

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 32**

(Oakland, California)

SYNGENTA SEEDS COMPANY,
Employer¹

and

CANNERY WORKERS UNION, LOCAL 912,
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, AFL-CIO;
Union

Case 32-RD-1395

and

ROBERT A. GONZALEZ, an Individual
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein 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 record in this proceeding,² the undersigned finds:

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

¹ The name of the Employer appears as corrected at the hearing.

² The Employer and the Union submitted briefs which have been considered.

2. The Employer is engaged in commerce within the meaning of the Act and will effectuate the purposes of the Act to assert jurisdiction herein.³
3. The parties stipulated, and I find that the Union involved is a labor organization within the meaning of Section 2(5) of the Act.
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:

INCLUDED: All full-time and regular part-time processing plant production employees employed at the Employer's 5355 Monterey Frontage Road, Gilroy, California Processing Plant.

EXCLUDED: All office clerical employees, administrative, research, laboratory, professional, sales, guards and supervisors as defined in the National Labor Relations Act.^{4 5}

³ The parties stipulated, and I find that the Employer, a Delaware corporation, with an office and place of business located at 5355 Monterey Frontage Road, Gilroy, California, is engaged in the business of receiving, processing, and shipping vegetable seeds. During the preceding 12-month period the Employer purchased in excess of \$50,000 worth of goods directly from suppliers located outside the State of California.

⁴ In his Petition, the Petitioner sought a unit of all full-time and regular part-time warehouse employees, including warehousemen, food processors, drivers and helpers, order fillers, and conditioning employees. The collective bargaining agreement sets forth a unit of all production employees at the Employer's 5355 Monterey Frontage Road, Gilroy, California Processing Plant. The parties stipulated to an appropriate unit of all full-time and regular part-time processing plant production employees employed at the Employer's 5355 Monterey Frontage Road, Gilroy, California Processing Plant. It is established Board policy that the unit appropriate in a decertification election must be coextensive with either the certified or recognized bargaining unit. Fast Food Merchandisers, Inc., 242 NLRB 8 (1979). Here, the existing unit includes the same job classifications as those covered by the parties' stipulation and is coextensive with unit named in the parties' collective bargaining agreement.

6. The Union contends that Petitioner Robert Gonzales, the leadperson in the Employer's Mill and Treating departments is a supervisor within the meaning of Section 2(11) of the Act and that, accordingly, the petition herein should be dismissed. Further, the Union asserts that Joe Garza, the leadperson in the Order Filling department, is a supervisor within the meaning of Section 2(11) of the Act and should thus not be allowed to vote in the election if the petition herein is not dismissed.
7. Contrary to the Union, the Employer contends that neither the Petitioner or Garza are supervisors within the meaning of Section 2(11) of the Act, that the petition was properly filed by a bargaining unit member and should not be dismissed, and that Garza, as a bargaining unit member should be allowed to vote in the election.
8. As is set forth fully below I conclude that neither the Petitioner nor Garza is a supervisor within the meaning of Section 2(11) of the Act.

THE FACTS

The Employer operates a seed processing plant in Gilroy, California. Pursuant to the collective bargaining agreement between the Employer and the Union, which expired on March 31, 2002, the Union represents all full-time and regular part-time processing plant production employees working in the warehouse at the Gilroy facility. On April 10, 2002, the Petitioner, the lead worker in the Treating and Mill departments, filed the instant petition. As noted, the Union contends Petitioner is a supervisor and that the

petition should be dismissed. The Union additionally asserts that Joe Garza, lead worker in the Order Filling department, is a supervisor and should not be allowed to vote in the event that the petition is not dismissed and an election is held.

The Employer's highest ranking employee at the Gilroy facility is the Plant Supervisor/Superintendent, Mark Tappen. Warehouse Manager, Fred Mikrut, works directly under Tappen. Working under Mikrut are the three lead employees, Javier Cabrera, Joe Garza, and Robert Gonzales, as well as about seven other warehouse employees. The warehouse is divided into four departments: Order Filling, Canning, Mill, and Treating. Cabrera is the lead person for the Canning department, Garza is the lead person in the Order Filling department, and Gonzales is the lead person in the Mill and Treating departments, together referred to as Conditioning. Mikrut is responsible for overseeing each of the four departments in the warehouse.

