

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

RADICI PLASTICS USA, INC.,

Employer,

and

TEAMSTERS LOCAL 24, a/w
THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS,

Petitioner.

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CASE NO. 8-RC-117818

EMPLOYER'S REQUEST FOR REVIEW

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I. REQUEST FOR REVIEW.

Pursuant to Section 102.67 of the NLRB Rules and Regulations, the Employer, Radici Plastics USA, Inc. (“Radici” or the “Company”), requests the Board to review the Decision and Direction of Election issued by the Acting Regional Director in this case on January 10, 2014. Review is appropriate when, *inter alia*, (1) “a substantial question of law or policy is raised because of (i) the absence of, or (ii) a departure from officially reported Board precedent;” or (2) “the regional director’s decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party.” 29 C.F.R. §102.67(1),29 C.F.R. §102.67 (2)

Radici asserts the following grounds for its request for review:

- (1) The Acting Regional Director’s Decision is predicated on factual findings that are incomplete and clearly erroneous on the record, and as such prejudicially affected Radici since the Acting Regional Director’s Decision that the putative supervisors (referred to as “Jolies” by Radici) are not statutory supervisors under Section 2(11) of the Act is based wholly on the erroneous factual findings.
- (2) The Acting Regional Director’s conclusionary finding that the Board “has consistently held that employees who serve as leadmen, foremen and group leaders are not 2(11) supervisors exercising independent judgment” is a departure from officially reported Board precedent; and
- (3) The Acting Regional Director’s Decision is a departure from officially reported Board precedent that requires a fact-specific analysis regarding the putative supervisors to determine Section 2(11) status, which the Acting Regional Director did not apply in this case.

The reasons in support of the grounds for Radici’s Request for Review are discussed in detail below. Radici respectfully requests the Board to grant this Request for Review and to stay the election scheduled for February 7, 2014, or impound the election ballots pending a decision by the Board in this case.

II. STATEMENT OF THE CASE.

This case arises out of a petition filed by the Teamsters Local 24, a/w The International Brotherhood of Teamsters (the “Union”) on November 26, 2013 with Region 8 of the National Labor Relations Board to conduct a representation election among a unit of production and maintenance employees employed by Radici Plastics USA, Inc. (“Radici” or the “Company”) at

its thermoplastic manufacturing plant in Wadsworth, Ohio¹. The Union sought to include three working supervisors, referred to by Radici as “Jolies,” in the petitioned-for unit. Radici objected to the inclusion of its Jolies, so a hearing was held on December 5, 2013, in Cleveland, Ohio before Hearing Officer Thomas Nicholas to determine whether the Jolies were statutory supervisors under Section 2(11) and as such should be excluded from the unit.

At the hearing, three witnesses were called by Radici (Jayme Garfield, Industrial Manager; Tim Stouffer, first shift Jolie; and Mark Weast, Second Shift Supervisor) and one witness was called by the Union (John Lang, the second shift Jolie). Radici submitted 17 exhibits in support of its position and the Union submitted none. Both Radici and the Union filed post-hearing briefs on December 19, 2013. On January 10, 2014, the Acting Regional Director issued a Decision and Direction of Election (the “DDE”) finding that that the Jolies were not statutory supervisors and should be included in the unit of eligible voters.

With all due respect, the Acting Regional Director apparently premised his decision on the erroneous legal conclusion that the Jolies are akin to leadmen and then misstated Board precedent when he declared that the Board has “consistently held” that leadmen are not §2(11) supervisors. Then, the Acting Regional Director attempted to bolster this conclusion with conclusory statements that are not based on the record evidence or Board precedent. For example, on the critical factor of the Jolies’ use of independent judgment when assigning work, the Acting Regional Director cites cases that are inapposite to the facts in the record and does not even attempt to explain their relevance to the facts in this case, and dedicates only **two sentences** to the Jolies’ ability to assign off-line work to operators that contain no analysis of the facts and no cites to Board precedent. As will be discussed below, the record evidence introduced by Radici to support the supervisory status of the Jolies is overwhelming, reliable and credible; but, notwithstanding, was ignored, mischaracterized or unjustifiably dismissed by

¹ The petition specifically excluded “All supervisors, clerical, office, managerial, sales, professionals and guards as defined in the Act.”

the Acting Regional Director. Further, the Acting Regional Director's Decision fails to apply Board precedent to the facts in this case, relies on case law inapposite to the facts of this case and misstates the relevant facts of the Board precedent cited to support the finding that the Jolies are not §2(11) supervisors. Accordingly, the Acting Regional Director's Decision on this issue was erroneous as a matter of law and the Board should grant review of this case.

