

United States of America
Before the National Labor Relations Board, Region 19
Ronald K. Hooks, Regional Director

Strategic Resources, Inc (SRI) Employer and International Association of Machinists & Aerospace Workers, District Lodge W24, AFL-CIO Petitioner	Case 19-RC-082047 Petitioner's Response to Employers Request for Review of Regional Director's Decision and Direction of Election
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The International Association of Machinists (IAM) submits this response to Employer's request for review of the Regional Director's Decision and Direction of Election. The Employer is attempting to challenge the decision based on three assertions; (a) RD substantially departed from officially reported Board precedent, (b) factual issues resolved in clearly erroneous fashion, and (c) refusal of RD to defer resolution of disputed issues to post-election procedures, when applicable facts would be fully developed.

The Petitioner is disappointed that the Employer would choose to challenge the decision. The fact remains that the Employer failed to properly present their case in the hearing. The Employer's only witness (Ms. Lawson) provided no substantive support to the Employer's position; instead, Ms. Lawson repeatedly stated that she had no actual knowledge of working

conditions or procedures being practiced at Joint Base Lewis McChord (JBLM), referring to such issues as “operational” and not under her purview as Director of Human Resources.

In addition to the lack of value provided by their lone witness, the Employer submitted an exhibit (CX6) that had been altered. Under oath, Ms. Lawson was unable to explain who altered it, when it was altered, or why. The Employer asserted that this document was “proof” that Ms. McGill had been promoted to the position of Lead/Site Supervisor on April 18th, and was aware of the 2(11) responsibilities at that time. This assertion is diminished when considering Ms. Lawson’s testimony that she had no direct knowledge of any conversation or communications that was held with Ms. McGill at the time of the offer of promotion.

Ms. McGill testified, and it was not challenged by the Employer, that she was offered the Lead position and expected that the duties would mirror those she held when Serco administered the contract with the Army.

It is important to note that SRI continues to argue that this is a new contract. The facts are that the contract is not new; all three of the Union’s witnesses, the Family Advocacy Program Manager and Army Community Services Division had been administering this contract for a substantial period of time prior to SRI being awarded the Service Contract. In many cases, the parties had been delivering the services for years, and there was uncontested testimony that an on-site supervisor had never been in place.

The facts are that SRI joined a program that had been operating for years with the same players continuing to function in their same roles, in their same locations, and performing their same duties. When Ms. McGill was offered the Lead position, a position she had held previously, she was justified in expecting that the duties would be the same.

When Ms. McGill submitted a report to SRI management, she was told to stop doing that function – a function that was (and still is) required by the Government. Ms. McGill properly requested clarification of her Lead duties at that point, and immediately protested when a draft (UX1) suggested that she now had 2(11) duties, and was the first mention of the term “Site Supervisor”.

Upon her protest, SRI Program Manager, Rosemary Galvan, insisted that the Employer would review the duties and get back to Ms. McGill. Ms. Galvan further insisted that Ms. McGill did not need to worry because this was just a draft, and no official job description existed. Ms. McGill never was contacted again on this matter, until after the Union filed the RC petition, six weeks later. None of this was refuted in the hearing.

SRI submitted an exhibit (CX2) that outlined the job duties that the Employer insists belong to the Lead/Site Supervisor. It is interesting to note that Ms. Galvan – a second level supervisor (above the Regional Director, Christine Lopez) – had stated that no job description existed, a full two months after CX2 was supposedly reviewed and approved. When questioned why the chain of command did not know of any approved job description, Ms. Lawson again testified that she did not know anything. Under testimony, Ms. McGill

stated that she had never seen CX2, and that Ms. Galvan never got back to her. None of this was challenged in the hearing.

For the Company to assert that there is no evidence that this job description was not approved in February is blatantly misleading. There is sworn testimony – that was never challenged – that Ms. Galvan professed the “approved” job description did not exist in the middle of April. When asked about this inconsistency, Ms. Lawson again admitted that she had no knowledge of what was happening at JBLM.

