who have already been vetted. CAC operators are able to access

DEERS through a system referred to as RAPIDS, through which they can make necessary adjustments, changes and updates to the information. Information about some changes is contained in DEERS; CAC Operators also gather information by interviewing individuals who come in to the facility to update their cards. CAC Operators verify the information, then produce the actual updated cards. The documentary evidence shows that, at the time of the hearing, the majority of the cards being updated and produced were for non-military personnel, although the testimony was to the contrary.

SRI occupies office space at Ft. Bragg; the record does not specify the specific location of that space. The office area contains a front desk and counters, behind which there is a separate office for the project lead, and a number of cubicles with doors, which house the operators, as well as the assistant lead.

In conducting the foregoing operations, SRI does not purchase any of the supplies used in the operation, nor does it ship any finished products to points directly outside the State of North Carolina. The Army provides all necessary equipment and materials, and SRI provides the staffing.

The program manager for the Ft. Bragg operation, Dennis VanLiere, works at SRI's offices in McLean, Virginia, and reports to SRI's CEO, who is also located in McLean. On site at the Ft. Bragg facility are Noelle Frizzell, the project lead; Angela Delaney, assistant project lead; and 16 CAC Operators.

## **II. JURISDICTION**

SRI challenges jurisdiction, first, by asserting that its Ft. Bragg operation constitutes a retail operation for which legal jurisdiction is absent, as there is no actual inflow or outflow

taking place across state lines, and second, that its operation does not have a substantial impact on national defense. Neither challenge is availing.

First, SRI makes the bare assertion on brief that its operation at Ft. Bragg is a retail one. The assertion is unsupported by reference to any facts or analysis of the actual standards for defining retail enterprises. In fact, there is not a scintilla of evidence to suggest that its operations come under the definition of a retail enterprise, which involves “sales to a purchaser who desires ‘to satisfy his own personal wants of those of his family or friends.’” *Morton Metal Works, Inc.*, 310 NLRB 195, 197 (1993), quoting *Bussey-Williams Tire Co.*, 122 NLRB 1146, 1147 (1959). To the contrary, SRI’s provision of services to its customer, the U.S. Army, clearly falls within the definition of a wholesale enterprise, which involves sales “‘to trading establishments of all kinds, to institutions, industrial, commercial and professional users, and sales to government bodies.’” *Id.* (emphasis supplied) (citation omitted).

As the record establishes that SRI, a self-described international corporation, will provide services within a twelve-month period valued in excess of \$50,000 to its sole customer at the Ft. Bragg job site, Board’s nonretail jurisdictional standard is clearly satisfied. *Siemons Mailing Service*, 122 NLRB 81 (1958).

SRI’s second contention, likewise, is meritless. Although it is not necessary to reach this issue, because of the findings in the preceding paragraph, the record amply demonstrates that SRI’s services have a direct and substantial impact on national security. In this time of heightened security, nationwide, both in the transportation industry and on military installations, the proper identification of those who are given ready access to military installations, including to services and equipment, has an obvious and direct bearing on national security. For this reason, it is immaterial whether a majority of the CAC’s have been issued for non-military rather

than military personnel. Moreover, various job descriptions stress that SRI's employees will be working with protected government systems and that SRI bears responsibility for safeguarding confidential or sensitive information, noting as well that employees may be subject to criminal liability for breaching any responsibilities in these areas. Even if jurisdiction were not established by the indirect outflow described above, then, I would find that jurisdiction under the Act exists based on the operation's substantial impact on national security.

### **III. THE SUPERVISORY ISSUES**

#### **A. The Project Lead**

The Employer contends that the project lead is a 2(11) supervisor. The Petitioner sought in the petition, and initially appeared to contend at hearing, that the project lead was non-supervisory, and should be included in the unit. Although the record is somewhat unclear, the Petitioner appeared to abandon that position at the end of hearing. In the absence of an agreed-upon stipulation in the record containing both facts and a legal conclusion, however, I will address the supervisory status of the project lead, below.

The current project lead, Noelle Frizzell, is SRI's main point of contact for upper management at the Ft. Bragg operation, as well as for employees and customers. She has primary responsibility for signing off on employees' electronic time records, and for scheduling and granting leave requests. In this regard, she determines the number of employees who can be off at one time, and, on occasion, denies leave requests based on operational needs. She uses independent judgment in this area, as she alone determines which operators can be granted leave, and how many operators must be at work at a given time.

The incumbent was employed by the predecessor contractor at the Ft. Brag job site, and while serving in that capacity, verbally counseled an employee. According to the testimony of

SRI's Director of Human Resources and Training, as well as the job description for the position, the project lead has the authority to counsel employees and to initiate disciplinary proceedings, although there have been no actual instances of that having occurred in the three months during which SRI has been operating at the Ft. Bragg job site.

