

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN**

ETO MAGNETIC CORP.

Employer

and

Case 07-RC-087016

**LOCAL 951, UNITED FOOD AND COMMERCIAL
WORKERS UNION (UFCW), CTW**

Petitioner

APPEARANCES:

Grant T. Pecor, Attorney, of Grand Rapids, Michigan, for the Employer.

Jonathan D. Karmel and Alexander D. Barney, Attorneys, of Chicago, Illinois, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to represent all full-time and regular part-time team leaders, assembly operators, maintenance employees, CNC operators, model shop employees, material handlers, supplier quality employees, lab engineers, logistics employees, quality engineers, quality technicians, manufacturing engineers, receiving inspectors, layout technicians, and shipping/receiving employees employed by the Employer at its facilities located at 4311 and 4323 Patterson Ave. S.E., Grand Rapids, Michigan; but excluding temporary employees, casual employees, office-clerical employees, professional employees, and guards and supervisors as defined in the Act.

The Employer contends that the petition should be dismissed as premature because the current complement of employees in the petitioned-for unit does not represent a majority of the ultimate bargaining unit, as it plans to expand the unit to add approximately 121 new jobs over the next two or three years. Should the petition not be dismissed, the Employer further contends that five team leaders (also known as line leaders¹) who also serve as interpreters/translators for the Employer are statutory supervisors, professional employees, and/or confidential employees and should be

¹ The terms "line leader" and "team leader" are used interchangeably herein.

excluded from the unit. There are a total of ten team leaders. The Employer distinguishes the team leaders who interpret/translate from those who do not based on the interpreters'/translators' assertedly greater involvement in such matters as assignment and direction of work, disciplinary investigations and grievance resolution, and hiring and promotions due to the number of its employees who do not speak English and the inability of upper management to communicate with non-English speakers without the assistance of these team leaders.²

As discussed below, based on the record and relevant Board law, I conclude that the petitioned-for unit constitutes a substantial and representative complement of the Employer's workforce. I further conclude that the Employer has not satisfied its burden of proof that the team leaders who interpret/translate for other employees are professional, confidential or supervisory employees, and that the petitioned-for unit constitutes an appropriate unit for the purposes of collective bargaining.

A. The Employer's Operations

The Employer is a German corporation primarily engaged in the design and manufacture of automotive solenoids (i.e., electromagnetic actuators). The Employer rents two buildings for its Grand Rapids operations, located at 4311 and 4323 Patterson Ave. S.E., Grand Rapids, Michigan, totaling about 60,000 square feet. The building located at 4311 is about 150 feet north of the building at 4323, separated only by the Employer's parking lot. Both buildings constitute a single operation, housing offices and production lines performing similar work. The volume of production is greater at the 4323 location, which operates three shifts, while there is only one shift, the day shift, at the 4311 building. The 4311 building also includes a 10,000 square foot warehouse. The Grand Rapids facility is the Employer's only North American operation, which it commenced in 2005, when it acquired LDI, Inc. The name was changed to ETO Magnetic Corp. in 2011.

Michael Ignaczak is the president of the company and also serves as the engineering manager.³ Vice-president Greg Peters, operations manager Kevin Manthei, and quality manager Ron Mathias report directly to Ignaczak. Manthei oversees the production department, which includes logistics manager Charla Symmes, maintenance manager Mac McAnany, manufacturing manager Duc Nguyen, and production manager Darren DesJardin, who is in charge of and accountable for all production. DesJardin directly supervises the day shift. Two production supervisors, Charles Sellman (2nd shift)

² The Employer represents that while an argument can be advanced that all team leaders are statutory supervisors, for reasons of strategy related to its burden of proof, it does not contend that team leaders who do not interpret or translate for other employees are supervisors. It also does not contend that they are professional or confidential employees, and agreed with the Petitioner that those team leaders who do not interpret would be included in an appropriate unit.

³ As identified in the Employer's organizational chart.

and Joe Johnson (3rd shift), report directly to DesJardin. The Employer also has a human resources manager, Judy Hughes, and a sales manager, a purchasing manager, and a controller, all of whom report to Peters.⁴

Production manager DesJardin oversees five line leaders who work on the first shift. There are about 47 assembly operators working on first shift. That number includes five temporary employees.⁵ Second shift supervisor Charles Sellman oversees two line leaders and approximately 22 assembly operators. Third shift supervisor Joe Johnson oversees three line leaders and approximately 20 operators, including 6 temporary employees. The Employer estimates that about 60% of its workforce speaks a language other than English.

