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Dynamic Science, Inc. and District Lodge 12, Local Lodge 2424, International Association of Machinists and Aerospace Workers, Petitioner
Case 5-RC-15189

June 27, 2001

DECISION ON REVIEW AND ORDER

By Peter J. Hurtgen, Wilma B. Liebman, John C. Truesdale, Dennis P. Walsh,

On May 7, 2001, the Regional Director for Region 5 issued a Decision and Direction of Election (relevant portions of which are attached as an appendix) finding that the Employer's artillery test leaders are not supervisors within the meaning of **Section 2(11) of the Act**.

Thereafter, in accordance with **Section 102.67 of the National Labor Relations Board's Rules and Regulations**, the Employer filed a timely request for review of the Regional Director's decision, contending that the test leaders are statutory supervisors because, inter alia, they use independent judgment in responsibly directing other employees.

On May 29, 2001, the Supreme Court issued its decision in **NLRB v. Kentucky River Community Care, 121 S.Ct. 1861 (2001)**. In that case, the Court upheld the Board's rule that the burden of proving **Section 2(11)** supervisory status rests with the party asserting it. However, the Court rejected the Board's interpretation of "independent judgment" in **Section 2(11)**'s test for supervisory status, i.e., that registered nurses will not be deemed to have used "independent judgment" when they exercise ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specified standards. Although the Court found the Board's interpretation of "independent judgment" in this respect to be inconsistent with the Act, it recognized that it is within the Board's discretion to determine, within reason, what scope or degree of "independent judgment" meets the statutory threshold.

The Employer's Request for Review of the Regional Director's Decision and Direction of Election is granted as it raises substantial issues warranting review in light of the Supreme Court's decision in **Kentucky River**. Having carefully reviewed the entire record in light of **Kentucky River**, we affirm the Regional Director's finding that the Employer has failed to sustain its burden of establishing that the test leaders possess statutory supervisory authority in their direction of other employees.

The Employer's test leaders, along with the petitioned-for artillery testers, run tests of military artillery, weapons, and armaments for the United States Army. Each working day, a stipulated supervisor provides the test leaders with detailed assignment sheets. These sheets detail the test leaders' daily activities, including: where he will report to carry out the testing; to whom he will be reporting; which testers will be on his crew; and what equipment he and his crew will be testing. Upon reaching the assigned site, the test leader checks in with the on-site test director, who provides additional instructions, such as what equipment needs to be set up and where exactly the test is to be executed. Depending on the equipment being tested, the test director will even specify the distance between the equipment and the target. In setting up the equipment, the leader and his crew are also required to follow written standard operating procedures that are provided by the manufacturer at each test site. Although the Employer's test leaders are responsible for the safe execution of the tests, it is uncontested that it is the responsibility of all the testers, as well as the test leaders, to stop the testing procedure and call the safety office should a safety violation occur.

Based on the foregoing, the Board agrees with the Regional Director's determination that the Employer has failed to sustain its burden of establishing that the test leaders possess statutory supervisory authority in their direction of other employees. The evidence shows that the test leaders' role in directing employees is extremely limited and circumscribed by detailed orders and regulations issued by the Employer and other standard operating procedures. Consequently, the degree of judgment exercised by the test leaders falls below the threshold required to establish statutory supervisory authority. **See Chevron Shipping Co., 317 NLRB 379, 381 (1995), cited with approval in Kentucky River.**

The Regional Director's Decision and Direction of Election is affirmed.

June 27, 2001

Peter J. Hurtgen, Chairman

Wilma B. Liebman, Member

John C. Truesdale, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD