

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

NEW PANDROL INCORPORATED AND  
PANDROL INVESTMENTS LLC, d/b/a PANDROL, USA, L.P.<sup>1</sup>

Employer

and

Case 4-RC-19675

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION,  
LOCAL NO. 19, AFL-CIO<sup>2</sup>

Petitioner

**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; hereinafter referred to as the 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, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
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 herein.
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 Employer is engaged in the manufacture and sale of railway track fasteners and related products at its Bridgeport, New Jersey plant. The Petitioner seeks to represent the Employer's full-time<sup>3</sup> production

---

<sup>1</sup> The name of the Employer appears as corrected.

<sup>2</sup> The name of the Petitioner appears as amended at the hearing.

<sup>3</sup> The Employer does not employ any part-time employees in any classifications at issue in this case.

employees which include approximately 28 to 31 manufacturing laborers,<sup>4</sup> four quality control inspectors and three material handlers. The Employer contends that the petitioned-for unit is inappropriate because it does not include the Employer's seven maintenance employees, namely, four machinist-die setters, two maintenance mechanics, and one machinist. The Petitioner, on the other hand, contends that the maintenance employees do not share a community of interest with production employees and should not be included in a unit with them.<sup>5</sup> The Employer's production and maintenance employees are unrepresented and there is no history of collective bargaining.<sup>6</sup> The parties stipulated that sales employees, office clericals, Production Supervisor Richard Rhoad, Quality Control Supervisor Larry Killington, Maintenance Supervisor Mike Link, Quality Assurance Manager George Langley, Vice President of Engineering Mark Alt, General Manager Marlin Gerber, Assistant Plant Manager Tom Broccoli, President John Shoemaker, and Safety Engineer Anna Radich, should be excluded from the unit. The Petitioner is willing to go to an election in any unit found appropriate.

There are three production lines on the floor of the Employer's plant. Two lines manufacture clips and one line manufactures lock spikes. Also, there are "offline" operations. Material handlers on the clip and lock spike lines unload incoming raw material, stock the material for shearing, and remove scrap generated around the machines. They move bins, weigh product, place finished product in storage, assemble orders for shipping, load product onto trucks or rail cars for shipment, and identify and properly record product for the Employer.

At the front of each clip line, the two manufacturing laborers use machines to heat, size and form the clips. The laborers take formed clips and put them into the quench tank to start the heat-treating process. The clips go through a tempered furnace and come out the back end on a conveyor. At that end are two other manufacturing laborers who place the products in bags and palletize them. Quality control inspectors check pieces on the line to assure that the product is within specifications. If the quality control inspector discovers that tolerance has been lost on a clip, a machinist-die setter is called to make adjustments until the clip is brought back into tolerance. The machinist die setters or quality control inspectors may test several pieces on the line to check for tolerance levels. After the product is brought back into tolerance, the quality control inspector approves continued production and the workers on the line resume producing clips.

On the lock spike line, manufacturing laborers load coils to start the operation, and process them through a shear to cut them to blank length. The coils are then fed through an induction heater to achieve forging temperature, after which they are automatically fed into a press. The press automatically cycles and the product is then conveyed into a quench tank. The manufacturing laborer on the line removes any jams or coils, moves container of product, and bags spikes.

In addition to the production lines described above, the Employer also has "offline operations," in which manufacturing laborers make weld-ons by shearing blanks to lengths and cold forming them. After cold forming, the laborers bag the weld-ons, identify them properly and record the information. Manufacturing laborers also engage in milling on self-aligning plates, and bag other miscellaneous items in offline work.

Quality control inspectors conduct a series of measurements and tests on the Employer's products before and after they are heat-treated, looking for defects. At least 75 percent of a quality control inspector's day is spent

---

<sup>4</sup> Three manufacturing laborers are currently not on the Employer's payroll and are the subject of pending Section 8(a)(1) and (3) unfair labor practice charges. Jason Miller is the subject of Case 4-CA-27504-2, and Debbie Hiner and John Fithian are the subject of Case 4-CA-28154.

<sup>5</sup> At the hearing, Petitioner also contended that maintenance employees should be excluded because they are supervisors. However, Petitioner made no such contention in its brief. Accordingly, I do not address this contention in this Decision.