III. RELEVANT FACTUAL BACKGROUND.

Radici is in the business of engineering and manufacturing thermoplastics, which are small plastic pellets used by the injection molding industry to produce various plastic products (Tr. 11). It's 240,000 square feet facility is located in Wadsworth, Ohio (Tr. 11, 13). At Radici, the small plastic pellets are mass produced in hundreds of pounds at a time to fulfill customer orders.

In the production department, where the thermoplastic pellets are produced, the top level manager is the Industrial Manager who bears ultimate responsibility for production at the plant, and all production managers, supervisors, and employees ultimately report to him (Tr. 17, 23). Within this hierarchy, there are several mid-level Shift Supervisors who bear responsibility for a particular shift and report directly to the Industrial Manager. *Id.* The positions at issue in this case – referred to by Radici as Jolies – fall in the hierarchy between the Shift Supervisors and the operators. *Id.* Like the Shift Supervisors, the Jolies work a particular shift and similarly bear responsibility for the production of that shift. Their duties are akin to that of a Shift Supervisor and, under certain circumstances, are identical; however, despite their significant overlap of responsibilities, the Jolies also bear additional responsibilities that Shift Supervisors do not. Jolies report directly to the Shift Supervisors, although they also report to the Industrial Manager (Tr. 23). At the bottom of this organizational hierarchy are the extruder machine operators ("operators") who, day-in and day-out, actually operate the extruder machines that produce the thermoplastic pellets (Tr. 25; Er. Ex. 2). The operators have no subordinate employees and report directly to both the Jolie and the Shift Supervisor. Unlike the Shift Supervisors, who are

primarily tasked with administrative functions and direct interfacing with Radici executives and management, a Jolie's primary job duties require significant day-to-day interaction with the operators on the production floor. (Tr. 171).

IV. The Acting Regional Director's Decision On Certain Substantial Factual Issues Is Clearly Erroneous And Prejudicially Affects Radici's Rights.

The Acting Regional Director ignores or mischaracterizes record evidence, and misstates relevant facts to reach a finding that is prejudicial to Radici inasmuch as these clearly erroneous facts are relied upon to find that the Jolies are not supervisors under the Act.

A. The Acting Regional Director's Finding that the Jolies Lack the Authority to Reward the Operators is Clearly Erroneous Because it is Contrary to Uncontroverted Evidence.

The Acting Regional Director states in the Decision, "With regard to the awarding of At-A-Boys, the evidence is clear that Jolies must submit their recommendations to either their shift supervisor, Garfield and/or the Human Resources Department for final approval" (DDE, p. 11). This finding is contrary to the uncontroverted testimony in the record.

The record establishes that the Jolies have absolute discretion in awarding "At-A-Boys."² (Tr. 135-137; 177-179). Indeed, if the At-A-Boy is awarded by the Jolie, the operator automatically receives the reward – there is no approval process, to wit:

Q. [Hearing Officer Nicholas]: And who decides that the At-A-Boy is granted, who makes that decision?

A. [Mr. Stoufer]: Actually, it's granted if somebody fills it out, all you have to do is turn it into the HR Director.

Q. So if you fill this sheet out --

A. If I fill that sheet out and I sign it --

Q. That person is going to get it?

² The "At-A-Boy" system (also known as an "Employee Performance Recognition Report) is a reward system designed to recognize outstanding performance by the Operators. It consists of three levels, with Level 1 being the lowest level of recognition of an accomplishment and Level 3 being the highest. (Tr. 135-136). If the employee is awarded a Level 3 "At-A-Boy" by a Jolie, the Operator receives a \$25.00 gift card. (Tr. 177-180).

A. Yes.

(Tr. 178). Further, in deciding to reward the operators, the Jolies do not need to seek permission from anyone. (Tr. 137-138). Instead, the record indicates that once an At-A-Boy is completed by a Jolie, it is awarded in every case. (Tr. 178). Although the At-A-Boy reward is reported to the HR Director, this is done solely for the purpose of procuring the \$25.00 gift certificate so the Jolie can distribute it to the employee. In other words, once the At-A-Boy is submitted it is *automatically* awarded. (Tr. 136, 176). Thus, contrary to the incorrect conclusion of the Acting Regional Director, it is the Jolie, not the HR Director, Industrial Manager, or Shift Supervisor, that exercises independent judgment in issuing the At-A-Boys, which are monetary rewards to employees for their exceptional performance.

