

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

CLARK DISTRIBUTION SYSTEMS, INC.¹

Employer

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS LOCAL UNION NO. 710, AFL-CIO

Petitioner

Case 13-RC-20149

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record² in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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 herein.³

3. The labor organization(s) involved claim(s) 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 purpose of collective bargaining within the meaning of Section 9(b) of the Act:⁴

All full time and regular part time dock employees employed at the employer's facility located at 21800 South Cicero Avenue, Matteson Illinois 60443; but excluding all temporary employees, office clerical employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Brotherhood of Teamsters Local Union No. 710, AFL-CIO

LIST OF VOTERS

In order to insure 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 with their full names and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Suite 800, 200 West Adams Street, Chicago, Illinois 60606 on or before **July 22, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

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, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by **July 29, 1999**.

DATED July 15, 1999 at Chicago, Illinois.

/s/ Harvey Roth

Acting Regional Director, Region 13

*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in 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 Director 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 Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection 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 Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

- 1/ The names of the parties appear as stated at the hearing.
- 2/ The arguments advanced by the parties at the hearing and in their post-hearing briefs have been carefully considered.
- 3/ The Employer is a corporation engaged in the business of the distribution of printed matter.
- 4/ The Petitioner seeks to represent a unit of all full time and regular part time dock employees employed at the Employer 's Matteson Illinois facility, excluding all temporary employees, office clerical employees, guards and supervisors as defined by the Act. The parties stipulated that the two working foremen, Tom Wentz and Jeff Cracco, are to be included in the unit. In addition, the parties stipulated that the Distribution Center Manager, Lee Ferraro, the Regional Manager, Jim Evans, the Quality Control Manager, Clarence Klipowitz, as well as all temporary employees, are to be excluded from the unit. The Employer asserts that the four shift foremen, George Gayden, Dave Hohman, Jason Lamastch and Larry Lippert, are not statutory supervisors within the meaning of the Act and should therefore be included in the unit. The Petitioner asserts that the shift foremen are statutory supervisors and should be excluded from the unit. Likewise, the Employer asserts that the four clerical employees, Beth Evans, Dolores Sherman, Denis Currier, and Theresa Lay, are plant clericals and should be included in the unit. Alternatively, even if the clerical employees are office clericals, the Employer argues that they nevertheless share a community of interest with the dock employees and should be included in the unit. The Petitioner asserts that the clerical employees are office clericals and should therefore be excluded from the unit. Further, the Petitioner asserts that if any of the clericals are determined to be plant clericals, they do not share a sufficient community of interest to be included in the unit.

THE EMPLOYER'S OPERATIONS

The Employer is engaged in the business of the distribution of periodicals and other printed publications from publishers and printers to locations throughout the United States and Canada. The material is time-sensitive, due to the specific publishing frequency of the materials and the relative market life span of each of the products. The Employer's corporate office is in Trenton, New Jersey and its operational and management center is located in Mechanicsburg, Pennsylvania. The Employer has four distribution centers, Matteson, Illinois, the subject of the petition herein, and one each in Nashville, Tennessee, Kansas City, Kansas, and Scranton, Pennsylvania. The Mechanicsburg facility essentially oversees the operations of the distribution centers, and determines the freight schedule for the centers, also known as a "game plan". This game plan is transmitted to the Matteson Illinois distribution centers via dedicated computer terminals known as CRT's. Through the CRT's, sort tickets are produced, and dock employees are responsible for sorting the printed materials and preparing loads to be shipped out via tractor-trailer. Clerical employees handle the paperwork associated with the game plan shipments, as well as overage, shortage, and damaged material paperwork for the various geographic regions.

James Evans is the Regional Manager at the Employer's Matteson, Illinois facility, and Lee Ferraro is the Distribution Center Manager. Clarence Klipowitz is the Quality Control Manager. The Employer's Matteson, Illinois facility operates 24 hours a day, 7 days a week, every day of the year with the exception of Christmas day. All of the Employer's employees enjoy nearly identical employee benefits, including 10 personal days, to be used at the

employee's discretion, an option to participate in the company 401(k) plan, and a medical insurance plan.

