

**Necedah Screw Machine Products, Inc. and International Association of Machinists & Aerospace Workers, AFL-CIO, Petitioner. Case 30-RC-5812**

April 28, 1997

**DECISION AND DIRECTION**

BY CHARIMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered determinative challenges in an election held September 26, 1996, and the hearing officer's report (pertinent portions are attached as appendix) recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 44 for and 39 against the Petitioner, with 5 challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the hearing officer's findings<sup>1</sup> and recommendations, and finds that the challenges to the ballots of Joseph Kroll, Gerald Ruskowsky, Donald Henningsen, Robert Thomas Jr., and Jeffrey Sunday should be overruled.

**DIRECTION**

IT IS DIRECTED that the Regional Director for Region 30 shall, within 14 days from the date of this Decision and Direction, open and count the ballots of Joseph Kroll, Gerald Ruskowsky, Donald Henningsen, Robert Thomas Jr., and Jeffrey Sunday. The Regional Director shall then serve on the parties a revised tally of ballots and issue the appropriate certification.

<sup>1</sup>The Petitioner has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

**APPENDIX**

**HEARING OFFICER'S REPORT ON CHALLENGED BALLOTS WITH FINDINGS AND RECOMMENDATIONS**

Pursuant to a petition filed on August 16, 1996,<sup>1</sup> and a Stipulated Election Agreement, executed by the parties and approved by the Regional Director on August 28, an election was conducted under the Regional Director's supervision on September 26, among employees in the following unit:

All full-time and regular part-time production and maintenance employees, truckdrivers, quality control inspectors and plant clerical employees; but excluding all office clerical employees, temporary agency employees,

management employees, guards and supervisors as defined in the Act.

The results of the election, as set forth in the tally of ballots served on the parties on the day of the election, showed that of approximately 88 eligible voters, 44 cast ballots for, and 39 cast ballots against the Petitioner. There were five challenged ballots which were sufficient in number to affect the results of the election. Both parties withdrew their respective objections to conduct affecting the results of the election prior to the close of the hearing with my approval.

Following preliminary investigation of the issues raised by the challenges, the Regional Director issued a notice of hearing on challenged ballots and objections to conduct affecting the results of the election dated October 17. The Regional Director concluded therein that the challenges and objections were attended by substantial questions of fact and credibility which could best be resolved on the basis of evidence developed at hearing. The notice of hearing further provided that the hearing officer prepare and cause to be served on the parties a report containing resolutions of credibility of witnesses, findings of fact, conclusions of law, and recommendations to the Board concerning the disposition of the issues involved herein. A hearing was held before me on November 6 and 7, and December 9 and 10, in Mauston, Wisconsin. The Employer and the Petitioner were represented and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties. Both parties have submitted briefs which have been duly considered. The findings of fact and credibility resolutions contained herein are based upon my consideration of the entire record and upon my observation of the testimony and demeanor of the witnesses.<sup>2</sup>

**The Challenges**

Petitioner challenged the ballots of Joseph Kroll, Gerald Ruskowsky, Jeffrey Sunday, Robert Thomas Jr., and Donald Henningsen, alleging, contrary to the position of the Employer, that they are statutory supervisors within the meaning of Section 2(11) of the Act.

As noted by the Regional Director in his report, the United Electrical, Radio & Machine Workers of America (UE) and the Employer participated in a hearing on June 28, 1994, in which the alleged supervisory status of the same five individuals involved herein were argued. In his ensuing Decision and Direction of Election (DDE), which issued on July 22, 1994, the five individuals were found by the Regional Director to be nonsupervisors, eligible to vote in the August 18, 1994 election.<sup>3</sup> The collective-bargaining unit found appropriate in the DDE is identical to the stipulated unit herein.

In accordance with the instructions of the Regional Director, the parties were constrained from presenting evidence involving 19 events or circumstances occurring prior to August 14, 1996, relating to the alleged supervisory status of the five individuals. He did, however, take administrative notice of

<sup>2</sup> Accordingly, any failure to completely detail all conflicts in evidence does not mean conflicting evidence was not considered. *Walker's*, 159 NLRB 1159 (1966).

<sup>3</sup> A sixth employee, Joseph Schmelze, was likewise found to be nonsupervisory. His ballot, however, was not challenged in the September 26 election.