B. Board Law

1. Expanding Unit

The Board will not authorize an election in a unit where there is evidence that the number of employees in the petitioned-for unit will increase substantially in the near future. *K-P Hydraulics Co.*, 219 NLRB 138, 138 (1975). Expansions which will occur at a remote date from the date the petition was filed, or that are too uncertain, are considered to be too speculative to warrant setting aside a petition. *Laurel Associates, Inc.*, 325 NLRB 603, 604 (1998); *Gerlach Meat Co., Inc.*, 192 NLRB 559, 559 (1971) (unit as it would exist in nearly two years found to be too speculative; Board considered unit as it would exist seven months from date of hearing). When an employer's current complement of employees is "substantial and representative" of the unit workforce to be employed in the near future, the Board will direct an immediate election in that unit, notwithstanding any plans the employer may have to expand its workforce. *Yellowstone International Mailing, Inc.*, 332 NLRB 386, 386 (2000); *Toto Industries (Atlanta)*, 323 NLRB 645, 645 (1997); *General Cable Corp.*, 173 NLRB 251, 252 (1968). The Board will generally find that an existing complement of employees is substantial and representative when approximately 30% of the anticipated complement of employees is employed in 50% of the anticipated job classifications. *Shares, Inc.*, 343 NLRB 455, 455 fn. 2 (2004); *Yellowstone International Mailing*, supra; *Custom Deliveries*, 315 NLRB 1018, 1019 fn. 8 (1994).

⁴ The parties stipulated that Mathias, DesJardin, Johnson, Sellman, McAnany, and Hughes are supervisors within the meaning of Section 2(11) of the Act. The record is silent with respect to a stipulation regarding the supervisory status of Peters and Manthei. Although employer counsel represented on the record that the logistics manager (Symmes) and manufacturing manager (Nguyen) are supervisors, there is no stipulation in the record and no record evidence in support of such a finding.

⁵ The temporary employees are employed by an employment agency and are specifically excluded from the petitioned-for unit.

2. Statutory Supervisors

Section 2(3) of the Act excludes from the definition of the term “employee” “any individual employed as a supervisor.” Section 2(11) of the Act defines a “supervisor” as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment.

This provision is to be read in the disjunctive; thus any one of the enumerated powers is sufficient to confer supervisory status, so long as the authority is held in the “interest of the employer” and exercised with the use of “independent judgment.”

Kentucky River Community Care, 532 U.S. 706, 713 (2001). Individuals are “statutory supervisors if: 1) they hold the authority to engage in any one of the 12 listed supervisory functions; 2) their exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment; and 3) their authority is held in the interest of the employer.” *Id.* at 713 (2001). Supervisory status may be shown if the putative supervisor has the authority either to perform a supervisory function or to effectively recommend the same.

The burden to prove supervisory authority is on the party asserting it. *Oakwood Healthcare, Inc.*, 348 NLRB 686, 687 (2006); *Kentucky River*, *supra* at 711-712. In addition, the Board has long recognized that purely conclusionary evidence is not sufficient to establish supervisory status. The Board requires evidence that the individual actually possesses supervisory authority. *Golden Crest Healthcare Center*, 348 NLRB 727, 731 (2006); *Chevron Shipping Co.*, 317 NLRB 379, 381 fn. 6 (1995) (conclusionary statements without specific explanation are not enough to establish supervisory status).

3. Professional Employees

Under Section 9(b) of the Act, the Board “shall not (1) decide that any unit is appropriate...if such unit includes both professional employees and employees who are not professional employees, unless a majority of such professional employees vote for inclusion in such unit.”

Section 2(12) of the Act defines professional employees as follows:

- (a) Any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or
- (b) Any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

If employees are found to be professionals, they are not automatically excluded from the unit, but are entitled to a special ballot by which they can indicate whether or not they wish to be included in a bargaining unit with non-professionals. *Sonotone Corp.*, 90 NLRB 1236, 1241 (1950).