The Acting Regional Director also summarily states that the record contains “very little evidence regarding At-A-Boys; certainly not enough to allow one to find that the Jolies exercise independent discretion in issuing these awards.” (DDE, p.11). And also incorrectly states that only Mr. Stoufer, the first shift Jolie, has awarded At-A-Boys. (DDE, p. 11). A review of the record, however, reveals that both of the Acting Regional Director’s statements are contrary to the record. While all three Jolies have the authority to reward employees with At-A-Boys, both Jolie Stoufer and Jolie Lang have exercised this authority to reward – with Stoufer granting approximately 12 and Lang awarding one or two. (Tr. 179-180; 298). The Acting Regional Director’s conclusions are not based on the record evidence and prejudice Radici because his Decision relies on these incorrect facts.

B. The Acting Regional Director’s Finding That The Jolies do not Make Recommendations Regarding Promotions and Pay Increases is Clearly Erroneous and Contrary to the Record.

In summarily concluding that the “Jolies do not make recommendations regarding promotions and/or specific pay increases” (DDE, p. 10), not only did the Acting Regional Director make a finding directly contrary to evidence in the record, but he also ignored evidence in the record that supports the opposite conclusion. While the Acting Regional Director

acknowledged that the Jolies provide “input” in the evaluation process – which is directly tied to decisions promotions and pay increases (DDE, p. 3-4) – he ignored uncontroverted facts about the extent of the Jolies’ involvement, which establishes the direct correlation between the Jolies’ recommendations regarding promotions through the level system and the corresponding pay increases.

Radici’s “levels system” is a performance metric for the progress of the operators and has a direct effect on the operator’s promotions and pay increases. If and when the operator is found to have met all the metrics in the checklist, the operator will receive a pay increase. (Tr. 42-43; Ex. 5). The Acting Regional Director conceded the fact that the Jolies actively participate in the levels system evaluations, but refused to find that this evidence was sufficient to confer supervisory status. (DDE, p.10). The Acting Regional Director provides no factual analysis or explanation, but states there is “no evidence that [the Jolies’] input directly correlates to raises or promotions received by operators.” (DDE, p.10). The record evidence, however, is just the opposite – the Jolies are an irreplaceable component of the evaluation process. While the levels system checklist is completed in tandem with the Shift Supervisor, the Jolies – not the Shift Supervisors – are most familiar with the skill sets, qualifications and improvement of the operators and take on the lion’s share of the evaluation checklist. In fact, the Jolies are so involved, that if Radici attempted to perform the evaluation without their participation in assessing the abilities of the operators, the levels system would be impossible to complete. (Tr. 156-157).

The ability to effectively evaluate the performance of the operators necessarily requires first-hand knowledge of the operator’s skills, and the credible evidence, which is utterly ignored by the Acting Regional Director, demonstrates that this knowledge and evaluation originates with the Jolies. (Tr. 41-42; 152-157; 300-304). Indeed, the vital importance of the Jolies’ recommendations regarding the operators’ job performance is evidenced by the fact that the

performance reviews cannot be completed until the Jolies share their personal knowledge of the operators' job performance with the Shift Supervisors, (Tr. 41-42; 301-303), to wit:

Q. [Mr. Brennan]: Is it your opinion that your supervisor could have completed this document without your assistance?

A. [Mr. Stoufer]: No.

Q. Why is that?

A. Because I know the operators in and out. I know what they can and what they can't do. I'm around them every day on the floor.

Q. Okay.

A. I see them every day. I see them on the weekends.

Q. So you consider yourself more familiar with the skill set of these employees than the supervisor?

A. Yes.

Q. Do you share that opinion with the knowledge of the other supervisors, shift supervisors, and the knowledge of the skills of their operators?

A. Yes.

Q. Are you of the opinion that those supervisors also would be unable to complete this accurately without the input of a Jolie?

A. Yes.

Q. And how do you know that?

A. Because I know the other Jolies, John Lang and Dwight Shane, and I also know the supervisors, Mark Weast and Paul Williford.