ROBERT GONZALES

Petitioner was hired as a Treater Operator in 1988. He later became the lead in Treating, but cannot remember when this occurred. Petitioner has been the lead in the Mill department for approximately two years.

Petitioner is paid by the hour, as are the other warehouse employees. Appendix A to the recently expired collective bargaining agreement sets forth wage rates and job titles of the employees in the bargaining unit. Employee job classifications are divided into four categories, each of which has a different base pay rate. Petitioner is in Group I, that with the highest pay rate. Appendix C to the agreement provides that a leadperson shall receive \$1.00 per hour above the highest rate in the group. During calendar year 2001,

other employees in Group I⁶ were paid \$13.58 per hour, while Petitioner received \$15.58 an hour because he holds the leadperson position in two departments.

Petitioner has an office in the warehouse that he shares with the Receiver, a bargaining unit employee. The amount of time Petitioner spends in his office varies, depending on the season. Currently he spends little time in his office, but during the milling season he spends approximately six hours per day at his desk doing paperwork and performing safety checks.

Treating Department

In addition to Petitioner, one other employee, Salvador Holquin, normally works in the Treating department. At the time of the hearing, Petitioner was the only employee working in that department because Holquin was injured and not yet scheduled to return to work. Employees in Treating apply pesticides to seeds and perform blending and coding of seeds. As the lead in the Treating department, Petitioner is responsible for prioritizing and checking work orders, and ensuring the orders are completed in time.

Mill Department

In addition to Petitioner, three employees work in the Mill department. Employees in the department receive and clean seeds. As the lead in the Mill department, Petitioner is responsible for prioritizing work according to requirement dates, checking labels, and finalizing work orders.

Work orders for the Mill department are initially received in the office. Thereafter, an employee in the shipping department, Linda Smith, makes labels for each of the orders. Orders for the Treating and Mill departments are placed in a mail slot for

⁶ The job classifications included in Group I are: Seed Treater Leadperson, Seed Treater Operator, Mill Leadperson, Mill Operator

Conditioning. When Petitioner retrieves work orders from the slot he brings the orders into his office and checks their labels to verify that the labels match the work order. If the information on the label does not match the information on the work order, he returns the label to the labeling department and instructs Smith to re-do the label. If Petitioner is not present, and a mill operator finds a label containing incorrect information, the operator will request that Smith re-do the label. After checking the labels, Petitioner assigns the orders to a particular line for cleaning.

The Mill department has five lines of different sizes, each of which performs the same function. Employees are hired to operate a particular line. Petitioner determines which orders are assigned to each line by the weight and amount of seed already running through each line.

To finalize work orders, Petitioner performs seed counts, checks moistures, ensures employees marked the location of where they placed the seed, and checks employees' work hours. When checking work hours, Petitioner reviews logs kept by employees of their time spent cleaning to ensure that the information entered by the employee at the top of their hour log matches that at the bottom. Petitioner does not question the hours marked by employees, but only reviews the logs to ensure all information is properly recorded. The purpose of the logs is not related to the hours of work for which employees are paid.

Petitioner testified that Mitruk is in the Mill department on a consistent basis. When there is not enough work available to occupy the mill employees, Mitruk assigns them to work in another department or assigns them another task. However, there are days on which Mitruk does not enter the department. Petitioner testified he is not in

charge of the department on those dates because the employees merely go about filling the work orders for the line to which they are assigned.

JOE GARZA

Joe Garza was hired by the Employer in 1984 and became the lead worker in the Order Filling department approximately five years ago. The Order Filling department assembles and packages orders for shipment. In addition to Garza, two other employees work in the Order Filling department. As lead in Order Filling, Garza assigns the orders he receives from Mitruk to the order fillers, prioritizes the orders, and fills orders alongside the other employees.