4. Confidential Employees

An employee will be considered a confidential employee and be excluded from the bargaining unit only if the employee assists and acts in a confidential capacity to personnel who are responsible for formulating, determining and effectuating labor relations policy, or has regular access to confidential information regarding collective bargaining negotiations. *Foodbasket Partners*, 344 NLRB 799, 805 (2005); *S.S. Joachim and Anne Residence*, 314 NLRB 1191, 1195 (1994); *Inland Steel Co.*, 308 NLRB 868, 872 (1992). The party asserting that an individual is a confidential employee bears the burden of proving that claim. *Crest Mark Packing Co.*, 283 NLRB 999, 999 (1987).

C. Application of Board Law to this Case

1. Expanding Unit

In reaching the conclusion that the current complement of employees is “substantial and representative” of the unit workforce to be employed in the near future, I rely on the following analysis and record evidence.

In November 2010, the Employer employed about 150 hourly assembly operators; due to the loss of one of its customers, it currently employs approximately 87.⁶ The Employer's sales team is in the process of bringing in new business. The Employer asserts that the new business it expects to bring in over the next few years will add 10 new products, and will require an additional 121 assembly operators.

It normally takes between two and four years for the Employer to roll out a new product line. Before beginning production, the Employer must first produce a prototype. That prototype is then tested by the customer, which may require changes to the product after testing. This process can take from two to three years. Only when the design is validated by the customer will the Employer build a new production line. The Employer's existing workforce is currently performing all of the necessary prototype work for the Employer's anticipated new product lines.

The Employer has orders in hand for three new customers. The soonest that any new employees will be hired is in September 2013, for a Jaguar redesign which will require only two additional employees on two shifts. The Employer also anticipates adding a new shift lock job which will require 24 additional jobs on two shifts. These jobs may be added at the end of 2013. In addition, the Employer has contracted to construct a prototype for an oil control valve job. If the prototype is approved and production commences, it will require 18 additional employees on two shifts. However, production will not begin until at least 2015. The Employer has not yet added any new machinery for these production lines, but asserts that it will begin ordering equipment for the Jaguar redesign work this month.

The Employer anticipates adding other new jobs, but it has not yet received orders for the work. These jobs include an ABS valve job which will require 18 additional employees on two shifts, a canister vent solenoid which will require no additional employees, and a fuel injector solenoid which will require 10 additional employees on two shifts. In addition, the Employer is hoping to secure orders for an oil control valve which will require 16 additional employees on two shifts, but the customer has not yet committed. The Employer has been awarded prototype work for a 4-port valve which will require seven additional employees on one shift, but does not know when it can expect to start production. Other anticipated work includes a core tube and coil job which will require two additional employees on one shift; and a canister vent solenoid which will require 24 additional employees on three shifts, but for which the Employer has not yet received a purchase order.

The Employer plans to house any additional production lines in its two existing buildings. Some of its commitments to current customers will have expired prior to the arrival of new work, so some of the Employer's existing production lines will be

⁶ Per DesJardin's testimony, although the Employer represents in its post-hearing brief that the agreed-upon unit contains at least 97 employees, which includes the five team leaders who do not interpret.

converted over to new work.⁷ The new work, if obtained, will all fall under the umbrella and structure of the Employer's existing products. The Employer does not anticipate adding any new job classifications or paying the employees on the anticipated new lines at a different wage rate than it pays its current employees.

The new jobs the Employer anticipates adding are simply too speculative to warrant dismissing the instant petition. The soonest any new employee will be hired is one year from now, for a job that will only require two additional employees. The Employer does not have dates certain for any of the other new work, all of which would start after September 2013. Any determination as to what the Employer's eventual complement of employees will be, and when they will be hired, is mere speculation at this point in time. See *Laurel Associates, Inc.*, 325 NLRB at 604; *Gerlach Meat Co.*, 192 NLRB at 559.

Further, even if the additional jobs are not too speculative to be considered as an expanding unit, the Board will generally find that an existing complement of employees is substantial and representative when approximately 30% of the anticipated complement of employees is employed in 50% of the anticipated job classifications. *Shares, Inc.*, 343 NLRB at 455 fn. 2; *Yellowstone International Mailing, Inc.*, 332 NLRB at 386; *Custom Deliveries*, 315 NLRB at 1019 fn. 8. That requirement is met in this case, as the current asserted complement of about 87 assembly operators represents 42% of the 207 assembly operators the Employer hopes to someday employ, and the new jobs will be in the same classifications as the ones currently in place. See *Laurel Associates*, supra.