The Employer is also improperly asserting that the RD based his decision on “McGill’s (2 month) experience at Lewis-McChord.” The facts are that Ms. McGill had nearly three years performing these duties at Lewis-McChord, while coordinating with the same military administrators, the same clients, under the same protocols and procedures of treatment and reporting, at the same desk, and with substantially the same co-workers.

The Employer further argues that the RD based his decision “solely” on Ms. McGill’s testimony. This is disturbing, since two other witnesses also testified to the fact that no supervisory authority was ever established or exercised. In addition to testimony, the only unchallenged exhibits were presented by the Union – all were part of the RD’s decision process. These convenient absences in the Employers request for review are curious, if not deliberately misleading.

The fact that the Employer is disappointed with the decision does not alter the fact that SRI failed to properly present any evidence to support their

position in this matter. The RD properly ruled on the disputed issues, based on the facts, testimony and evidence that were presented at the hearing.

It is interesting to note that even after the Employer filed their objection and necessitated this hearing, there were opportunities to have Ms. McGill perform supervisory duties – and the Employer continued to exclude Ms. McGill from any association with supervisory duties. When the Employer threatened retaliation toward the three Union witnesses, for properly responding to the subpoenas, Ms. McGill (if she were a 2(11) supervisor) should have had the authority to approve the time off, but the Employer continued to exclude Ms. McGill in the supervisory decision.

The Employer also asserts, in their request for review, that the draft job description (UX1) lists 2(11) duties – and ignores the base description that this evidence was a “draft” and that Ms. McGill protested it and was told not to worry, because it was still being reviewed.

The Union submitted UX3, and had three witnesses testify that it continued the pattern of threats that SRI repeatedly used in emails to the Victim Advocates. Ms. McGill testified that under duress, and feeling that she was being threatened with termination, she agreed to perform duties as she may be assigned. None of this was challenged during the hearing.

The Employer continues to point that Ms. McGill was given the application material for Jennifer Turner, participated in the initial interview, and made a recommendation to hire Ms. Turner. Under oath, Ms. Lawson testified that she didn't actually know if Ms. McGill had participated in the interview, or if she had

received the application. Despite these concerns, Ms. Lawson insisted that “she must have recommended that we hire Ms. Turner, otherwise there would not have been a second interview”. The RD properly weighed Ms. Lawson’s opinion of what “must have” happened.

Ms. Campbell, another Union witness, testified that she was also given the application materials and participated in the interview process – which is a group “meet and greet”, the same method used when Serco administered the contract. Ms. McGill testified that she never made any recommendation on the hiring of Ms. Turner, nor was she asked to make one. These testimonies were never challenged. It is a blatant mischaracterization for the Employer to claim that Ms. McGill testified that she made “some type of recommendation”, that did not happen.

The Employer references discipline given to Ms. Carlson, and asserts that it was prior to Ms. McGill becoming the Lead, because Ms. Worley was involved – and her employment ended prior to Ms. McGill being offered the Lead position. A more careful review of the testimony would have revealed that the testimony, provided by Ms. Carlson, shows that Ms. Worley was not involved in the discipline outlined in Ms. Carlson’s statement. The Supervisors involved were Rosemary Galvan and Christina Lopez. These pieces of evidence were submitted to show that SRI has a chain of command, and Ms. McGill was not considered part of it.

SRI references a need to train supervisors, prior to allowing them to exercise their supervisory duties. A prudent business model would have

included Ms. McGill in the correspondence between the Victim Advocates and the supervisors that were already in place; this would have given a “supervisor in training,” accepted models of behavior to copy – that did not happen.

The Employer improperly asserts that Ms. McGill testified that she understood that her job was supervisory in nature. This distortion ignores that the counsel for the Employer was questioning Ms. McGill’s impression “if the company exhibit (CX 3) were actually the job description imposed”. Ms. McGill repeatedly stated that the job would be supervisory if the company exhibit were her job description, but continued to assert that CX3 was never in place – in fact, she had been advised that it was not her description by her supervisor.