The incumbent has made a recommendation for hire that was accepted by upper management. In that regard, she submitted a recommendation for hire for a candidate that she and the assistant lead had interviewed to replace an employee who resigned after SRI took over the contract at Ft. Bragg. The record supports the conclusion that the recommendation was accepted by upper management without their taking any independent steps to evaluate the proposed candidates.

The job description for the project lead provides that she has the authority to perform and complete employees' annual performance evaluations, although the record is silent on whether she actually has performed those duties, either for SRI or the predecessor contractor. She oversees the training of employees, and reviews quality control reports and data for any deficiencies in work performance.

As set forth below, I find that the project lead is a statutory supervisor under Section 2(11) of the Act, based both on primary and secondary indicia. In regard to primary supervisory indicia, first, the incumbent possesses the authority to make, and has made, an effective recommendation for hire, exercising independent judgment in making that recommendation. Second, it appears that she possesses the authority to discipline employees, although there has been no need to exercise that authority during the first three months of SRI's operation. That the authority has not been exercised does not, on the facts presented here, militate against the finding that the authority is real. This is so because the authority was subsumed in her role with the

predecessor contractor; the current job description specifically grants the authority; and SRI has no other managers or supervisors above Frizzell present at the jobsite. Third, although the authority to grant time off is generally considered by the Board to be only a secondary indicia of supervisory authority, see *Sam's Club, A Division of Walmart Stores*, 349 NLRB 1007, 1014 (2007) (citation omitted), here the incumbent's actions in that area are more akin to the responsible assignment and direction of work, as she is solely responsible for assuring that sufficient operators are available at all times to complete the work at the job site. The record, then, reasonably supports the conclusion that she responsibly assigns and directs the work of others by exercising authority to schedule employees for work and to deny leave requests, and in doing so, uses independent judgment.

Secondary indicia of supervisory authority are also present. As the Board has held, “[w]here the possession of any one of these powers is not conclusively established, the Board looks to certain other factors as evidence of supervisory status, e.g., the individual’s designation as a supervisor, attendance at supervisory meetings, responsibility for a shift or phase of the employer’s operation, authority to grant time off to other employees, responsibility for inspecting the work of others, responsibility for reporting rules infractions, and the ratio of supervisors to employees.” *Monarch Federal Savings and Loan Association*, 237 NLRB 844, 855 (1978), quoting *Flexi-Van Service Center, a Division of Flexi-Van Corporation*, 228 NLRB 956 (1977).

Notably, almost all of the foregoing secondary indicia are present here, including: the designation of the project lead as supervisor; her responsibility for all phases of the Ft. Bragg daily operation; her authority to grant time off; her responsibility for monitoring the work of employees; her responsibility to report rules infractions; and finally, the ratio of supervisors to employees, in the sense that if she is found not to be a supervisor, then there would be no

supervisors present at the jobsite. I find, therefore, that both primary and secondary indicia are present and that the project lead is a statutory supervisor under Section 2(11) of the Act. I shall exclude that position from the unit found appropriate herein.

#### **B. The Assistant Project Lead**

Unlike the foregoing evidence concerning the duties and actual authority of the project lead, the record fails to establish that the assistant project lead functions as a 2(11) supervisor. Rather, the record evidence establishes that she is a working lead person, who is appropriately included in the unit.

In this regard, the incumbent in this position, Angela Delaney, was employed as the assistant project lead by the predecessor contractor, and she testified that both her pay and her day-to-day job duties remained the same after SRI took over the contract. She testified further that she had never seen the job description for her position with SRI; had never been told that she had the authority to perform employee evaluations, or conduct training, or to issue discipline; and, in fact, never has done so. Similarly, she testified that SRI had never told her that she had authority to recommend individuals for hire or promotion. Nor does the record demonstrate that she was ever held out to the other operators as a supervisor.

The incumbent performs all the regular duties of a CAC Operator VO, which take up from 85 to 90 percent of her work day. In addition to those operator duties, she generates status reports of various kinds for the project lead's review, including reports documenting the number of cards produced and the number of errors. She is also responsible for weekly mailings to the DEERS office in California, and fills in for other operators when they are on break, as does the project lead. She also fills in for the project lead in her absence, and in doing so, covers the more routine functions of the project lead. She has been told that she has the authority to sign



employees' electronic time sheets in the absence of the project lead, but has not been trained in how that is done, and has not yet had the opportunity to do so. When serving as fill-in for the project lead, she has submitted the duty status reports to upper management. In regard to the frequency of her fill-in duties, she has filled in for the project lead on three occasions during the three-month duration of SRI's operation, so, on average, one day a month. She participated in the interview process that took place to fill the position created by the resigning employee after SRI took over the contract, as well as the interview process of three employees that took place just before SRI took over. In this process, she provided her input to the project lead, who made the effective recommendation to upper management.