ANALYSIS

Since supervisors are not “employees” under the Act, they cannot file decertification petitions. *Clyde J. Merris*, 77 NLRB 1375 (1948); *Doak Aircraft Co.*, 107 NLRB 924 (1954). The party asserting that individuals are supervisors under the Act bears the burden of proving their supervisory status. *Bennett Industries, Inc.*, 313 NLRB 1363 (1994); *Tuscon Gas and Electric Co.*, 241 NLRB 181, 181 (1979); *NLRB v. Kentucky River Community Care, Inc., et al.*, 121 S.Ct. 1861 (May 29, 2001).

Section 2(11) of the Act defines a supervisor as an individual who possesses “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 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.” The possession of any one of the

indicia specified in Section 2(11) of the Act is sufficient to establish supervisory status, provided that such authority is exercised in the employer's interest and involves the use of independent judgment in a manner which is more than routine or clerical. *Harborside Healthcare, Inc.*, 330 NLRB No. 191 (2000); *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). The exercise of some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner, however, does not confer statutory supervisory status on employees. *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985); *Advanced Mining Group*, 260 NLRB 486, 507 (1982).

Because supervisory status removes individuals from some of the protections of the Act, only those personnel vested with "genuine management prerogatives" should be considered supervisors and not "straw bosses, leadmen, set-up men and other minor supervisory employees." S Rep No 105 80th Cong 1 Sec 4 (1947); *Ten Broeck Commons*, 320 NLRB 806, 809 (1996). Furthermore, the Board holds that supervisory status not be found "whenever the evidence is in conflict or otherwise inconclusive on a particular indicia." *Phelps Community Medical Center*, 295 NLRB 486 (1989).

In the instant matter, I find that the Union has failed to satisfy its burden of establishing that Petitioner and Garza are statutory supervisors. The record reveals that neither Petitioner nor Garza possess the authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them or to adjust their grievances or to effectively recommend such action. As such, the record clearly establishes that neither of the above named employees possess the statutory indicia of Section 2(11) authority.

In its brief, the Union argues that Petitioner is a statutory supervisor because he: (1) exercises independent judgement in the assignment and direction of employees' work; (2) tracks employees hours, sick leave, and vacation leave usage; (3) monitors and controls employees' productivity and work quality and is consulted in the course of the Employer's official evaluations of employees; and (4) effectively recommended the hiring of a new employee.

Exercise of Independent Judgement in the Assignment and Direction of Work

The evidence does not support the Union's contention with respect to Petitioner's authority to assign and responsibly direct the work of employees. To the contrary, the record reveals that employees are hired to operate a particular line, not assigned to a line by Petitioner. To determine which orders should be assigned to each line and thus to each operator, Petitioner merely considers the weight and amount of seed already running through each line, a function of his skill and experience, not of supervisory authority. Such a determination, based on Petitioner's experience, does not establish him as a statutory supervisor. *Chrome Deposit Co.*, 323 NLRB 1961, 1964 (1997).

Nor does the evidence support the Union's assertion that Petitioner regularly exercises independent judgement in determining the priority of orders. Warehouse Supervisor Mikrut or Plant Supervisor Tappen generally conveys changes in the priority of orders to Petitioner. On occasion, Petitioner will alter the priority of orders in accord with the requirement dates for each of the orders without being specifically directed to do so by Mikrut or Tappen. However, any limited authority Petitioner may exercise regarding changing the priority of orders is largely routine and does not require the exercise of independent judgment which would disclose the possession of supervisory

authority. Moreover, in changing the priority of orders according to requirement dates, Petitioner is effectuating a policy conveyed to him by Mikrut and Tappen, so that any such decisions are made based on experience and on the parameters that have been defined by management. Consequently, such changes are insufficient to convey supervisory status. *North Shore Weeklies, Inc.*, 317 NLRB 1128 (1995); *Quadrex Environmental Co.*, 308 NLRB 101 (1992); and *Vanport Sand & Gravel, Inc.*, 267 NLRB 150 (1983).

