

CASE NO. 16-RC-070839

FREEMAN (Employer)

and

**TEXAS CARPENTERS REGIONAL COUNCIL
(Petitioner)**

and

**INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, DISTRICT
COUNCIL 88, LOCAL UNION 756
(Intervener)**

REQUEST FOR REVIEW

Petitioner Texas Carpenters Regional Council hereby requests review of the Regional Director's decision of February 13, 2012, to the extent of the Regional Director's holding that the employer's part-time supervisors are not statutory supervisors and thus ineligible to vote.

The Regional Director's analysis and holding as to the supervisory status of the part-time supervisors is contained at pages 16-20 of the Decision and Direction of Election dated February 13, 2012. Petitioner requests review pursuant to Section 102.67 because:

- (1) The Regional Director's holding that the part-time supervisors are not statutory supervisors significantly from Board law and precedent as a matter of law, and
- (2) The Regional Director's ruling on a factual issue is clearly erroneous and prejudicial to the rights of the Petitioner.

We discuss these points in combination for ease of discussion.

The Employer's General Manager. Patricia Frank, testified unequivocally that the part-time supervisors serve as supervisors approximately 75% of the time (Tr. 117), that when serving as supervisors they have the same authority and responsibility as the fulltime salaried supervisors who are undisputedly statutory supervisors (Tr. 146), and that a critical part of this authority is determining how many and what kind of employees are needed for each job. (Tr. 52-53, 93-93). The Regional Director disregarded the General Manager's testimony, treating it as merely conclusory. ("The Carpenters, without specific supporting evidence, merely point to portions of Frank's testimony..." [Decision, p. 18]) Contrary to the Regional Director, the affirmative, declaratory testimony of the chief ranking executive manager of the Employer's facility is not merely conclusory – instead, because the Employer contends the part-time supervisors are not statutory supervisors, it is an admission against interest and should be given controlling weight.

The part-time supervisors, when planning jobs in their capacity as supervisors, do not only identify the number of employees needed, they also identify the specific employees to be called for the jobs by name. Again, the Regional Director disregarded key testimony of General Manager Franks on this point, in particular her testimony that the employees for a job are primarily identified and called for by specific name. (Tr. 99).

Under the Board precedent in *Oakwood Health Care, Inc.*, 348 NLRB No. 37, at 689 (2006), to "assign" an employee means to possess the authority to appoint an employee to a place or time. The part-time supervisors in question do

assign employees and perform such role 75% of the time, according to affirmative admissions of the Employer's principal executive manager. These individuals are statutory supervisors and should be ruled ineligible.

Respectfully submitted,

/s/ David Van Os
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Statement of Service

This is to certify service of the above and foregoing request for review upon counsel for all parties by electronic transmission on February 27, 2012.

/s/ David Van Os
David Van Os