In contrast to the specific testimony of the incumbent about her duties, SRI's Human Resources Director testified concerning the assistant lead's duties and authority primarily by merely describing each section of the written job description. The record is replete with statements about the authority that the incumbent has, and what she could do in various situations, without any examples of supervisory authority actually being exercised by the incumbent, or of the incumbent's having been held out to others, or even informed herself that she was a supervisor during the three months that SRI had been in operation at the time of the hearing.<sup>1</sup> Nor does the record contain evidence of any supervisory duties performed by assistant project leads in any of SRI's many other facilities.

The Employer's CEO also testified about the assistant lead position, and stated that the incumbent had been awarded a substantial pay increase upon being hired by SRI, as compensation for her added responsibilities as supervisor. SRI, however, did not proffer any

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<sup>1</sup> In this regard, in his post-hearing brief, Counsel for Respondent asserts that the incumbent was officially informed that she was a supervisor following the hearing. I find that any such post-hearing conversation is not probative of whether the assistant project lead actually is a 2(11) supervisor, as opposed to a working lead person, at the Ft. Bragg operation.

documentation, or indeed, even specifics, in support of this assertion. In direct contrast, the incumbent testified that she had been salaried under the predecessor, and that she was changed to hourly paid when SRI took over. She testified further that she did not receive a raise when she began working for SRI, and that she enjoyed the same benefits as other operators. I do not find the record evidence sufficient to support the conclusion that SRI awarded the assistant project lead a substantial increase in salary when taking over the Ft. Bragg operation, as compensation for her taking on additional supervisory duties.

Similarly, the Employer points to the assistant project lead's participation in the interview process to support its contention that the incumbent has effectively recommended employees for hire. The record demonstrates, however, that the Senior Program Manager specifically tasked the project lead to be the point person for the interviews and for the final recommendation, and that the project lead fulfilled that role. Moreover, it was the project lead who chose to include the assistant project lead to assist in the interview and recommendation process.

The burden is on the party asserting supervisory status to establish that status. *Chevron, U.S.A.*, 309 NLRB 59, 62 (1992). Because the Act excludes any "supervisor" from the definition of "employee" entitled to the protection of the Act, the Board has a duty not to construe supervisory authority too broadly. *Wal-Mart Stores, Inc.*, 340 NLRB 220, 223 (2003).

As the Employer correctly points out on brief, the rule clearly is established that the *possession* of any of the Section 2(11) indicia is sufficient to establish supervisory status, even if that authority has not yet been exercised. *Pepsi Cola Company*, 327 NLRB 1062, 1062 (1999); *Fred Meyer Alaska, Inc.*, 334 NLRB 646 (2001). In this line of cases, however, there is otherwise proof in the record of some of the individuals in the disputed classifications actually having exercised supervisory authority. Here, there is no such evidence. Rather, here there is

simply a job description that enumerates possible supervisory duties. It is settled that job descriptions, without more, are insufficient to meet the burden of establishing supervisory status. See *NLRB v. Security Guard Service Inc.*, 384 F.2d 143, 149 (5th Cir. 1967). As the Fourth Circuit stated long ago, “It is equally clear that the employer cannot make a supervisor out of a rank and file employee by giving him the title and the theoretical power to perform one or more of the enumerated supervisory functions. The important thing is the possession and actual exercise of actual supervisory duties and not the formal title.” *NLRB v. Southern Bleachery & Print Works, Inc.*, 257 F.2d 235 (4<sup>th</sup> Cir. 1958), cert. denied 359 U.S. 911(1959).

Based on the foregoing, I find that the assistant project lead is not a statutory supervisor, and I shall include her in the unit found appropriate herein.

#### **IV. CONCLUSIONS AND FINDINGS**

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
5. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

6. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time CAC Operators VO, and assistant project leads, employed by the Employer at its job site located at Ft. Bragg, North Carolina; excluding all guards, professional employees, the project lead, and supervisors as defined in the Act.

## **V. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Electrical Workers, AFL-CIO, Local 553. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the

strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **December 22, 2010**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency website, [www.nlr.gov](http://www.nlr.gov),<sup>2</sup> by mail, or by facsimile transmission at 336/631-

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<sup>2</sup>To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the E-Gov tab. Then click on the E-Filing link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident**

5210. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## **VI. RIGHT TO REQUEST REVIEW**

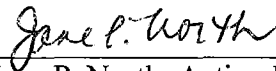
Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **December 29, 2010**. The request may be filed

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**Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).

electronically through E-Gov on the Board's web site, [www.nlr.gov](http://www.nlr.gov),<sup>3</sup> but may not be filed by facsimile.

**Dated:** December 15, 2010



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Jane P. North, Acting Regional Director  
National Labor Relations Board  
Region 11  
P.O. Box 11467  
4035 University Pkwy  
Winston-Salem, North Carolina 27116-1467

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<sup>3</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Board/Office of the Executive Secretary** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the request for review, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, [www.nlr.gov](http://www.nlr.gov).