

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

SCHAUS ROOFING & MECHANICAL
CONTRACTORS, INC.¹

Manitowoc, Wisconsin

Employer

and

Case 30-RD-1261

DOUGLAS J. STRAUSS, An Individual

Petitioner

and

SHEET METAL WORKERS INTERNATIONAL
ASSOCIATION, LOCAL NO. 18, AFL-CIO

Union

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 (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 affirmed.

¹The Employer's name appears as amended at the hearing.

²The Employer and Union filed timely briefs, which have been considered. Petitioner did not appear at the hearing, nor did he file a brief.

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 in this case.

3. The labor organization involved claims 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 purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time sheet metal workers including journeymen, state indentured sheet metal apprentices and sheet metal helpers employed by the employer at or out of its Manitowoc, Wisconsin facility, but excluding office clerical employees, sales employees, estimating employees, warehouse employees, roofing employees, auto mechanics, service technicians, managerial employees, guards, and supervisors as defined in the Act.

Background and Issues

The Employer, a Wisconsin corporation, is engaged in roofing and mechanical contracting including heating, air conditioning and refrigeration from its Manitowoc, Wisconsin facility. On May 23, 1997, the Board issued a Decision on Review and Order finding the above unit of sheet metal workers to be appropriate, *Schaus Roofing*, 323 NLRB No. 146 (1997). The Board rejected the Employer's contention that a broader unit, including pipe fitters and service technicians, was the appropriate unit. In the course of eighteen months of negotiations, which have yet to produce a collective bargaining agreement, the Union has consistently

opposed expanding the unit whenever the issue was raised. The parties stipulated that thirteen employees are appropriately included in the unit and eligible to vote in a representation election³.

As it did in 1997, the Employer challenges the status of two individuals: Charles King and Paul Loewenbein⁴. The Employer contends they should be included in the unit, inasmuch as their circumstances have changed from when the Board held they were excluded from the unit. In its brief, the Employer asserts, ". . .the work they currently perform brings them squarely within the defined bargaining unit." The Union argues these individuals should be excluded from the unit because their circumstances have not changed, their unit placement had not been challenged until the filing of this petition, and their duties do not involve sheet metal craft work.

Charles King

Charles King began working for the Employer in 1988, having previously worked for a competitor where he performed both pipe fitting and sheet metal work. King has no formal education in either pipe fitting or sheet metal work. At first, King worked mainly as a pipe fitter because of his experience, but later his duties expanded to include sheet metal work. For approximately

³Dan Loeh, Doug Strauss, Mike Chevela, Jon Gilbert, Steve Grant, Jerome Schultz, Marcus Bartelme, Kirk Shillcox, Brian Reed, David Klein, John Pelnar, Rick Gollata, and Chris Czekala.

⁴At the hearing, and in its brief, the Employer continues to challenge the correctness of a unit limited to the sheet metal craft. In its brief, the Employer argues that the record for the previous hearing was not fully developed. I need not deal with those issues in light of the Board's 1997 Decision and record in this case.

the past twelve months, King has primarily worked in the shop, at his own request. While in the shop, King mostly performs sheet metal work. He did not testify in this case.

In 1997, King was classified as a pipefitter/sheet metal employee. The Board, upholding the Acting Regional Director's determination to exclude King and four other similarly situated employees, found that the evidence was "insufficient to establish that the employer has so blurred the separate identity of sheet metal work and piping work as to preclude a separate sheet metal unit." *Schaus Roofing, slip op.* at 4. (citation omitted) A breakdown of King's hours shows that in 1997 he spent 1,594.25 hours doing heating work, and 248.50 in piping. In 1998, King worked 1,643.50 hours in heating, and 408 hours in piping. On a percentage basis, in 1997 King worked more hours in heating than he did in 1998 (78% versus 75%). So far in 1999, King has worked exclusively in heating.

Earlier this year, the Employer provided the Union a list of employees (Union Exh. 1). King is listed as a "Classified Worker," an employee category the Employer proposed in negotiations, but one the Union has resisted. Mike Schaus, the Employer's president, testified that a "Classified Worker" is someone who does not have adequate training or education to be a journeyman. Some of these individuals may reach journeyman status; others will not. King has never been in a sheet metal apprenticeship program. He does not layout duct work on the computer, but he can do some layouts by hand. In the past, he

has been a foreman on some mid-level jobs, requiring about two employees and lasting for a few days.

The evidence fails to establish that King performs an amount of sheet metal craft work sufficient to require his inclusion in this craft unit. In 1998, as a percentage of his working time, King spent less time in the heating department than he did in 1997 -- when the Board found he should not be included in the unit. Although he has recently spent more time in the shop fabricating materials, I do not find this work to be comparable to that performed by those included in the unit. Since the Board's 1997 decision, King has not received any additional sheet metal education or training. The Employer's designation of King as a "Classified Worker" is further acknowledgment that his skills are not appropriate for inclusion in the sheet metal craft unit.

Paul Loewenbein

Paul Loewenbein began working for the Employer on October 31, 1997, as a service technician. Loewenbein, and four other service technicians were excluded from the unit because the Board held that ". . .the evidence fails to establish that the service technicians in this case perform an amount of traditional skilled sheet metal craft work sufficient to require their inclusion in the craft unit." *Id.* He did not testify in this case.

In 1997, Loewenbein lost his driver's license as a consequence of some personal problems. Not wishing to lose a valuable employee, the Employer transferred Loewenbein to the heating department. In 1998, when Loewenbein was permitted to

drive again he briefly worked in the service department, but then transferred back to the heating department. In 1998, Lowenbein worked 1,548.25 hours in heating and 489.25 in service. So far, in 1999, he has worked 262.25 hours in heating, and 17.5 in service. The Employer classifies Loewenbein as "Sheet Metal Laborer/Service Technician."

Loewenbein has never been in a sheet metal apprenticeship program, cannot layout duct work on the computer or by hand, and doesn't fabricate sheet metal. When working on the job site, Loewenbein anchors equipment, makes low voltage connections, adds accessories to equipment that is to be installed, and performs the start up on the equipment. He also assists in hanging duct work, but does not hang duct work unsupervised.

Although Loewenbein has performed significantly more work in the heating department than when the Board found his duties as a service technician disqualified him from the unit, he actually continues to "perform only less skilled sheet metal work." The uncontradicted evidence demonstrates, for example, that this past summer he hung low pipe in a foundry, and assisted by holding pieces in place or by lifting them. He did not do any measuring and did not hang duct work by himself. Based on the entire record, I conclude that Loewenbein does not perform the type of work requiring the skills of the craft unit appropriate here.

Conclusion

Based on the record in this case, I conclude that the circumstances since the Board's May 23, 1997 Decision on Review and Order involving these parties have not sufficiently changed

to require the placement of either Charles King or Paul Loewenbein in the craft unit found appropriate. Neither Charles King nor Paul Loewenbein possesses the required skills or education required of the sheet metal craft and they do not perform the required craft work. Accordingly, they are excluded from the bargaining unit and are not eligible to vote in the election directed in this case.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among employees in the unit 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 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 **Sheet Metal Workers International Association, Local No. 18, 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 to 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*, 384 U.S 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994).

Accordingly, it is directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **three** copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before March 23, 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 this requirement.

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, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **March 30, 1999**.

Signed at Milwaukee, Wisconsin this 16th day of March, 1999.

Philip E. Bloedorn, Regional Director
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Thirtieth Region
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