(Tr. 156-157).

C. The Acting Regional Director's Finding that the Jolie's do not Exercise Independent Judgment in Assigning Off-Line Work and Directing the Operators Work is Clearly Erroneous.

The Acting Regional Director's Decision makes erroneous factual conclusions regarding a critical issue in this case – whether the Jolies exercise independent judgment in assigning and directing work. The Acting Regional Director states:

“The testimony establishes that when a Jolie assigns ‘off-line’ tasks to Operators, he is merely carrying out the direction of the employer and is not acting as a supervisor” (DDE, p. 13); and

“When the Jolies provide direction to operators, they are merely using their superior knowledge and skill set to ensure that the guidance provided by management...is being followed” (DDE, p.13).

With all due respect to the Acting Regional Director, Radici submits that based on the uncontroverted record in this case, it is almost inexplicable how the Acting Regional Director reached these conclusions. As discussed in more detail below, these findings are not based on evidence in the record and/or are in direct contradiction to the record evidence that the Jolies exercise independent judgment in assigning and responsibly directing work.

1. The Jolies exercise independent judgment In assigning off-line work.

The Jolies receive no direction from management about whether or what off-line work is to be done. Rather, this is decided solely by the Jolie:

Q. [Mr. Brennan]: And those designations of side work, did you make those designations or is that a determination made –

A. [Mr. Stoufer]: It's something that we had to get done.

Q. Did you make a determination yourself to get that work done?

A. Yes.

Q. Did you have to seek permission before you made those decisions to assign those employees to side jobs?

A. No.

(Tr. 146). In fact, the Jolies are expected to make the decision to reassign operators to off-line work autonomously. (Tr. 33-34).

2. The Jolies exercise independent judgment in responsibly directing the Operators’ work.

The conclusion of the Acting Regional Director that the Jolies lack independent discretion in directing the operators’ work is wholly unsupported by the evidence, and is contrary to the numerous examples on the record of Jolies utilizing independent judgment when directing

operator's work. For example, Jolies need not consult any supervisor, manager, or other employee nor are they bound to any specific procedure in overseeing the production floor or monitoring operators and their machines to ensure production is operating efficiently. (Tr. 139, 70-71). Further, Jolies are not bound by any standard or requirements to seek managerial approval in resolving and/or correcting machine/operator issues to avoid the production of inferior product. (Tr., p. 145).

The Acting Regional Director's reliance upon flawed factual findings and ignoring important record evidence is highly prejudicial to Radici as each of the factors impacted by his analysis (ability to assign, responsibly direct and reward), evidence the Jolie's supervisory status under the appropriate §2(11) analysis which, as discussed below, is highly fact-specific. When the cumulative impact of the record evidence that was ignored, mischaracterized or misapplied by the Acting Regional Director is considered, it clearly indicates that, contrary to the Acting Regional Director's perplexing conclusion, the Jolies are "supervisors" as that term is defined in §2(11) of the Act.

The Acting Regional Director's Decision results in the unlawful inclusion of supervisors in the proposed bargaining unit and the Board should grant review of this case.

V. THE ACTING REGIONAL DIRECTOR'S DECISION RAISES A SUBSTANTIAL QUESTION OF LAW BECAUSE IT IS NOT SUPPORTED BY BOARD PRECEDENT.

In addition to relying on factual conclusions that are clearly erroneous and wholly ignoring record evidence, the Acting Regional Director's Decision relies upon a legal analysis that does not comport with Board precedent regarding the required §2(11) analysis, which requires an examination of the unique facts of each case. It also misstates relevant facts from the Board cases cited, ignores precedent cited in Radici's Post-Hearing Brief and relies upon Board precedent that is clearly distinguishable from the facts of this case.

A. The Acting Regional Director Misapplied Board Precedent In Finding That The Jolies do not Possess the Authority to Reward the Operators.