Dock Employees

The Employer's dock employees are responsible for tasks associated with moving the materials that are shipped in and out of the Matteson facility. Specifically, dock employees, using pallet jacks and forklifts, unload in-bound trucks, sort the items for shipment to various locations, and then re-package and load them onto out-bound trucks. The dock employees perform this work according to the sort tickets they receive. These sort tickets are sent to the Matteson facility via the CRT terminals by employees at the the Mechanicsburg facility. Ferraro, Evans or a shift foreman first prioritizes the sort tickets for the dock employees so that time critical shipments are prepared immediately. Higher priority tickets are placed in one pile in the dock office, and the lower priority items are placed in another pile. In the event the dock employees do not receive the sort ticket directly from their shift foreman, Evans or Ferraro, they simply select the next sort ticket from the priority pile, or if none is available, from the lower priority pile.

There are three overlapping shifts of dock employees per day, starting with the 8:00 a.m. to 4:30 p.m. shift (hereinafter the "day shift"), followed by the 4:00 p.m. to 12:30 a.m. shift (hereinafter the "afternoon shift") and finally the midnight to 8:30 a.m. shift (hereinafter the "midnight shift").¹ Approximately 10 to 12 dock employees work the day shift, approximately 10 dock employees work the afternoon shift and around 4 to 10 dock employees work the midnight shift. These numbers vary, depending on the workflow, the turnover rate and hiring procedures. The dock employees work on a rotating schedule so that weekend shifts are distributed among the employees working each of the three shifts. Dock employees have a 30-minute lunch break, from Noon to 12:30 p.m., as well as two additional scheduled break periods, at 10:00 a.m. and 2:00 p.m.. The record is unclear as to the exact length of these two break periods. Dock employees who drive to work park in the back lot, which does not require any kind of special parking permit.

The dock employees report to the working foreman or the shift foreman on a regular basis. Although Ferraro ultimately supervises all dock employees, on each of the three shifts, there is either a working foreman, and/or a shift foreman, who is responsible for making work assignments for the dock employees. Dock employees are required to record their time by punching time cards, both at the beginning and end of their shift, as well as for their 30-minute lunch break. The starting salary for dock employees is about \$8 per hour, with more senior dock employees earning approximately \$10 per hour. Dock employees are paid on a weekly basis. No uniforms, specialized clothing or protective gear is required for dock employees, however, they are prohibited from wearing open toed shoes or loose clothing that would be deemed "unsafe" given the equipment they use and the work they perform.

¹ One employee, working foreman Tom Wentz, apparently works a 10 hour shift but the record did not reveal his precise start and finish times. However, since Wentz's scheduled workdays appear with the 8:00 a.m. to 4:30 p.m. shift on the dock employees work schedule (*See*, Union Exhibit 1), he apparently works a modified day shift.

Dock employees are evaluated annually. The evaluation process is a multi-step procedure with the first step being a self-evaluation by the dock employee himself. On a form provided by the Employer, there are two columns, one in which the dock employee rates himself on a scale from 1 to 40 on a variety of topics, estimated at between 10 and 15 total topics. Once this is complete, the employee returns the form to his shift foreman. Ferraro testified that he regularly allows the shift foreman to then fill out the second column, and rate the dock employee on the same subjects. Ferraro further testified that he and the shift foreman then review the ratings that the shift foreman gave the dock employee. Ferraro testified that he periodically may change some of the ratings given by the shift foreman, adjusting them up or down, depending on the dock employees personnel file information. Ferraro testified that the shift foreman holds the yearly evaluation meeting with the dock employees, and the shift foreman reviews his evaluation of the dock employee. The record is unclear as to who generally signs the form on behalf of the Employer. Dock employee Patrick Anthony testified that over the years, he has seen shift foreman George Gayden's signature on the evaluations, as well as Ferraro's, and Evans'. Anthony testified that Gayden signed his most recent evaluation, performed in early 1999. This signed evaluation is then sent to Mechanicsburg, and wage increase determinations are made based on its contents.