I find, based upon the record evidence and the case law cited above, that the Employer's anticipated expansion of the unit is too remote and speculative to form a basis for denying present employees an opportunity to select a bargaining representative, and that, in any event, a representative and substantial complement of employees, both by anticipated job classification and number, are presently employed.

2. Supervisory Status of Team Leaders

The Employer specifically contends that the team leaders "at issue," i.e., those team leaders who interpret/translate for the Employer, are supervisors within the meaning of the Act because they have the authority, in the interest of the Employer, to assign, discipline, responsibly direct, evaluate, reward, transfer, and adjust the grievances of employees, as well as effectively recommend individuals for hire, layoff, discipline, suspension, promotion, reward, discharge and adjustment of grievances, using independent judgment. However, the Employer adduced no evidence as to some of these asserted authorities beyond conclusory assertions, and the evidence proffered in support

⁷ The record does not indicate whether the employees from the expired lines will be transferred to the new production lines, but employees are required to cross-train on different machines.

of the remaining supervisory indicia is insufficient to sustain its burden of proof.⁸ In reaching the conclusion that team leaders are not supervisors, I rely upon the following analysis and record evidence.⁹

The employees at issue in this matter work in the Employer's production department. Each team leader is assigned to a line or lines performing a particular function. For example, of those team leaders whom the Employer identifies as also acting as interpreters, Julio Coyoy leads "CVSII-Core Tube" lines, Vi Le leads a "Lacks/MH LL" line, Juan Contreras and Leo Baez Tajeda lead "INA/JAG" lines, and Jose Lopez Hernandez leads an "INA" line. The line designations refer to product and/or customers. Team leaders and supervisors work the same shifts as assembly operators, but report to work 15 minutes before each shift and stay 15 minutes afterward, for which overtime is paid, to communicate with the team leaders and supervisors on the other shifts regarding the status of production.

When customers order products from the Employer, the logistics manager creates shop orders instructing the production team as to how the products will be built. Production manager DesJardin sets up the production lines based on these shop orders. The production manager and production supervisors, Sellman on 2nd shift and Johnson on 3rd shift, meet with the team leaders on each shift to identify which production lines will operate during that shift, and give them direction on how to run the line. Each task on the line has written work instructions which must be followed. Team leaders are responsible for initial and periodic verification (measurement and testing of the operations) of the production lines to make sure they are running as stated in the control plan (work instructions detailing how a task is to be performed within a job skill) issued by the Employer's logistics manager, to avoid producing bad parts. Team leaders verify that the line has all necessary materials, and perform quality checks during production to ensure that the machines are running properly. If any overtime is needed, the team leader does not have authority to authorize it.

a. Assignment of Work and Responsible Direction

In *Oakwood Healthcare*, 348 NLRB 686 (2006), the Board held, that "assign," for purposes of Section 2(11), means the act of "designating an employee to a place . . .

⁸ For example, team leader Coyoy testified that he was not involved in promotions and knew nothing about layoff procedures. The Employer appears to contend that promotion is a collateral effect of team leader certification that operators have been trained.

⁹ It is Board policy to accept stipulations/representations from the parties regarding the composition of the unit, unless contrary to the statutory provisions of the Act. *Hollywood Presbyterian Medical Center*, 275 NLRB 307, 308 (1985). Because inclusion of supervisors in the bargaining unit would be contrary to the Act, and the Employer adduced evidence regarding the supervisory authorities of team leaders who do not perform interpretation duties, I have reviewed all of the record evidence to ensure that the representation and inclusion in the unit of team leaders who do not interpret is appropriate. Based on my conclusion that team leaders – whether they provide interpreting assistance to the Employer, or not - are not supervisors within the meaning of the Act, I find that the position of team leader is appropriately included in the petitioned-for unit.

appointing an individual to a time . . . or giving significant overall duties to an employee” and “not . . . ad hoc instruction that the employee perform a discrete task.” Id. at 689. The Board further interpreted “responsibly direct” of Section 2(11) to reference “what job shall be undertaken next or who shall do it” and “for direction to be responsible, the person directing and performing the oversight of the employee must be accountable for the performance of the task by the other such that some adverse consequence may befall the one providing the oversight if the tasks . . . are not performed properly.” Id. at 692. In order to demonstrate that an employee is a supervisor, the employee must exercise independent judgment in the assignment and direction. Such independent judgment is not established when assignments or direction are routine or clerical, or made based on the detailed policies of the employer. *Alternate Concepts, Inc.*, 358 NLRB No. 38, 4 (2012); *Oakwood Healthcare*, supra at 693.