<sup>1</sup> All dates refer to 1996, unless otherwise noted.

the record and DDE in Case 30-RC-5605. Likewise, I have taken administrative notice of that proceeding. I have carefully reviewed that record and will rely on its findings as a foundation for this report.

#### The Operation

The Employer, a closely held family corporation, continues to be engaged in the manufacture of screw machine products. The basic operation appears to remain unchanged since 1994, except that it has expanded to employ about 30 additional employees over the past 2 years. Last spring, the Employer moved to a new location, which did not appear to cause changes which would affect these representation proceedings. As before, the Company cofounders, Kelly Jump and Michael Belmonte Sr., continue to head the operation. There is no dispute that the cofounder's sons, Jeffrel, Gary, Brian, John Belmonte and Michael Belmonte Jr. are vice presidents, stockholders, and statutory supervisors. Likewise, Charles Uksas, the second-shift supervisor and the only person with authority during much of that shift, was stipulated to be a statutory supervisor. The five sons all have the title of production supervisor, with Jeffrey Jump the primary department supervisor, Gary Jump the secondary department supervisor, Michael Belmonte Jr. heading the quality assurance department, Brian Jump heading shipping and receiving, and John Belmonte in charge of engineering. These owners/supervisors' functions and duties appear to be of a "hands on" nature. They wear uniforms, albeit slightly different from those of other employees and Uksas, and readily and commonly assist in troubleshooting machinery problems.

The Company produces precision parts, customized for its industrial customers. As such, machines are regularly set up and repaired to accommodate the production of different parts. It is evident that the operation employs a wide spectrum of employees of varying experience and skills, ranging from highly skilled technicians to learner/helpers. The most skilled employees have been referred to as setup technicians, foremen and leadpersons, and supervisors.

The primary department, where the initial production occurs, has been expanded from about 36 machines in 1994 to about 44. Roughly 20 to 24 employees work in primary on the day shift, and 10 to 20 at night. Four of the challenged voters, Kroll, Henningsen, Sunday, and Thomas, work in this department under Jeff Jump. Kroll is the longest standing employee excepting stipulated supervisors, having been with the Company since 1964. He is also the highest paid, earning a salary of \$720 per week, or \$18 per hour. Henningsen, formerly salaried, has been employed since 1973 and earns \$16.75 per hour; the highest paid hourly employee. Kroll and Henningsen, described as setup technicians or primary leads, roam throughout the primary area, and are ultimately responsible for all the machinery and production quality. Michael Belmonte Sr. testified in the 1994 hearing that Kroll and Henningsen were highly qualified technical people who did not want to "manage people," thus effectively refusing supervisory authority. There is virtually no record evidence herein of any change in the duties of Henningsen since 1994. Evidence regarding possible changes in the duties of Kroll are discussed below.

Also within the primary department, challenged voter Jeff Sunday oversees about 10 employees operating the Brown & Sharpe line of machinery consisting of about 32 machines.

In 1994, he worked over about 5 employees but now has 10, having assumed lead duties from former leadman, Joe Schmelze, following the plant relocation. His duties include setting up machinery and troubleshooting on his first shift. Included in this group of 10 are setup persons Don Boser and Joe Schmelze. Robert Thomas, another challenged voter, oversees five Brown & Sharpes and about three to four employees, also on the first shift. Two setup men work with Thomas. Henningsen spends much of his time in the area of the Tornos multispindle machines. Kroll handles the Davenport machine area, and spends a substantial amount of time with the Brown & Sharpe machines.

The secondary or finishing department consists of about 20 employees on the first shift and 8 to 12 on the second shift under the supervision of Gary Jump. Bob Vike, an employee of about 6 months, is a leadperson who moves around the department, making sure the proper machinery is operating. Harlan Johnson is a second-shift lead in secondary, under the overall supervision of Uksas. Uksas supervises between 20 to 26 employees.

The shipping and receiving department, supervised by Brian Jump, has seven to eight employees on the first shift, including Mitch Lewis, a leadperson, and one in the evening. None of the challenged voters work in shipping and receiving, quality assurance, or engineering assistance.

The "maintenance lead" is Gerald Ruskowsky, a challenged voter, who is salaried, earning the hourly equivalent of \$17 per hour. Ruskowsky routinely directed the work of one part-time employee in 1994, but currently works over two full-time employees.