<sup>6</sup> On May 7, 1998, in Case 4-RC-19375, the Board conducted a representation election in a unit of production and maintenance employees pursuant to a stipulated election agreement. The petitioner in that case, Teamsters Local 676, lost the election and the Regional Director thereafter certified the results of the election.

on the floor making adjustments and corrections, which requires interaction with production laborers, machinist die setters and maintenance mechanics. Twenty-five percent of their day is spent in an area of the plant, adjacent to the maintenance shop, which encompasses about 1,000 square feet. About 500 to 600 square feet of this area is enclosed, while the remainder is open. The equipment used by the quality control inspectors is located in this area of the plant.

The four machinist die setters respond to determinations by the quality inspectors that products are out of tolerance. To correct the problem, they examine the tooling that forms the product. Also, they make adjustments, sharpen tools, install new tools, change the sizes of the tools, replace air hoses and repair conveyor chains.

If there is a problem with the equipment on the lines, a maintenance mechanic is called to come to the line to repair or adjust the equipment. Maintenance mechanics repair electronic instruments and electric motors, controls for gas burners, and tempering furnaces, hydraulic pumps, valves and hoses and pneumatic equipment. The Employer currently employs a maintenance mechanic I and a maintenance mechanic II, with the former being the more skilled employee who troubleshoots and repairs all the electronic equipment in the plant.

The sole machinist at the plant makes the tools and spare parts which are used on the production floor. If a part on a machine breaks, the machinist may make replacement parts. The machinist makes the tooling used to form clips, spikes or weld-ons. The machinist sharpens dull tools. If there are major problems with equipment on the floor, the machinist comes to the floor and works on them. The machinist spends about 90 percent of his time in the maintenance shop, and the remaining 10 percent on the production floor.

The plant covers 72,000 to 75,000 square feet. The maintenance shop is an enclosed area of approximately 3,200 square feet. In the maintenance shop are milling machines, lathes, grinders, saws, workbenches, die sets, spare parts and spare tooling. One-half of the maintenance shop is a mezzanine that has a storage area for extra tools, dies and machine parts. There is a break area in the mezzanine where maintenance employees often take their breaks rather than using the break room on the production floor used by production employees.

The Employer's General Manager estimated that maintenance employees, except the machinist, spend at least 75 percent of their time on the production floor and 25 percent of their time in the maintenance shop doing repairs. Several manufacturing laborers denied that maintenance employees spend this much time on the floor. They testified, however, that their machines broke down and required intervention by a maintenance employee from ten to fifteen times per week or at least once every other day. When a machine breaks down, the laborer flicks a switch on the control panel of his machine signaling a yellow light for a maintenance mechanic or a red light for a machinist-die setter. A buzzer then goes off and a light comes on in the maintenance shop summoning the relevant employee from the maintenance shop to the affected machine. If the maintenance employee informs the manufacturing laborer that the machine can be fixed in five or ten minutes, the laborer will remain at the machine. If the repair is likely to take more than this amount of time, the maintenance employee or a supervisor will direct the laborer to perform other jobs in the interim. When the repair is complete, the maintenance employee flicks a buzzer which signals that the line is back up and the laborer can return to the press.

Production employees go into the maintenance shop if they need a tool such as tongs to be fixed or taped, or if they need some other repair to be done by a maintenance employee. However, manufacturing laborers must receive permission from their supervisors to leave their machines to enter into the maintenance shop.

Production employees lack the skill to perform maintenance work, and generally do not do so. There is conflicting record evidence on whether maintenance employees perform production work such as bagging products, running production or relieving manufacturing laborers on break. The Employer's General Manager testified that they do so, while several manufacturing laborers testified that they have never observed maintenance employees performing these tasks. Manufacturing laborers testified that they occasionally hand tools to maintenance employees, unjamb lines for them and run samples of product for them to examine, and that maintenance employees may run production themselves to obtain limited samples for analysis. Also on Saturdays, the Employer regularly has a repair and preventive maintenance day. On these days, maintenance mechanics, the machinist and machinist-die setters repair or maintain the Employer's equipment. Three or four additional employees from among laborers, material handlers or quality control inspectors work on these days to provide a second pair of hands to assist with lifting or cleaning.

The Employer has two shifts at its plant, a morning shift, which runs from 6:00 a.m. to 3:00 p.m. for maintenance employees and from 6:30 a.m. to 3:00 p.m. for production employees, and an afternoon shift which runs from 2:30 p.m. to 11:30 p.m. for maintenance employees and 3:00 p.m. to 11:30 p.m. for production employees. Employees generally work Monday through Friday and some Saturdays as described above. Employees rotate among the two shifts except for the material handlers and machinist who do not work second shift, and some employees who choose to work only on the second shift.