The production manager assigns line employees to a line/team. The team leaders assign employees to work on certain machines on their lines, but the production supervisor can change those assignments. Each job is accompanied by specific work instructions which fit into the overall production plan developed and put into place by the logistics manager and production manager. The team leaders assign employees to certain machines based on whether or not the employee has been trained on that machine and the employee’s level of experience. For example, a new employee begins by performing an easier operation. Other employees who have worked for the Employer a long time know where they are supposed to work. Team leaders may also reassign employees who request an easier job on the line, or transfer employees within the line to jobs the employee is known to be capable of performing. Team leader Coyoy indicated that when rotating operators on the line he will ask an operator whether that operator wants to work at a particular work station. When an operator needs to be replaced, sometimes the supervisor informs the team leader where the operator is to be assigned. The team leader must first check with DesJardin in order to move an operator to a different line, which may occur when a line is not working properly, when there is no material, or to replace an absent operator, but this movement occurs infrequently.

These assignments do not involve a “degree of discretion that rises above routine or clerical.” Ibid. The team leaders who may be asked by the Employer to interpret may possess a better ability to communicate with non-English speaking employees on their line than other team leaders, but there is no evidence that this ability gives them more discretion in assigning work.

The Board has noted “[t]o establish the authority to assign, moreover, it must be shown ‘that the putative supervisor has the ability to *require* that a certain action be taken; supervisory authority is not established where the putative supervisor has the authority merely to *request* that a certain action be taken.’” (emphasis in original). *Rockspring Development, Inc.*, 353 NLRB 1041, 1042 (2009), quoting *Golden Crest Healthcare Center*, 348 NLRB at 729. The Employer has failed to establish in the

instant case that the team leaders can require that an employee perform a task. Coyoy, the only team leader to testify, stated that employees on his team could refuse a task, but have never done so. While an employee from his team testified that he must follow the instructions of his team leader, he also testified that no one had ever told him that the team leader was his supervisor. The evidence therefore does not support a finding that the team leaders have the authority to require employees to perform tasks.

I also find that the Employer has not met its burden in establishing that the team leaders and team leaders who interpret/translate exercise responsible direction. Responsible direction means that the person directing the performance of a task must be accountable for its performance. *Oakwood*, supra at 691-692. To establish accountability for purposes of responsible direction, “it must be shown that the employer delegated to the putative supervisor the authority to direct the work and the authority to take corrective action, if necessary. It also must be shown that there is a prospect of adverse consequences for the putative supervisor if he/she does not take these steps.” Id. at 692. Evidence of actual accountability must be presented to prove responsible direction. See *Alstyle Apparel*, 351 NLRB 1287, 1287 (2007); *Golden Crest Healthcare Center*, supra.

The Employer presented evidence of three instances of discipline issued to its team leaders for failing to perform certain tasks, and only one postdates 2006. Coyoy was disciplined in September 2005, for failing to ensure that his line was running correctly. This discipline was related to his duties in verifying the production line, and not to his responsibility to supervise the employees working on the line. Coyoy was also disciplined in June 2006, for failing to train employees on his team and for the failure of various line operations to show proper verification and set-up. Again, this discipline addresses his responsibilities and does not establish accountability for his teams’ mistakes. The only other documented discipline of a team leader occurred in January 2012, and pertained to the team leader asserting that there were no parts for her line to run, and leaving work early. This discipline was not related to the performance of the employees on her line, but to the apparent misrepresentation that she had no work to perform.