#### Issues

As the Regional Director note in his 1994 DDE, it is the burden of a party seeking to exclude an individual from a proposed collective-bargaining unit to prove supervisory status. *Bennett Industries*, 313 NLRB 1363 (1994). Adding to that burden is the fact that the five employees the Petitioner COI contends are supervisors were found *not* to be supervisors by this Region in 1994. Petitions presumably argues that the duties of these five employees either became supervisory during the past 2 years, or else relevant information did not come into light in the prior proceedings. As noted above, I did not permit the parties to present evidence of events occurring prior to the 1994 DDE. I will, of course, in my determination of the supervisory issues, consider any changes in the status of these five individuals since 1994.

#### Facts

The parties presented evidence at the hearing in support of their respective positions regarding the indicia of supervisory authority set forth in Section 2(11) of the Act, vested or not vested, as the case may be, in the duties of the five individuals discussed herein.

The hiring procedure was described by John Belmonte. The aforementioned Belmontes and the Jumps have the undisputed authority to hire. Applications for employment are accepted almost daily. If a department needs help, the (stipulated) department supervisor submits a request form to the human resources manager, Sue Henning. Thereafter, Henning screens the applicant and refers his/her application to the requesting supervisor. The supervisor reviews the application,

then requests that an interview be arranged by Henning. The requesting production supervisor then conducts an interview and essentially decides whether to hire the applicant. Sometimes a second interview is conducted by the production supervisor or a leadperson,<sup>4</sup> which appears to be largely for orientation purposes. Sometimes a leadperson will advise the applicant that he/she has been hired.

Witness Karl Simonson testified that after having been interviewed by Jeff Jump in June 1996, he was told that he looked to be a favorable employee and the Company would be contacting him. Thereafter, in Jump's absence, Sunday conducted a second interview of Simonson. Sunday told Simonson that he had been told to hire him if he found him to be favorable. According to Simonson, Sunday told him that he would be working in the primary department and Sunday would be his supervisor. Sunday testified that prior to the second interview Jump advised him to talk to Simonson and if everything was all right, to tell him he was hired. If he found something wrong, Sunday was to report back to Jump. This was corroborated by Jump.

Another witness, Greg Sobus, initially an employee of a temporary help agency called TEMPO, was interviewed by Jeff Jump and Sunday in early August 1996. He was advised that his application looked good, and the Company would be getting back to him. Thereafter, TEMPO advised Sobus that the Employer would like to hire him, and a second interview was arranged. In the interview conducted by Sunday and Joe Kroll, Sobus was asked about his experience, if he would accept the TEMPO established rate of \$8 per hour and when he could start. Kroll told Sobus he was hired. As in the case of Simonson, Jump was again unavailable for this second interview.

Regarding the transfer of employees, the record reflects that Sunday has the authority to transfer or assign employees to machines within his area of responsibility within primary department, but not out of the area. The same is true for the other challenged individuals. Transfer out of the area of responsibility of a leadperson within primary must be approved by Jeff Jump. While witness Hadley testified that she was transferred to Sunday's area by leadperson Robert Thomas for 1 day, she would not have known whether this needed to be approved by Jump. There was no evidence presented that any challenged individual has the authority to lay off, recall, promote, or adjust grievances of employees.

Virtually all of the examples of disciplinary actions presented in the hearing involve Jeffrey Jump, the head of the department. All such documents involving discipline were signed by Jump. However, the signatures of Sunday and Kroll likewise appear on some of the disciplinary notices. Many of the notices involve Michael Anderson, an employee who worked in Sunday's area who received several warnings, a suspension and finally, termination.

Leadpersons and even other employees have continued over the past 2 years to report employees for infractions that may lead to discipline. For example, Sunday reported to Jeff Jump that Anderson had taken an overlong break after hearing reports of this from Don Boser, a setup man. This appears to have been the "last straw," resulting in Anderson's

discharge. In another instance, Sunday and Joe Schmelze, a nonsupervisor, complained of Anderson's verbally abusive outbursts. Jump issued a verbal warning to Anderson, and directed Sunday and Schmelze to sign it. The disciplinary action appears to have been clearly the decision of Jump. But it should be recalled that in the last proceeding, Sunday was referred to as the "breathalyzer monitor," whose reports of alcohol on the morning breaths of employees resulting in their being sent home. Thus, little seems to have changed in that regard.