Tracking Employees' Attendance

The record does not support the Union's assertion that Petitioner is responsible for monitoring employees' work hours, sick leave, and vacation usage. The record shows that Petitioner' reviews employee work hours for the purpose of ensuring all information is properly recorded, a task clerical in nature and thus insufficient to establish supervisory status. *Fleming Companies, Inc.*, 330 NLRB No. 32 (1999).

Neither do employees request time off from Petitioner or call him when they call in sick. Rather, employees contact Warehouse Supervisor Mikrut regarding these matters. To request time off for vacations, employees complete and turn in forms to Mikrut. If an employee falls ill during his or her work shift, Petitioner speak to Mikrut before the employee leaves, unless an employee is obviously ill, in which case, the employee may leave before getting permission from Mikrut. As such, the record reveals that employees do not request Petitioners' permission to miss work, but rather inform him of their absence. The rare instance in which Mikrut is not contacted for permission is when an employee is seriously ill. Consequently, any exercise of authority by Petitioner

over employee scheduling is limited and is consequently insufficient to convey supervisory status. *Tree-Tree Fiber Co.*, 328 NLRB No. 51 (1999).

Evaluation of Employees

Although the Union asserts Petitioner is responsible for monitoring and evaluating employees' work, the record does not support this contention. Instead, the record shows that Petitioner is sometimes asked by Mikrut or Tappen about how employees are doing. Neither take notes and there was no testimony as to what Mikrut and Tappen do with the information provided by Petitioner.

When an employee makes a mistake, both Petitioner and the employee are required to submit a written report to Mikrut regarding the incident. On occasion, after receiving the reports, Mikrut has spoken to Petitioner alone regarding the incident in question and asked for his opinion regarding what to put in the write-up for employees. Petitioner has not seen a copy of any of these write-ups afterwards. As such, the record does not support the assertion that Petitioner effectively recommends the discipline of employees or is otherwise responsible for evaluating their performance.

Power to Effectively Recommend Hiring

The Union asserts Petitioner effectively recommended the hiring of employee Salvador Holquin. Petitioner testified that in that one instance, he told Mitruk he knew the applicant, Salvador Holquin, from a previous job, and that Holquin seemed like a good worker. Holquin was ultimately hired by the Employer. This isolated occurrence, however, even if deemed an effective recommendation to hire, does not confer statutory supervisory status on Petitioner. *Chicago Metallic Corp.*, 273 NLRB 1677, 1689 (1985); *Advanced Mining Group*, 260 NLRB 486, 507 (1982).

JOE GARZA

The Union asserts Garza is a supervisor because he exercises independent judgement when he assigns work to employees. The Union bases its assertion on Garza's testimony that he assigns the "pick lists" to a particular employee based on the size of the order and the speed of the order filler. However, Garza also testified that he meets with Mitruk for five to fifteen minutes each morning to discuss the priority of orders and which workers should be assigned to particular jobs. As such, the evidence is inconclusive as to whether Garza has the authority to independently assign work to employees, and thus insufficient to warrant a finding of supervisory status. *Sears, Roebuck Co.*, 304 NLRB 193 (1991). Rather, the record as a whole, must establish that an alleged supervisor's role is something other than routine communication of instructions between management and employees without the exercise of any significant discretion. *McCullough Environmental Services*, 306 NLRB 565 (1992).

There are approximately 10 employees in the voting unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the 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 the status as such during the eligibility period and their

replacements. Those in the military services of the United States Government 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 CANNERY WORKERS UNION, LOCAL 912, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO.

LIST OF VOTERS

In order 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 in 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 seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the names and addresses of all the eligible voters shall be filed by the Employer with undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Ronald V. Dellums Federal Building, 1301 Clay Street, Suite 300N, Oakland, California, 94612-5211, on or before May 23, 2001 . 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 provision 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. This request must be received by the Board in Washington by May30, 2002.

DATED at Oakland, California, this 16th day of May, 2002.

Veronica I. Clements
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