1. Jolies have exercised their authority to issue “At-A-Boys” to reward the operators.

The record evidence establishes that Jolies have the authority to award At-A-Boys to operators as a monetary reward for outstanding job performance. While the Board has held that the exercise of supervisory indicia is insufficient to confer supervisory status when “final approval must be conferred by a supervisor or manager,” *see, e.g., Bowne of Houston*, 280 NLRB 1222, 1223 (1986), as stated above, contrary to the Acting Regional Director’s finding, there is no record evidence that the Jolies’ decision to award an At-A-Boy is subject to “final approval” by any other manager or supervisor of Radici. Once the At-A-Boy is submitted by a Jolie, it is *automatically* awarded. (Tr. 136, 176). This is sufficient evidence to confer §2(11) supervisory status on the Jolies because they actually exercise the §2(11) indicia for which they have authority. *See, Columbia Textile Services, Inc.*, 293 NLRB 1034, 1050 (1989) (finding §2(11) status where the “credible evidence establishes, that [the putative supervisor] had the authority to hire and fire employees....”).

While the Acting Regional Director attempts to minimize the Jolies’ ability to reward employees with At-A-Boys, the record provides several specific examples of Jolies actually exercising their authority to award the employees with At-A-Boys, which according to the Board, is sufficient to evidence supervisory status. *See, G4S Regulated Secretary Solutions*, 358 NLRB No. 160, *slip op.* at 2 (2012) (stating that §2(11) “requires...evidence of actual supervisory authority translated into tangible examples”). While all Jolies have the authority to award At-A-Boys, both Jolie Stoufer and Jolie Lang have exercised this authority to reward employees with At-A-Boys. (Tr. 179-180; 298). As a result, numerous employees (especially considering that there are only 24 operators at Radici) have received a monetary award by virtue of the Jolies’ unencumbered authority to award At-A-Boys. *See, Detroit Plastic Molding, Co.*, 213 NLRB 897, 899 (1994) (holding that putative supervisor’s unfettered ability to reward

employees with additional compensation by awarding overtime had the authority to “reward employees...and is therefore a supervisor within the meaning of §2(11) of the Act.”).

Furthermore, the Acting Regional Director’s reliance on *Station Casinos, Inc.*, 350 NLRB No. 77 (2012) for the proposition that the issue of the At-A-Boy occurred too infrequently to confer §2(11) status is misplaced. In *Station Casinos* the Board was faced with a putative supervisor who issued a handful of “star awards,” but admittedly was never actually conferred with that authority by the employer. *Id.* at *Slip Op.* 8. Here, however, the Jolies are expressly authorized to reward the operators and it belies common sense to suggest that the Jolies strip themselves of their §2(11) status merely because they are selective in indentifying and rewarding outstanding performance.

The Acting Regional Director’s erroneous application of the law, alone, justifies the Board’s review of this case.

2. The Jolies’ extensive involvement in evaluating employees for promotions and merit increases confers §2(11) status.

As stated previously, while the Acting Regional Director conceded the fact that the Jolies actively participate in the levels system evaluations, he found this was insufficient evidence to confer supervisory status because the Shift Supervisors also are involved in the process. This is contrary to Board precedent. *See, Bayou Manor Health Center, Inc.*, 311 NLRB 955 (1993) (finding supervisory status when the putative supervisor completes an employee evaluation that has a direct linkage to a merit pay increase even though it is reviewed by a management administrator before the pay increases is granted); *see also, Harbor City Volunteer Ambulance Squad*, 318 NLRB 764 (1995) (individuals who composed employee evaluations in “collaboration” with supervisors were found to have exercised §2(11) supervisory authority affecting employee’s pay).

B. The Acting Regional Director Misapplied Board Law By Concluding that the Lack of a “Supervisor” Title is Indicative of the Jolies Lack of Independent Judgment.

In kicking off his discussion of the Jolies’ authority in the assignment and direction of work, the Acting Regional Director completely misstates Board law when he states, “The Board has consistently held that employees who serve as leadmen, foremen and group leaders are not 2(11) supervisors exercising independent judgment.” (DDE, p. 12). While the Board certainly has found that some foremen, leadmen and group leaders are not § 2(11) supervisors, it also has found that foremen, leadmen and group leaders **are** § 2(11) supervisors. *RCC Fabricators, Inc.*, 352 NLRB 701, 702 (2003) (holding that “leadmen” were §2(11) supervisors); *see also, Cooper/T. Smith, Inc. v. NLRB*, 177 F.3d 1259 (1999) (refusing to enforce NLRB certification of union as bargaining representative where bargaining unit included leadmen who were authorized to perform §2(11) functions). The Acting Regional Director’s conclusion – which flies in the face of the Board’s longstanding position that the determination of 2(11) supervisory status is highly fact specific – is inarguably prejudicial to Radici. Of course, contrary to the Acting Regional Director’s prejudicial assumption, it is the individual’s actual duties rather than his or her job title or classification that determines supervisory status. *See, New Fern Restorium Co.*, 175 NLRB 871 (1969); *Fall River Saving Bank v. NLRB*, 644 F.2d 50 (1st Cir., 1981) (“job titles are not determinative of supervisory status.”).

