

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 34

KLEPP WOOD FLOORING CORP.

Employer/Petitioner

and

DISTRICT COUNCIL OF NEW YORK CITY
& VICINITY, AFL-CIO

Union

Case No. 34-UC-115

DECISION AND ORDER

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, and pursuant to Section 3(b) of the Act, and Section 102.63(b) of the National Labor Relations Board's Rules and Regulations, the undersigned has caused an investigation to be conducted in this matter. In accordance with that investigation, the undersigned hereby finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
2. The Employer seeks to clarify the bargaining unit currently represented by the Union to specifically exclude Dean Klepp, Jr. The Employer asserts that, by filing for arbitration seeking benefit fund contributions for Dean Klepp, Jr., the Union is seeking to include Dean Klepp, Jr., in the bargaining unit. The Employer's position is that Dean Klepp, Jr. should be excluded from the unit based on his supervisory status under Section 2(11) of the Act. Although the Union moves for dismissal of the instant petition on grounds that the issue involving Dean Klepp, Jr., is a benefit fund issue and not a question of Klepp's supervisory status, the Union does not contest the Employer's claim that Klepp is a supervisor within the meaning of the Act.

The Employer is a contractor engaged in the installation of hard wood flooring in sports facilities. The Union has represented a unit of the Employer's employees since

1993. The bargaining unit is set forth in the most recent collective bargaining agreement as follows:

Carpenters, Carpenters Apprentices, Hod Hoist Carpenters, Joiners, Millwrights, Pile Drivers, Dockbuilders, Divers, Cabinet Makers, Bench Hands, Stair Builders, Millmen, Wood and Resilient Floor Layers and Finishers, Carpet layers, Shinglers, Siders, Insulators, Acoustic and Dry Wall Applicators, Casket and Coffin makers, and all those engaged in the operation of wood-working or other machinery required in the fashioning, milling or manufacturing of products used in the trade, or engaged as helpers to any of the above-divisions or sub-divisions, and the handling, erecting and installing material on any of the above divisions or sub-divisions consistent with the Constitution and Laws of the United Brotherhood of Carpenters and Joiners of America and the burning, welding, rigging, and the use of any and all instruments or tools for layout work, incidental to the trade.

The investigation revealed that Dean Klepp, Jr. is a partial owner and officer of the Employer who has not been included in the bargaining unit. He has also been employed by the Employer in the position of “Supervisor” for the past 10 years. In this capacity, Klepp has the authority to assign work, transfer employees from job site to job site, and to discipline and/or suspend individuals for infractions of Employer policies. The investigation further reveals that Klepp does not regularly perform unit work, and only performs such work on an occasional basis. ¹

Based on his authority as described above, I find that Dean Klepp, Jr., is a supervisor within the meaning of Section 2(11) of the Act, who should be excluded from the bargaining unit. *Custom Bronze Aluminum Corp.*, 197 NLRB 397 (1972).

ORDER ²

¹ As previously indicated, based upon his recent performance of bargaining unit work, the Union has filed for arbitration seeking benefit fund contributions pursuant to Article XV, Section 14 of the parties’ collective-bargaining agreement which provides: “Should any dispute or disagreement arise between the parties hereto, or between the Union and any Employer signatory hereto, concerning any claim arising from payments to the Fund of principal and/or interest which is allegedly due, either party may seek arbitration of the dispute before the impartial arbitrator...”

² This Decision and Order does not address the question of whether the Employer is contractually obligated to pay benefit fund contributions for Dean Klepp, Jr.

It is hereby ordered that the collective bargaining unit under consideration herein be, and it hereby is, clarified to exclude the position of Dean Klepp, Jr.

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, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by July 22, 1999.

Dated at Hartford, Connecticut this 8th day of July, 1999.

/s/ Peter B. Hoffman
Peter B. Hoffman, Regional Director
Region 34
National Labor Relations Board

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