On the first shift, Production Supervisor Richard Rhoad supervises manufacturing laborers and material handlers. He also has authority to discipline maintenance employees when they are working in production areas.<sup>7</sup> When the maintenance supervisor is absent, Rhoad sets priorities for maintenance employees. Any maintenance question of a technical manner is directed to the Assistant Plant Manager. Production Supervisor Rhoad holds a production meeting in the break room of the Employer's facility for manufacturing laborers and occasionally quality control employees almost every day. Material handlers and maintenance employees do not attend this meeting.

Larry Kildington is the Quality Control Supervisor on day shift, and Mike Link is the Maintenance Supervisor on day shift. Link has authority to supervise anyone in the plant and substitutes for absent supervisors. Also, Link acts as the supervisor over all employees working on Saturdays doing preventive maintenance and repair work. The manufacturing laborers who testified at the hearing generally confirmed Link's authority over them. Tom McMenemey is the only supervisor on the afternoon shift. According to the Employer, he supervises the manufacturing laborers, quality control inspectors, machinist-die setters and maintenance mechanics who work on that shift. However, as previously stated, manufacturing laborers testified generally that McMenemey has no authority to discipline maintenance employees. Further, as described below, maintenance employees on second shift can work overtime without securing McMenemey's approval.

Rhoad, Link, and McMenemey report to Tom Broccoli, Assistant Plant Manager. Broccoli reports to Marlin Gerber, General Manager. Kildington reports to Quality Assurance Manager George Langley. Langley reports to Vice President of Engineering, Mark Alt, who reports to President John Shoemaker. Broccoli, and sometimes Gerber approve overtime on first shift. On second shift if there is a breakdown of a machine and overtime is required, maintenance mechanics or the machinist-die setters work overtime without obtaining McMenemey's approval. Broccoli and/or the Production Supervisors are responsible for scheduling production employees, and a schedule is posted at the plant for them every two weeks. Maintenance employees do not have a posted written schedule. Due to their paucity, they are given their schedule verbally by Link, who also schedules their vacations.

With respect to wages, manufacturing laborers earn from \$10.95 to \$13.68 per hour, quality control inspectors earn from \$13.92 to \$15.37 per hour, material handlers earn from \$13.92 to \$15.37 per hour, machinist-die setters earn from \$15.71 to \$18.82 per hour, the maintenance mechanic II earns from \$16.30 to \$19.53 per hour, the maintenance mechanic I earns from \$19.67 to \$21.47 per hour, and the machinist earns from \$16.89 to \$21.05 per hour.

Both production and maintenance employees are hourly paid, punch the same time clock and are listed on a common seniority list. There is a total budget related to the product line rather than separate production and maintenance budgets. All employees receive the same benefits which include health insurance and life insurance, holidays, vacations, uniforms, 401(k) plan, pension plan, long term disability plan, a bonus program, Christmas luncheon, safety shoes and a savings bond program. The uniforms, which the Employer provides to all employees including Supervisors Link, McMenemey and Rhoad, are pants and a shirt with the employee's first name on the shirt pocket. They are all blue except for Link's uniform, which is brown. An employee breakroom is available for use by all employees. However, maintenance employees rarely use it. There are also picnic tables outside for use in warm weather, which are used by production and maintenance employees. All employees use the same bathroom

---

<sup>7</sup> Manufacturing laborer Larry Mays testified that Rhoad and afternoon shift Supervisor Tom McMenemey told him that neither Rhoad nor McMenemey had authority to discipline maintenance employees.

facilities on the production floor. With respect to parking, all employees may park in the Employer's lot. There are several spaces adjacent to the maintenance shop area of the Employer's facility, which are used solely by maintenance employees. All employees are subject to the same disciplinary procedure and probationary period.

There are no educational requirements or specialized technical training required for any of the production or maintenance employees. There are skill requirements for the maintenance mechanics, the machinist and the machinist-die setter. Maintenance mechanics must have electrical experience, instrumentation experience, knowledge of hydraulic lifts and knowledge of mechanical repairs. Machinists must be able to construct parts and tools for blueprint or samples, and possess the knowledge to operate the equipment. The machinist-die setter must have knowledge of lathes, milling machines and grinders. All employees receive on the job training and the record reflects that on several occasions the Employer has paid for the outside training of maintenance employee.

