

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MATSON TERMINALS, INC.  
Employer

and

Case 20-RC-173297

HAWAII TEAMSTERS AND ALLIED WORKERS  
LOCAL 996  
Petitioner

ORDER

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is denied as it raises no substantial issues warranting review.<sup>1</sup>

MARK GASTON PEARCE, Chairman

LAUREN McFERRAN, Member

Dated, Washington, D.C., October 7, 2016.

Member Miscimarra, dissenting in part:

I would grant review of the Regional Director's Decision and Direction of Election on the basis that substantial questions exist regarding whether the petitioned-for supervisors and senior supervisors possess the authority under Section 2(11) of the Act to responsibly direct, reward, discipline, or adjust grievances of statutory employees engaged in barge loading and unloading operations. In my view, Board review of the record is warranted because, among other things, the seven individuals whose supervisory status is disputed oversee work performed by approximately 34 undisputed statutory employees; if the petitioned-for individuals are deemed

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<sup>1</sup> In denying review, we do not rely on the Regional Director's statement that when the supervisors and senior supervisors "give direction to the other employees, they act as leadmen, using their skill, experience, and familiarity with the equipment and vessels" which appears to apply an interpretation of "independent judgment" that the Supreme Court rejected in *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001). See also *Network Dynamics Cabling*, 351 NLRB 1423, 1425 fn. 11 (2007).

Our dissenting colleague reiterates a position rejected by the Board in *Buchanan Marine, L.P.*, 363 NLRB No. 58, slip op. at 2 (2015), which we decline to revisit.

non-supervisors, the Employer has a total of 41 statutory employees, over which all statutory supervisory authority would be exercised by one individual—the terminal manager. Given the nature of the Employer’s business, an operation at two ports located 75 miles apart involving work that often takes place when the terminal manager is not present, I question whether it is plausible to conclude that all supervisory authority regarding 41 employees could be exclusively vested in the terminal manager. See *Buchannan Marine, L.P.*, 363 NLRB No. 58, slip op. at 10 (2015) (Member Miscimarra, dissenting) (stating that, when applying the supervisor criteria set forth in Sec. 2(11), the Board should consider (i) the nature of employer's operations; (ii) the work performed by undisputed statutory employees; and (iii) whether it is plausible to conclude that all supervisory authority is vested in persons other than those whose supervisory status is in dispute). Indeed, the Regional Director stated that “there is no question that the work of the petitioned-for employees is to quarterback the cargo operations.” This statement alone could justify granting review of the Regional Director’s findings in order to determine whether evidence of supervisory authority was discounted or disregarded “merely because it could have been stronger, more detailed, or supported by more specific examples.” *Id.*, slip op. at 9 (Member Miscimarra, dissenting). Accordingly, I respectfully dissent.

PHILIP A. MISCIMARRA,

Member