Shift Foremen

The four shift foremen at the Employer's Matteson Illinois facility work on one of the three shifts that the dock employees work. As noted earlier, there is either a shift foreman or a working foreman on each of the shifts. Unlike the dock employees, shift foremen are salaried, and therefore do not punch a time card or otherwise record their time. Shift foremen earn more than any of the dock employees. In addition, shift foremen are paid every two weeks.

Several witnesses testified that the Distribution Center Manager and the Regional Manager, as well dock employees, refer to shift foremen as supervisors in day to day work conversations. According to Ferraro, the shift foreman is responsible for determining, at the beginning of each shift, what particular tasks each dock employee is to perform. For example, depending on the workflow, one employee may be assigned to unload incoming trucks, one may be assigned to load outgoing trucks, and the others may be assigned to sort the printed materials. In addition, shift foremen are responsible for checking to make sure the amounts unloaded match the amounts listed on the freight schedules and also on the documents provided by the truck drivers indicating what their loads should be.

Clerical Employees

Each of the clerical employees is responsible for processing paperwork concerning shipments to a particular geographic region. Evans testified that she is currently training Currier to do the overage, shortage and damage ("OS & D") paperwork and to coordinate the free astray pool. The free astray pool is made up of excess materials (overages) that are shipped to the Matteson facility. This pool of materials, kept outside the main office in the front of the Matteson facility, is then used to cover shortages of the material, either at other distribution centers of the Employer's, or with the Employer's customers. Although there is occasional contact between dock employees and clerical employees, based on their separate and distinct work areas, this contact is limited to special situations and to the 2 days a week in which a dock

employee must work with the free astray pool. Given the fact that Evans was not even sure which dock employee is presently assigned to the free astray pool, the contact appears to be minimal.

The clerical employees work only day shifts, from 8:00 a.m. to 4:30 p.m., Monday through Friday, and have a 30-minute lunch break, from Noon to 12:30 p.m.. Rather than punch a time clock, as the dock employees are required to do, clerical employees record their hours on time sheets. In addition, clerical employees do not have scheduled break times, but rather are allowed to use their own discretion as to taking breaks throughout the workday. Clerical employees earn approximately \$10 per hour.

The clerical employees each have their own desks within the main office at the front of the Matteson facility. This main office is completely walled-off from the warehouse floor. Ferraro as well as clerical employee Beth Evans testified that Clarence Kilpowitz supervises both her and Denise Currier while Ferraro supervises Theresa Lay and Dolores Sherman. However, Ferraro testified that he allows James Evans to perform the evaluations of Lay and Sherman because Evans spends more of his time with them and is therefore more familiar with their work. The record fails to indicate whether Ferraro reviews and occasionally adjusts Evan's evaluation in the same way he reviews the shift foreman's evaluations of the dock employees. There is evidence of only one transfer from a clerical position to a dock position, that took place several years ago.

ANALYSIS

The first issue to be addressed is whether the shift foremen are supervisors under the Act. Section 2(11) of the Act defines the term "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 the responsibility to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment.

The exercise of any one of these authorities is sufficient to confer supervisory status; such authority, however, must be exercised "with independent judgment on behalf of management and not in a routine or sporadic manner" (citation omitted). *International Center for Integrative Studies/The Door*, 297 NLRB 601 (1990); *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985), *affd. in relevant part* 794 F.2d 527 (9th Cir.1986). The burden of demonstrating supervisory status is on the party seeking to exclude an individual as a supervisor. *Alois Box Co.*, 326 NLRB No. 110 (1998); *Bennett Industries*, 313 NLRB 1363 (1994). In each case, the differentiation must be made between the exercise of independent judgment and a routine following of instructions, between effective recommendation and forceful suggestion and between the appearance of supervision and supervision in fact. *See, e.g., Chevron Shipping Co.*,

317 NLRB 379 (1995); *J.C. BrockCorp.*, 314 NLRB 157 (1994); *Clark Machine Corp.*, 308 NLRB 555 (1992); and *Quadrex Environmental Co.*, 308 NLRB 101 (1992).