In addition to the infrequency of documented discipline of team leaders, the record does not establish that the team leaders were disciplined for the performance of employees on their line. DesJardin testified that he was unaware of any example of a team leader being disciplined, or instructed that he would be disciplined, if the employees working on the line built defective parts. Nor does the evidence establish that team leaders are held accountable in their performance appraisals for team performance. The only performance review of a team leader in the record is Coyoy’s performance review dated December 2006, which only suggests he develop a cross-functional team and learn other lines. As with the disciplines discussed above, this document does not indicate that Coyoy was being held accountable for operators’ errors.

b. Hiring Recommendations

Most assembly operators start their employment as temporary employees. After working as temporary employees for 90 days, they may be hired as permanent employees. Prior to making a decision on whether to hire a temporary worker as a permanent employee, production manager DesJardin reviews their training records and qualifications and asks the team leader about the work performance of the temporary employee. Coyoy testified that, when asked by DesJardin how an employee is working, Coyoy informs DesJardin whether or not the temporary employee is a good worker. Coyoy indicated that those employees he has identified as good workers have been hired, although he could only remember the name of one employee. The authority to “effectively recommend” an action “generally means that the recommended action is taken without independent investigation by superiors, not simply that the recommendation is ultimately followed.” *DirectTV LLC*, 357 NLRB No. 149 (2011), citing *Children’s Farm Home*, 324 NLRB 61, 61 (1997). Coyoy testified that production manager DesJardin also reviews work records and observes the work of the temporary employee being considered for hire, such that the decision to hire is not solely based upon the team leader’s recommendation. Because it appears that the team leaders’ recommendations are accompanied by independent investigation by the production manager, I find that there is inadequate evidence to establish that the team leaders can effectively recommend that an employee be hired.

c. Discipline

Regarding the asserted disciplinary authority of the team leaders, under Section 2(11) of the Act, individuals are statutory supervisors if they have the authority, in the interest of the employer, to discipline other employees, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. *Oakwood Healthcare*, supra at 687; *Arlington Masonry Supply*, 339 NLRB 817, 818 (2003).

The Employer produced one document, entitled “employee warning report” and dated “1/11/12,” assertedly written by a team leader (who is not an interpreter), and issued to an employee for excessive scrap. That team leader did not testify, and the circumstances under which the discipline arose are unclear.¹⁰ There is no record evidence as to when or how this document was given to the employee, nor its impact in the disciplinary process. DesJardin testified in general terms that team leaders have the authority to issue discipline. However, such conclusory testimony does not establish supervisory authority. See *Golden Crest Healthcare Center*, 348 at 731; *Chevron*

¹⁰ DesJardin’s testimony with respect to the document amounted to little more than orally reading the report into the record.

Shipping, 317 at 381, fn 6. Coyoy testified that he cannot discipline employees, and has never recommended discipline. He testified that he might report disciplinary issues to his supervisor, but that he has never had to do so. The job description for team leader does not include the responsibility to discipline employees, and it is apparent that Coyoy was not aware he has the authority to discipline employees. The evidence proffered by the Employer is not sufficient to establish that any team leaders have authority to discipline employees.

d. Adjustment of Grievances

According to Coyoy, his teammates may come to him with complaints such as an unclean break room or restroom, or paycheck questions, which he tries to answer or informs the human resources manager of the complaint. This evidence is insufficient to establish that team leaders have the authority to adjust grievances within the meaning of the Act.

e. Secondary Indicia

It is well established that the existence of secondary indicia, such as title and higher pay, standing alone, is insufficient to demonstrate supervisory status. *Shen Automotive Dealership Group*, 321 NLRB 586, 594 (1996); *Billows Electric Supply*, 311 NLRB 878 fn.2 (1993).

Team leaders (both those who interpret/translate and those who do not) receive about \$2.00 more per hour than the assembly operators,¹¹ and carry a different job title. Their job description does not designate the position as holding supervisory responsibilities. The first item noted in the job description of the team leader is “work within the cell as direct labor.” Coyoy has never been told by anyone that team leaders are supervisors. He testified that his job is mostly to walk the line and help operators. Team leaders sometimes sit in on production meetings, but not supervisory meetings. Team leaders do not have access to employee personnel files.

In its brief, the Employer asserts that without the team leaders, the ratio of employees to supervisors is about 30:1, a ratio which is frowned upon by the Board. See *Formco, Inc.*, 245 NLRB 127 (1979). However, on second and third shift the ratio is actually 20:1 and 22:1. On first shift, the ratio between the production manager and the assembly operators is higher, but other managers are also on duty on first shift, including the logistics manager, operations manager and the human resources manager. The Employer asserts in its brief that it limits access to certain items, such as computers, to its supervisory staff; however, the record evidence reflects that while most or all of the team leaders have a desk with an all-in-one computer at their work stations, not all have access

¹¹ The actual differential is unclear, but those team leaders who are interpret/translate are not paid more for their translation skills.

to company e-mail at those work stations. Nor does the record establish how much time in a given work day, if any, the team leader spends on the computer.