SRI notes that the RD correctly cited Fred Meyer Alaska, Inc., 334 NLRB 646 (2001), but fails to mention that the exercise of vested authority is only part of the question. The more basic part of this citation is that “vested authority” was never established, nor was it ever referenced or hinted at – in any manner. In fact, the Employer repeatedly directed employees to bypass the Lead in their area, for all issues related to approvals or working conditions. This lack of effort in establishing any “vested authority” was reinforced by all three of the Union witnesses, and was never challenged.

The Company argues that the contract with the Army requires an on-site supervisor, and then points out that they had the option of not filling this position. It is unchallenged, and multiple testimonies confirm, that no site-supervisor had ever been part of a contract to provide these services to our military. It is also unchallenged, and supported by multiple testimonies, that

no attempt to establish any on-site supervisory position existed until long after the Union filed the RC petition. It is further noted that the Company argues that supervisor training was to begin on June 21, as of this date (more than a month later) such training has not begun in any manner.

SRI asserts that their procedures require the Lead / Site Supervisor to provide a recommendation before a second interview would take place. While this is interesting, it does not replace the facts of what happened. Undisputed testimony must be used to establish what “actually” happened. No recommendation from Ms. McGill was ever offered nor requested.

In addition to SRI insistence that, “Going forward, the Lead / Site Supervisor is expected to interview potential applicants and make recommendations” – the Company has added two new Victim Advocates to the “Excelsior” list that were never introduced to anybody in the bargaining unit, including Ms. McGill. No attempt has ever been made to establish or exercise any supervisory status for Ms. McGill.

The Employer argues that leaving the work group without an on-site supervisor, qualifies as secondary indicia. This is interesting, since the Employer argues in this request for appeal (again), that they had the option of not filling this position (repeatedly stating that they chose to wait months before addressing it). In addition, any secondary indicia is of no merit if primary indicia is lacking – which has already been determined to be missing. This argument by the Employer is an attempt to hide the facts of this case.

The Employer repeatedly asserts that Ms. Lawson's statements during the hearing were "undisputed testimony". Even a cursory review of the proceedings would reveal that most of what Ms. Lawson testified was based on hearsay and opinion, any reference to "actual facts" were contested repeatedly.

SRI attempts, in this request for review, to use "Nicholas House" as justification. The facts are that Ms. McGill was:

- Told to ignore the draft duties as no approved description existed
- Told to expect another discussion on the duties of the Lead, before any final description was adopted
- Bypassed on every opportunity to witness SRI supervisory protocol
- Never introduced to the other Victim Advocates as a supervisory figure, instead the VA were specifically directed to bypass Ms. McGill and address all concerns to other personnel
- Repeatedly put in position to resign or accept the duties - an obviously stressful situation
- Informed of an "official" change to her duties, after the Union filed the RC petition
- Scheduled for "supervisory training" the day after this hearing began; a month later, she has still never received any training.

The Union must challenge the Employers statement that there is a "misunderstanding between SRI and Ms. McGill as to duties and expectations of the Lead Advocate / Site Supervisor". There is no misunderstanding; Ms. McGill

questioned her duties as soon as there was a concern. She was told it would be worked out later, and she would be consulted before a decision was made, any confusion is on the part of SRI, as they do not have a consistent stance.

The Employers request for review contains many mischaracterizations of the proceedings of the hearing. The fact further exists that the Employer failed to meet their obligation to prove the merit of their objection to the appropriate bargaining unit. As a result, the Union stands in objection to giving the Employer additional attempts to present their case until they get the decision they want.

For the reasons outlined, the Union requests that the Board deny the Employers Request for Review.

Dated July 22, 2012

A handwritten signature in blue ink that reads "Kevin J. Cummings". The signature is written in a cursive style with a large, looping "C" at the end.

Kevin Cummings

IAM Grand Lodge Representative