

NOT TO BE INCLUDED IN
BOUND VOLUMES

PFB
Tomah, WI

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PROPPANT SPECIALISTS, LLC
Employer

and

Case 30-RC-006783

INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL 139, AFL-CIO
Petitioner

DECISION AND DIRECTION

The National Labor Relations Board, by a three-member panel, has considered determinative challenged ballots and objections to an election held June 9, 2011, 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 8 votes for the Petitioner, 7 against, and 4 challenged ballots, a number sufficient to affect the election's results.

Having reviewed the record in light of the exceptions and briefs, the Board adopts the hearing officer's findings and recommendations.¹

¹ There were no exceptions to the hearing officer's recommendation to overrule the challenge to Todd Rainey's ballot.

In adopting the hearing officer's finding that Barrett Oliver is not a statutory supervisor, we rely only on his finding that the Employer failed to establish that Oliver exercises independent judgment in assigning or responsibly directing employees. We also find that the Employer failed to show that Oliver is closely associated with management. *BP Custom Building Products*, 251 NLRB 1337 (1980), upon which the Employer principally relies in this regard, is distinguishable. There, the Board found that employee Hoss was an agent of the employer and, on that basis, that his service as the employer's election observer was

DIRECTION

IT IS DIRECTED that the Regional Director for Region 30 shall, within 14 days from the date of this Decision and Direction, open and count the ballots of Barrett Oliver and Todd Rainey, and prepare and serve on the parties a revised tally of ballots. If, at that point, the still-unresolved challenge to the ballot of Burdette Billings is nondeterminative, the Regional Director shall issue the appropriate certification. Otherwise, the Regional Director shall take further appropriate action.

Dated, Washington, D.C., April 3, 2012.

Mark Gaston Pearce, Chairman

Terence F. Flynn, Member

Sharon Block, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

objectionable. Other than to claim that Oliver is a statutory supervisor, a claim that we have rejected, the Employer does not contend that Oliver is its agent. To the extent that it implies such a contention by claiming that Oliver, like Hoss, was placed in a position in which he would be viewed as speaking on management's behalf, we reject that claim as well. Hoss attended management meetings, spoke on behalf of management at employee meetings, and promised employees benefits on behalf of the employer. There is no evidence that Oliver does likewise. Having found that Oliver is not closely associated with management, we find it unnecessary to address the Employer's legal argument that persons closely associated with management may not serve as election observers for a union.

In adopting the hearing officer's finding that Ralea Rainey is an office clerical employee excluded from the unit under the terms of the parties' stipulation, we do not rely on any post-election evidence cited by the hearing officer.