Finally, the Employer asserts that team leaders are supervisors because of their responsibility to train employees on their line, and evaluate them based on their ability to operate various machines. The team leaders train production employees according to the Employer's detailed written work instructions, and sign off when employees are proficient in a certain task, which may take one or two days, using a four-quadrant operator certification form for each operation for each operator. While an employee may not move up to team leader without reaching proficiency in all tasks, the evidence fails to establish that the team leaders' action in signing off when an employee is proficient in a task amounts to an effective recommendation with regard to the employee's status for promotion or discipline. The ability to evaluate is not in itself an indicia of supervisory status under the Act. *Williamette Industries*, 336 NLRB 743 (2001). The Board has consistently declined to find supervisory status based on evaluations without evidence that they constitute effective recommendations to reward, promote, discipline, or likewise affect the evaluated employee's job status, *Dean & Deluca New York*, 338 NLRB 1046, 1048 (2003); *Ten Broeck Commons*, 320 NLRB 806, 813 (1996); *Brown & Root, Inc.*, 314 NLRB 19, 21 (1994), evidence which is lacking in the record herein.

3. Professional Status of Team Leaders Who Interpret

The Employer contends that team leaders who translate/interpret qualify as professional employees because of their work in translating or interpreting for the Employer. The Employer argues that because translation and/or interpreting is not always a matter of translating something word for word, but rather a task that involves the consistent exercise of independent judgment in making decisions regarding which words and phrases would best convey the speaker's meaning, the team leaders who interpret qualify as professionals under the Act. Based on the record evidence and case law, I find that the team leaders who may be asked to interpret are not professionals as defined by the Act.

The Employer identified five team leaders who interpret/translate: Julio Coyoy, Vi Le, Juan Contreras, Leo Baez Tajeda, and Jose Hernandez. Coyoy (Spanish) and Le (Vietnamese) interpret/translate more often than the other three team leaders.¹² Only Julio Coyoy testified at the hearing. He testified that his translation/interpretation work includes the translation of telephone messages from employees who have called in sick; helping employees to understand their paychecks or communicate with the human resources department when they request sick leave or vacation; and occasionally translating written employment policies. He also testified regarding a recent incident

¹² DesJardin noted that he could also use manufacturing manager Duc Nguyen to translate Vietnamese. DesJardin testified that he has also used team leaders Floridalma Lopez and Pedro Diaz to interpret, although neither is specifically identified among the five team leaders who interpret.

where he talked to employees about their argument at work to find out what had happened, and reported back to the Employer. Team leaders who translate/interpret may also relay safety information to employees. Coyoy stated that he translates/interprets on a fairly regular basis, but it does not make up the bulk of his work assignments for the Employer.

Coyoy, a native Spanish speaker, relies upon his bilingual skills when translating and interpreting for the Employer. Although he was a teacher before he came to the United States, he does not have any special training or certification in the field of translation or interpretation. As noted, the team leaders who translate/interpret receive no additional pay for performing this service.¹³

The work performed by team leaders who may be called upon to translate or interpret is not predominantly intellectual or varied in character, and does not appear to involve the consistent exercise of discretion or judgment. See *Avco Corp.*, 313 NLRB 1357 (1994). Rather, it appears that the team leaders perform fairly routine translation and interpretation services, drawing only upon their native bilingual skills and not upon any advanced certifications or degrees. Further, when the team leaders are not present, the Employer has at least two bilingual employees who perform the same tasks. Accordingly, I find that the team leaders who translate/interpret are not professionals and should be included in the petitioned-for unit. See *Rhode Island Hospital*, 313 NLRB 343, 359 (1993) (hospital interpreters were not technical employees because their knowledge of hospital processes was generalized, and because any employee who spoke the required language could substitute for them when they were absent).

4. Status as Confidential Employees of Team Leaders Who Interpret

The Employer contends that team leaders who translate/interpret are confidential employees and should be excluded from the unit because these individuals have regular access to policies or communications prior to their plant-wide distribution; they have access to confidential medical information of employees; they help relay safety information to production employees; they relay and/or resolve employee grievances; they assist in responding to employee inquiries regarding pay or benefits; and, they are involved in disciplinary investigations. Based on the record evidence and case law, I find that the Employer has not sustained its burden of proving that team leaders who interpret are confidential employees who should be excluded from the petitioned-for unit.