Accordingly, the Acting Regional Director’s insistence that job title has any bearing on supervisory status is a direct affront to the cardinal rule of the §2(11) analysis – that each case is decided on its own facts – and, therefore, brings into question whether the Acting Regional Director’s limited factual analysis of the Jolies’ authority to assign and direct work with independent judgment is anything but illusory. *St. Alphonsus Hospital*, 261 NLRB 620, 624 (1982) (nothing that “[j]ob titles are unimportant” in the §2(11) analysis); *Longshoremen’s Ass’n v. Davis*, 476 U.S. 380 (1986) (stating that the Board must “look to actual duties, not merely job title or classification” in reaching §2(11) conclusions).

As made apparent by the Acting Regional Director's scant analysis of the independent judgment exercised by the Jolies (in important factor the analysis of §2(11) supervisory status), the Acting Regional Director prejudiced Radici by placing upon it an additional burden to overcome simply because the Jolies are not referred to as "supervisors."

C. The Acting Regional Director's findings that Jolies lack independent judgment in the assignment and direction of work is unsupported by Board law.

While conceding that the Jolies assign work to the operators (See, DDE, p. 13), the Acting Regional Director, by hook or crook, reaches the conclusion that the Jolies do not exercise the requisite independent judgment in assigning the work to make them § 2(11) supervisors. Specifically with regard to the Jolies' assignment of "off-line" tasks, the Acting Regional Director provided a one-sentence conclusion, without any analysis or reliance upon record evidence, that a Jolie does not exercise independent judgment in the assigning of these tasks because "he is merely carrying out the direction of the employer and not acting like a supervisor." (DDE, p. 13). Not only does the Acting Regional Director not even attempt to explain **why** he concluded that the Jolies are "not acting like supervisors" with any cites to the record or even any explanation, the conclusion is just not accurate. The record establishes that Jolies receive no direction from the Shift Supervisors or Managers on whether or what off-line duty work is to be done and is decided solely by the Jolie. (Tr. 146; 288). In fact, Jolies are *expected* to make the decision to reassign operators to off-line work autonomously. (Tr. 33-34).

The Jolies also assign employees to cover in the case of an absence of an operator. Once again, the Acting Regional Director attempts to circumvent the supervisory nature of this activity by simply stating the Jolies lack independent discretion without addressing the facts on record in this case. The Acting Regional Director cites two inapposite cases to support this position, but again, does not even attempt to apply them to the facts of this case. The first, *Van Port Sand and Gravel, Inc.*, 267 NLRB 150 (1983), held that when a putative supervisor merely replaces one employee with another based solely on the fact that the replacing employee has

the skills necessary to cover the work required for production is not evidence of independent judgment. Here, however, the assignment of work is not limited to simply finding the employee who possesses the skill set necessary to operate the equipment normally operated by the absent employee. Instead, because the operators at Radici all share the same job description, any one of the eight operators on the shift could operate any one of the eight machines. Thus, the Jolie must exercise independent discretion in selecting the employee who could *best* fill the vacant spot while simultaneously shifting other employees to ensure that production is maintained. (Tr. 137-138). Accordingly, unlike the case in *Vanport Sand* where the leadmen would automatically assign the Oiler to cover for the Dredge Operator, the necessity of vetting multiple employees to effectively cover for an absent operator requires the Jolie to call upon his independent judgment.

For this same reason, the Acting Regional Director's reliance on the second case, *Tree-Fiber Co.*, 328 NLRB 389, 393 (1993), is also misplaced. In that case, the Board held that where a Team Leader was simply called upon to dispatch yard maintenance employees when other departments requested landscaping services, his decision was merely a "routine response to a recurring work-assignment issues." As discussed above, however, the decision of who will cover what machine is anything but a routine response as it would necessarily be unique based upon who was absent, what machine needs covered and what are the daily production needs.³