When it came to the actual discharge of Anderson, Sunday professed surprise at the action taken. Not having been forewarned, Sunday had advised Anderson that he was probably being called to the office to discuss a "quality problem." Jump had the discharge letter prepared by Sue Henning, and the letter was then signed by Jump, Henning, and Sunday; the latter as "line foreman."

In still another incident involving Anderson, Jump suspended him for 2 days, again for his verbal abuse of Sunday and a confrontation with Jump. Sunday, Schmelze, Henning, and Jump signed the letter announcing the disciplinary action.

Regarding a 1-day suspension of Dennis Kuehl for a no-call, no-show incident, Kuehl's failure to report to work was reported to Sue Henning by Sunday. In Jeff Jump's absence, Michael Belmonte Sr. made the decision to discipline Kuehl. Sunday and Kroll were asked to sign the document announcing the suspension. Jump later signed the document also.

As to the assignment of overtime, the testimony reflects that overtime is nonmandatory and only production supervisors have the authority to authorize overtime. Leadpersons do not have such authority, notwithstanding the alleged comment by Joe Kroll to Kara Hadley that he would start requiring overtime if employees continued to refuse to volunteer for it. Leadpersons help to train employees, but so do setup persons and even experienced operators.

Employees formerly received formal evaluations twice a year, but now receive one following their probationary periods and thereafter, yearly around the time of their anniversary or hire dates. Production supervisors and leadpersons, including Sunday and Thomas,<sup>5</sup> fill out evaluation forms and discuss them with employees. They may make changes in the evaluation pursuant to these discussions. However, Jeffrey Jump and other production supervisors are ultimately responsible for the final reviews of the evaluations. Production supervisors, or in some cases a management committee, may approve wage increases; leadpersons have no such authority. While in one instance Kara Hadley complained to Thomas about the size of her wage increase, which complaint Thomas brought to the attention of Jeff Jump, it was Jump who ultimately investigated the situation and decided to increase the raise.

In another instance, Jeff Jump promoted Michael Anderson and awarded him a wage increase against the advice of Sunday and Schmelze, even though he agreed with Sunday's evaluation of and comments about Anderson.

<sup>4</sup>For simplicity, I may hereinafter refer to the challenged voters as leads or leadpersons, keeping in mind that the titles have little influence on my conclusions.

<sup>5</sup>It appears that Sunday and Thomas are willing to assist in the evaluations, whereas Kroll and Henningsen shun such duties. Ruskowsky assists in the evaluations of the two maintenance employees in his area.

A great deal of time was spent in discussing the actual authority vested in the leadpersons to fill out and approve absence reports and grant time off. It appears that Sunday and Ruskowsky routinely initial absentee reports for employees in their areas for reasons which include illness, vacation, personal time, and jury duty. Usually Jeff Jump or Mike Belmonte Sr. signs the report as well. Excused absences include approved vacations, jury duty and funeral leave, and certain medical situations with approval. As a rule, if there is a question as to whether an absence is to be excused or unexcused, the leadperson will defer to higher authority. Leadpersons may mark "excused" or "unexcused" on the form if independent judgment is not involved. The reports find their way to the office where they are reviewed by Henning. Henning will make sure that an employee has sufficient vacation accumulated to accommodate a request for example, or decide whether an absence is excused or unexcused. She then gives them to a department head for approval.

The Employer does not have strictly enforced attendance policy in terms of numbers of absences requiring discipline, but takes action when it appears that a problem is developing involving an employee. The absence reports are not in themselves used for the purpose of discipline, but are used to assist monitoring attendance. Absence forms are useful in keeping leads and supervisors informed for production purposes and to keep machinery manned and operating.

In a similar manner, the leads may initial timecards when employees forget to punch them or when the timeclock is malfunctioning, as examples. It appears, however, that the initialing is done merely to verify that the employees needing the initialing were, in fact, working during the period they claimed. A production supervisor must approve an employee's request to leave work early, or work through lunchbreak.

Since 1994, Sunday, Henningsen, and Thomas, formerly salaried employees, are now paid on an hourly basis. They now receive overtime pay as hourly employees. As before, the five contested individuals' benefits are the same as those of other nonsupervisory employees except for better disability pay. Five of the six highest paid employees below the stipulated supervisors include the disputed alleged supervisors.

As before, management meetings are held most weeks, attended by the stipulated supervisors and sometimes Uksas. The leads do not attend these meetings. They do attend quarterly production meetings, along with production supervisors, setup employees, and sometimes other employees. All employees, including the stipulated supervisors, currently have health insurance premium contributions deducted from their paychecks. Two years ago, the stipulated supervisors and the five challenged individuals did not have to make such payments.