Based on the facts in the instant matter and the applicable law, I find that the shift foremen are not statutory supervisors under the Act. The record fails to reveal sufficient indication that the shift foremen exercises independent judgment with regard to any of the statutory factors listed above, nor do they have the power to effectively recommend such actions. First, with regard to the authority to hire or discharge fellow employees, the record establishes that shift foremen lack any such power. Second, the Petitioner has failed to meet its burden of establishing that shift foremen use sufficient independent judgment in assigning work to be considered supervisors under the Act. Third, shift foremen do not effectively promote or determine wage increases. Fourth, shift foremen cannot discipline fellow employees, nor do they use independent judgment to effectively recommend discipline. Consequently, shift foremen do not possess any of the primary indicia of supervisory status and therefore, despite the presence of some secondary indications of such status, I find that they are not supervisors under the Act.

Record evidence demonstrates that shift foremen clearly do not have the ability to hire, discharge, or effectively recommend such action, on behalf of the Employer. Ferraro testified that he discusses the performance of temporary employees with shift foremen prior to requesting that Mechanicsburg place them on the Employer's own payroll. However, he also testified that he looks at their attendance history, which is contained in records not even accessible to shift foremen. In addition, Ferraro stated that he speaks with dock employees other than the shift foreman, and observes the employee himself to see if they are capable of performing the necessary tasks and if they seem to grasp the overall distribution process at the facility. Thus, the record demonstrates that shift foremen do not have the authority to hire employees or to effectively recommend such action.

Similarly, shift foremen do not possess the authority to discharge fellow employees of the Employer, or to effectively recommend their discharge. Ferraro testified that he, with the occasional input of Evans, recommends that employees be discharged, and that the Mechanicsburg facility must ultimately approve the discharge. By way of example, Ferraro testified that in the case of an employee who failed to show up for 2 consecutive days and did not call in, the shift foreman's role, if any, was simply to inform Ferraro of the situation. The method the shift foremen uses to relay the information to Ferraro ranges from simply orally telling Ferraro about the situation, to writing it on a post-it note, to filling out a discussion report of the event. Thus, the record evidence indicates that shift foreman do not exercise independent judgment with respect to the discharge of other employees.²

With respect to the remaining statutory indicia, the record is somewhat less clear as to the precise amount of supervisory authority the shift foremen possess. Overall however, I find that the Petitioner has failed to meet its burden of demonstrating that shift foremen exercise independent judgment on the Employer's behalf to find that shift foremen are supervisors under the Act.

² The record does not reveal the shift foremen's role with regard to their role in the transfer, lay off, recall, or adjustment of other employee's grievances.

Specifically, the record fails to demonstrate that the shift foremen's role in the assignment and direction of other employee's confers supervisory status upon them. A showing of the use of independent judgment is essential to establish supervisory status. *See, NLRB v. Health Care & Retirement Corp.*, 511 U.S. 571, 573-574 (1994). Ferraro testified that shift foreman, at the beginning of their respective shifts, form their own "game plan" as to how to complete the existing work. However, as in *Hydro Conduit Corp.*, 254 NLRB 433, 436 (1981), the shift foremen here carry out their jobs under the direction of management, according to the freight schedule that has been established by Mechanicsburg. The record evidence establishes that if the shift foremen encounter nonroutine problems, they speak to Ferraro or Evans to determine how to handle the situation. Under circumstances such as these, employees lack sufficient discretion to be statutory supervisors. *Id.* at 438. Indeed, here, as in *Sears, Roebuck & Co.*, 292 NLRB 753, 755 (1989), the shift foremen's assignment of specific warehouse tasks to dock employees demonstrates nothing more than the knowledge expected of experienced persons regarding which employees can best perform particular tasks. As such, I find that shift foremen do not exercise independent judgment on behalf of the Employer in the assignment and direction of the work of other employees.

As for the imposition of discipline, the record indicates that, for example, shift foremen make notations on a dock employee's time card if he is late, and that this ultimately results in a docking of the employee's pay. The testimony of dock employee Patrick Anthony, along with that of several other witnesses, indicates that such discipline is covered by the work rules applicable at the Employer's Matteson facility. Unfortunately, the record fails to reveal whether all late employees have their pay docked. In other words, it was not established whether a shift foreman has the discretion to make a notation on a late dock employee's time card that ultimately leads to docked pay, or whether he can independently decide whether the amount of time involved or the reason for the lateness warrants such a notation. As a result, the record evidence does not demonstrate that the imposition of docked pay for lateness involves independent judgment by shift foremen.

However, the record is clearer as to other forms of discipline issued to dock employees. Ferraro and shift foreman Larry Lippert testified that shift foremen do not have the independent authority to discipline dock employees. Although Patrick Anthony testified that he has in the past received "write-ups" from his shift foreman, Ferraro and Lippert indicated that Ferraro must approve such discipline, and the shift foreman may, at times, simply deliver that discipline to the dock employee. It is well established that merely issuing verbal reprimands is too minor a disciplinary function to be deemed statutory authority. *See, Beverly Manor Convalescent Centers*, 275 NLRB 943, 945 (1985). Likewise, the mere factual reporting of oral reprimands and the issuance of written warnings that do not alone affect job status or tenure do not constitute supervisory authority. *Heritage Manor Center*, 269 NLRB 408, 413 (1984). Thus, the Petitioner has failed to meet its burden of establishing that the shift foremen exercise independent judgment in issuing discipline to fellow employees.

Next, I find that shift foremen do not have the authority to effectively recommend wage increases through the evaluation procedure used by the Employer at the Matteson facility. Ferraro testified that it is his practice is to allow shift foremen to fill out the second column on

the evaluation forms, once the individual dock employee first evaluates himself on the same characteristics. Record evidence indicates that there are over ten individual characteristics that are the subject of the evaluations. Ferraro testified that he first reviews the specific numbers the shift foremen assigns to the dock employees on the evaluations, and he further testified that this includes a review of the employees personnel files to determine the accuracy of the ratings. As previously noted, the personnel files are not accessible to shift foremen. Ferraro stated that he has modified the numbers, both up and down, to reflect the information contained in the personnel file. Consequently, while shift foremen do have some input into the evaluations, Ferraro ultimately evaluates the dock employees.

Either Ferraro or a shift foreman then discusses the evaluations with the dock employee. The evaluations are then forwarded to Mechanicsburg. According to Ferraro, Mechanicsburg has never altered the evaluations sent to them and that there is some formula, based on the ratings the employee receives, that determines the exact amount of the employees wage increase for the year. Consequently, based on the record evidence, Ferraro, and not the shift foremen, have the authority to effectively determine wage increases for dock employees. Thus, the shift foremen's authority to participate in the evaluation of dock employees does not rise to the level of statutory supervisory authority.

The Petitioner, in its post-hearing brief, notes the presence of several secondary factors, which would tend to indicate the supervisory status of the shift foremen. Indeed, the record reveals, based on the testimony of Anthony, that dock employees perceived the shift foremen as "supervisors". However, the other employee's perception, without more, is insufficient to confer supervisory status on them. *Masterform Tool Co.*, 327 NLRB No. 185 (1999). Likewise, the Petitioner emphasizes that the Employer's work schedule uses the term "supervisor" under the shift foremen's names and the fact that shift foremen earn more than dock employees. However, under the Board's decision in *Masterform Tool*, neither the secondary factor of shift foremen's higher wage rate nor their title can establish supervisory status without some primary indicia having first been established. *Id.*

Finally, it bears mentioning that Congress, in enacting Section 2(11) of the Act, stressed that only those individuals vested with "genuine management prerogatives" should be deemed supervisors, as opposed to "straw bosses, leadmen, ... and other minor supervisory employees." *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985) (citing S. Rep. No. 105, 80th Cong., 1 Sess. 4 (1947), *affd. in relevant part* 794 F.2d 527 (9th Cir. 1986). Consequently, "the Board has a duty to employees... not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied ... rights which the Act is intended to protect." *Id.* at 1689 (footnote omitted).

Based on the foregoing, I conclude that the Petitioner has failed to meet its burden of showing that the shift foremen possess the statutory indicia of supervisory status. Therefore, the shift foremen will be permitted to vote.