¹³ The Employer also elicited testimony from an individual that was hired to serve as the interpreter at the hearing. The testimony of that individual is not relevant to the issue of whether the team leaders/interpreters are professional employees. The interpreter who provided her services at the hearing is a court-certified interpreter who has been certified by the State Court Administrator's Office. The Employer's team leaders have no such certification, and the nature of the interpretation/translation services that they provide to the Employer are different than the services provided by a court-certified interpreter.

According to human resource manager Judy Hughes, when employees who do not speak English call in to work and leave messages, the bilingual team leaders who interpret those telephone messages may hear an employee's personal information. The team leaders who interpret also may help employees ask for time off, which sometimes involves the sharing of medical or personal information. They also occasionally translate at safety meetings and may translate an employment policy or other document that is to be distributed to the employees. As noted, Coyoy indicated that employees may come to him with complaints such as an unclean break room or restroom, or paycheck questions, which he tries to answer or informs the human resources manager of the complaint for resolution, and that on one occasion he asked employees who had been in an argument what the argument was about, and reported this information back to the Employer.

None of this evidence establishes that the team leaders who interpret/translate have access to confidential labor relations information or act in a confidential capacity regarding such information to anyone formulating, determining or effectuating management policies in the field of labor relations.¹⁴ See *Foodbasket Partners*, 344 NLRB 799, 805 (2005); *S.S. Joachim and Anne Residence*, 314 NLRB 1191, 1195 (1994). Team leaders answering employee questions about their pay or other such information, while arguably involving labor relations information not disclosed to other employees, does not make a team leader a confidential employee. Mere access by an employee to confidential labor relations material does not render an employee ineligible as a confidential employee. *Los Angeles New Hospital*, 244 NLRB 960, 961 (1979). In the process of assisting their fellow employees and management to communicate with each other, team leaders serving as translators/interpreters may have access to some information of a personal or confidential nature, but this alone does not make them confidential employees under the Act. Moreover, isolated occasions of confidential duties are insufficient to exclude an employee from a bargaining unit as a confidential employee. *Crest Mark Packing Co.*, 283 NLRB 999 (1987).

CONCLUSIONS AND FINDINGS

Based on the foregoing discussion and on the entire record,¹⁵ I find and conclude as follows:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.

¹⁴ Although the parties stipulated that Hughes is a supervisor within the meaning of Section 2(11) of the Act, the Employer never established that Hughes formulates, determines or effectuates management policy in the field of labor relations.

¹⁵ The parties filed briefs, which were carefully considered.

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.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A 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.

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

All full-time and regular part-time team leaders, assembly operators, maintenance employees, CNC operators, model shop employees, material handlers, supplier quality employees, lab engineers, logistics employees, quality engineers, quality technicians, manufacturing engineers, receiving inspectors, layout technicians, and shipping/receiving employees employed at its facilities located at 4311 and 4323 Patterson Ave., S.E., Grand Rapids, Michigan; but excluding temporary employees, casual employees, office-clerical employees, professional employees, and guards and supervisors as defined in the Act.

Dated at Detroit, Michigan, this 28th day of September 2012.

(SEAL)

/s/ Terry Morgan

Terry Morgan, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

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 **UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 951 (UFCW), CTW**. 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 quit or 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.). 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 **October 5, 2012**. 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's website, **www.nlrb.gov**,¹⁶ by mail, or by facsimile transmission at **313-226-2090**. 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 **two** 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. Posting of Election Notices

Section 103.20 of the Board's Rules and Regulations states:

a. Employers shall post copies of the Board's official Notice of Election on conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sunday, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. [This section is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).]

¹⁶ To file the eligibility list electronically, go to the Agency's website at **www.nlrb.gov**, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Regional Office**, and follow the detailed instructions.

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

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 **October 12, 2012**. The request may be filed electronically through the Agency's website, **www.nlr.gov**,¹⁷ but may **not** be filed by facsimile.

¹⁷ To file a Request for Review electronically, go to the Agency's website at **www.nlr.gov**, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Board/Office of the Executive Secretary** and follow the detailed instructions.