Sunday testified without contradiction that he spends the vast majority of his workday on the floor with the machines, troubleshooting, setting up machines, assisting other employees, and even operating the machinery. He spends roughly 1/2 to 1 hour per month in paperwork or personnel functions described herein, such as verifying timecards, helping with evaluations, sitting in on employee counseling sessions or initialing timecards and other documents. Thomas testified that he spent 5 to 10 minutes a week on such functions.

## Conclusions

I conclude that the five challenged individuals, Joseph Kroll, Donald Henningsen, Gerald Ruskowsky, Jeffrey Sunday, and Robert Thomas Jr. are not statutory supervisors as defined in Section 2(11) of the Act. The record does not establish that any of these individuals exercise genuine authority with respect to any of the statutory indicia listed in that Section.

Hiring and firing authority are clearly vested with the stipulated supervisors. While leadpersons Sunday and Kroll have occasionally advised that an applicant was hired, creating a momentary impression of authority, this occurred only after Jeffrey Jump, the production supervisor, effectively made the decision. In the case of Karl Simonson, Sunday did not have the authority to deny him employment following the interview, but only could advise Jump if he detected anything warranting reconsideration. It appears that Kroll and Sunday, at the second interview of Greg Sobus, largely required as to whether he would accept employment at an already established wage rate and when he could begin. They did not make the decision to hire Sobus, or effectively recommend that he be hired.

There is no evidence of any effective disciplinary action taking place without the involvement and authorization of a stipulated supervisor. While Kroll and Sunday have been instructed to sign disciplinary notices, so have other nonsupervisory employees not in dispute. The record evidence persuaded me that the leadpersons and others sign these documents as witnesses rather than disciplinarians. The fact that the leadpersons sign above the title of "production supervisor," "line foreman," or other such nomenclatures appears to be form versus substance. Leadpersons were called supervisors prior to August 1994 as well. Moreover, there is no evidence to suggest that leadpersons have discharged, or effectively recommended that anyone be discharged.

In the 1994 DDE, the Regional Director determined that these challenged individuals directed and monitored the work force in a routine manner; the type of direction expected of more skilled and experienced workers. I find nothing in this record to disturb that finding. The vast majority of their workday is spent in producing parts rather than in personnel functions. The rates of pay of leadpersons are higher than those of most rank-and-file employees, but this is logically attributable to their greater longevity and expertise. Schmelze, an acknowledged nonsupervisor, earns more per hour than do Sunday and Thomas.<sup>6</sup>

Leadpersons have the opportunity to observe the work performance of employees on a daily basis. Thus, production supervisors commonly seek their input in employee evaluations. However, the ultimate authority to promote or reward an evaluated employee rests with the production supervisor. It appears the leadpersons sign attendance reports requesting time off primarily so that they may be kept apprised of the comings and goings of employees in their area who keep the machines running. The stipulated supervisors do not appear to have delegated their authority to approve time off.

<sup>6</sup>As mentioned above, there was no evidence presented which would suggest that the duties of Henningsen have changed during the past 2 years. Likewise, there was little or no change in the duties of Kroll, who signs disciplinary notices when ordered to do so.

The ratio of supervisor to employees has lessened somewhat due to the expanded work force, but the ratio still is hardly disproportionate, especially in view of the fact that the stipulated supervisors are commonly present on the shop floor. Moreover, it appears that Uksas, the stipulated night-shift supervisor, directly supervises more employees than anyone else. I, therefore, conclude that Kroll, Henningsen, Ruskowsky, Thomas, and Sunday are not supervisors within the meaning of the Act.

#### Recommendation<sup>7</sup>

Based on the foregoing, I recommend that the challenges to the ballots of Joseph Kroll, Gerald Ruskowsky, Donald Henningsen, Robert Thomas Jr., and Jeffrey Sunday be overruled, that their ballots be opened and counted, and a revised tally of ballots issue and appropriate certification issue.

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<sup>7</sup>Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, exceptions to this report must be received by the Board in Washington, D.C., by January 22, 1997. Immediately upon the filing of exceptions, the party filing same shall serve a copy with the Regional Director for Region 30. If no exceptions are filed, the Board will adopt the recommendation of the hearing officer.