The conclusion of the Acting Regional Director that the Jolies lack independent discretion in directing the operators' work is equally flawed inasmuch as it fails to address any of the specific duties of the Jolie position. In this case, as discussed in Radici's Post-hearing Brief, the job duties of the Jolies are nearly identical to those of a §2(11) supervisory position analyzed in *Croft Metals, Inc.*. In *Croft*, the putative supervisors were required to oversee their

³ For example, just one day prior to the hearing, Jolie Stoufer recalled a situation where one operator was late due to a flat tire, another left early due to illness and another missed part of the day due to a doctors appointment. Through the exercise of independent judgment, Mr. Stoufer was able to reassign and redirect the work of several operators to keep the floor running to ensure that the daily production was met. (Tr. 138-139)

assigned teams, to correct improper performance, to shift employees from one job to another when appropriate, and had the authority to decide the order of when certain work would be performed in order to achieve production goals. Based on that evidence, the Board concluded that the putative supervisors “‘responsibly direct’ their line or crew members as that [Section] 2911) term is defined ...” *Croft Metals, Inc.*, 348 NLRB 717, 722 (2006). While the Acting Regional Director dismissed the analysis in *Croft Metal*, simply stating that the Board ultimately found those leadmen not to be supervisors, the Acting Regional Director failed to apply the Board’s analysis of the “reasonably direct” factor of the § 2(11) test – which Radici submits should be the analysis applied to this factor of the test for supervisory status.

While it may be true that production run specifications are set by the Plant Engineer, it does not follow, as the Acting Regional Director suggests, that any and all direction provided by the Jolie is not supervisory merely because he “ensure[s] that the guidance provided by management, including [the Plant Manager], is being followed.” (DDE, p. 13). Indeed, such an assumption is illogical as every supervisor ensures that management’s directives are carried out. By virtue of the position (and all supervisory positions), the Jolie is necessarily charged with the obligation to ensure that management directions are followed. However, that does not mean that the Jolies strip themselves of independent judgment and discretion because they direct employees in the performance of duties required by the employer. See, *Oakwood Healthcare, Inc.*, 348 NLRB 686, 693 (2006) (“the mere existence of company policies does not eliminate independent judgment from decision-making if the policies allow for discretionary choices”).

The record is replete with examples of the Jolies utilizing independent judgment in directing the operators’ work. For example, Jolies need not consult any supervisor, manager, or other employee nor are they bound to any specific procedure in overseeing the production floor, and monitoring operators and their machines to ensure production is operating efficiently. (Tr. 139; 70-71). Further, Jolies are not bound by any standard or requirements to seek managerial

approval in resolving and/or correcting machinery/operator issues to avoid the production of inferior thermoplastics. (Tr. 145). Under circumstances such as these, the Board has found that the putative supervisor necessarily utilized independent judgment. See, *Action Auto Stores*, 298 NLRB 875, 891 (1990) (holding that the putative supervisor's responsibility "for the daily operation of the garage and its equipment, directly monitor[ing] the work of the mechanics, using his own judgment in assigning and reassigning work to mechanics, and reject[ing] unsatisfactory work by mechanics" necessarily required the use of independent judgment in the directing of the mechanics' work).

VI. CONCLUSION.

Radici respectfully submits that the Acting Regional Director's Decision is based on clearly erroneous facts that were either misstated or simply contrary to the record and relevant record evidence that supported Radici's position was wholly ignored or summarily dismissed. The erroneous application of the facts is irrefutably prejudicial to Radici. The finding that Jolies are not supervisors under the Act is contrary to the overwhelming evidence in the record that establishes that the Jolies exercise independent judgment when rewarding, assigning work and responsibly directing the work of the operators. Further, the Acting Regional Director's Decision is not only unsupported by Board precedent, but also is in complete derogation of established Board precedent and its standard for determining § 2(11) supervisory status under the Act.

For all the reasons stated above, Radici respectfully requests that the Board accept this case for review. Further, given the unlawful composition of the currently composed unit, Radici respectfully requests that the Board direct the Acting Regional Director to suspend the election scheduled for February 7, 2014, or in the alternative, impound the ballots pending a decision by the Board.

Dated this 31st of January, 2014.

Respectfully submitted,

/s/ Melanie L. Webber

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CERTIFICATE OF SERVICE

This is to certify that a true copy of the foregoing *Request For Review* was sent via regular United States Mail, postage prepaid, this 31th day of January, 2014 to:

Rick Kepler, Organizer
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/s/ Melanie L. Webber
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