I now turn to the issue of whether the Employer's clerical employees are plant clericals or office clericals, and whether they possess a sufficient community of interest to be included in the same unit as the dock employees. The Board has stated, "the distinction between office clericals

and plant clericals is not always clear.” *Hamilton Halter Co.*, 270 NLRB 331 (1984). The Board has long held, however, that the distinction between office and plant clericals is rooted in community-of-interest concepts. *Minneapolis-Moline Co.*, 85 NLRB 597, 598 (1949). Clericals whose principal functions and duties relate to the general office operations and are performed within the general office itself, are office clericals who do not have a close community of interest with a production unit. This is true even if those clericals spend as much as 25 percent of their time in the production area and have daily contact with production personnel. *Container Research Corp.*, 188 NLRB 586, 587 (1971). In *Wickes Furniture*, 255 NLRB 545, 548 (1981), the Board also noted that the functional integration of the facility, including the interchange and contact among employees, as well as the supervisory structure is to be considered as well.

It is important to note at the outset that the Board does not ordinarily include office clericals in a unit containing manual workers because of their different interests, a policy which has been applied most frequently where the office clerical workers differ from production workers by working on administrative matters not directly related to production. *Broyhill & Associates*, 298 NLRB 707, 712 (1990). Moreover, the Board's declared policy is to consider only whether the unit requested is an appropriate one, even though it may not be the optimum or the most appropriate unit for collective bargaining. *Overnite Transportation Co.*, 322 NLRB No. 122 (1996). Thus, inasmuch as a unit made up of dock employees (including working foremen) is an appropriate bargaining unit, I need not analyze whether including all of the Employer's clerical employees in the bargaining unit constitutes a better unit for collective-bargaining purposes.

I find, pursuant to the record evidence herein, that the functions and duties performed by four clerical employees at the Employer's Matteson Illinois facility are more akin to office clericals than plant clericals. In this regard, the facts noted above reveal that the clerical employees perform most of their duties in the main office, which is separate and walled off from the rest of the warehouse. The Board stated in *Broyhill & Associates, Inc.*, 298 NLRB at 712, that this factor tends to lead to a finding that the clericals in question are office clericals.

Employee interchange between clerical and dock employees at the Employer's Matteson facility, as well as its overall functional integration, also militate against a finding that the clericals employees in question are plant clericals. In the instant case, only one employee has transferred from a clerical position to a dock position at the Matteson facility. Moreover, that transfer took place several years ago, and the record indicates that no such transfers have occurred since. Therefore, the interchange of employees between the clerical and dock employees weighs against a finding that the clericals are plant clericals. Similarly the functional integration of the warehouse is called into question by the fact that clerical employees work only day shifts, and only on weekdays. Teagan testified that the facility operates 24 hours a day, 7 days a week, every day of the year except Christmas and that dock employees work three overlapping around the clock shifts. If the clerical employee's duties were functionally integrated to point of mandating a finding that they are plant clericals, the clerical employees would logically work similar shifts to the dock employees.

Also, record evidence indicates that clerical employees do not have similar skills, duties or working conditions. To that end, Evans testified that she does not use a forklift or a pallet

jack, as do the dock employees. Likewise, she stated that the clerical employee's duties involve maintaining and producing paperwork associated with the shipment of goods in and out of the Matteson center. The dock employees, on the other hand, are primarily responsible for loading and unloading trucks and sorting the materials according to the sort tickets, in preparation for the shipment of the materials.

Regarding the issue of placing the clerical employees in the unit with the dock employees based on community of interest principles, I find that the Employer's clerical employees at its Matteson facility lack a sufficient community of interest with the dock employees to be included in the unit. Evans testified that she rarely interacts with dock employees. Rather, if a situation arises where she needs information or assistance in the warehouse, Evans testified that she generally deals with a shift foreman rather than a dock employee. Moreover, Anthony testified that the clerical employees rarely come to the dock office for work or to engage in non-work related activities, such as eating lunch or taking a break. Thus, the contacts and interaction between the clerical employees and dock employees in their work and nonworking settings is negligible.

Therefore, I find that the following groups of employees are eligible to the in the election: All full time and regular part time dock employees employed at the employer's facility located at 21800 South Cicero Avenue, Matteson Illinois 60443; but excluding all temporary employees, office clerical employees, guards, and supervisors as defined in the Act. Clerical employees are not eligible to vote.

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