There is no record evidence that any maintenance employee has ever transferred to a production position, and the parties stipulated that since 1989, no production employee has been transferred to, or promoted into, the positions of machinist-die setter, maintenance mechanic or machinist. Production employees do not have the requisite skills to substitute for maintenance employees, and accordingly do not perform their work.

Generally, an overall production and maintenance unit is more appropriate than separate units of these employees, *Kirstein Leather Co., Inc.*, 100 NLRB 1469 (1952). However, it is well settled that a petitioner need not seek the most appropriate unit in petitioning for an election. *Morand Bros. Beverage*, 91 NLRB 409, 418 (1950), *enfd.* on other grounds 196 F. 2d 576 (7th Cir. 1951). As the Board held in *Overnite Transportation*, 322 NLRB 723 (1996) [*Overnite I*], a union may obtain an election for a group of employees which constitute an appropriate unit even if the most appropriate or optimum unit would contain this group of employees and others. As the Board stated "A union is ... not required to request representation in the most comprehensive ... unit of employees unless an appropriate unit not compatible with the requested unit does not exist." *Id.*

In addition, the Board has carved out maintenance employee units and excluded production employees from them where the facts demonstrate a separate, distinct, and cohesive group of maintenance employees. *Ore-Ida Foods*, 313 NLRB 1016, 1019 (1994), *enfd.* 66 F. 3d 328 (7th Cir. 1995); *Skyline Distributors*, 319 NLRB 270, n. 2 (1995) *enfd.* on other grounds 99 F.3d 403 (D.C. Cir. 1996); *Phillips Products Co.*, 234 NLRB 323 (1978). In determining whether a group of employees constitutes an appropriate unit, the Board examines mutuality of interests in wages, hours and other working conditions, common supervision, degree of skill and common functions, frequency of contact and interchange with other employees and functional integration. *Id.* In addition, the Board considers whether the Union seeks representation in an appropriate unit. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988).

In the instant case, the petitioned-for production employees perform the lowest skilled, lowest paid work for the Employer and do not possess the requisite skills to perform the work of the maintenance employees. They work fewer hours than maintenance employees, perform different jobs from the maintenance employees, do not generally interact with maintenance employees in the breakroom, have limited interaction with maintenance employees when maintenance employees are summoned to repair their machines, are unable to make their own overtime decisions without prior supervisory approval on second shift, and are supervised and scheduled separately from maintenance employees by the Production Supervisor. Further, there is no history of collective bargaining on a broader basis and the Petitioner is not seeking to represent the maintenance employees. Assuming *arguendo* that the General Manager correctly testified that maintenance employees occasionally relieve production employees, it is clear that maintenance employees spend the major portion of their time performing maintenance duties. Such minor interchange does not destroy the homogeneity of the production employee unit. *Heublein, Inc.*, 119 NLRB 1337, 1339 (1958); *Lily-Tulip Cup Corp.*, 177 NLRB 71, 72 (1969); *Overnite Transportation Company*, 325 NLRB No. 113, slip. op. at 1 (1998) [*Overnite II*]. I recognize that both production and maintenance employees receive the same fringe benefits, punch the same time clock and are subject to the same disciplinary procedure. While these facts would support inclusion of both groups in one unit, they fail to establish that the requested production unit is not an appropriate unit by itself. *Omni-Duffey Hotels, Inc.*, 283 NLRB 475, 476 (1987). Based on the foregoing, the record as a whole and careful review of the arguments presented, I find that the production employees constitute a distinct, separate and cohesive group of employees and the community of interest factors set forth above are not so substantial as to require the inclusion of maintenance employees in the petitioned-for production unit. Accordingly,

I find that the petitioned-for production employees unit is appropriate for collective bargaining. *Overnite I, Overnite II, supra.*

Based on the foregoing, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time production employees including manufacturing laborers, quality control inspectors, and material handlers employed by the Employer at its 501 Sharpstown Road, Bridgeport, New Jersey facility, excluding sales employees, office clerical employees, maintenance mechanics, machinist-die setters, machinists, guards and supervisors as defined in the Act.

## **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently,<sup>8</sup> 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. 19, 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*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the **full** names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be clearly legible, and computer-generated lists should be printed in at least 12-point type. In order to be timely filed, such list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **July 16, 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 the requirement here imposed.

---

<sup>8</sup> Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

## **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., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **July 23, 1999**.

Dated July 9, 1999

at Philadelphia, PA

/s/ John D. Breese

**JOHN D. BREESE**

Acting Regional Director, Region Four

440-1760-0580

*jmd: H:\R04COM\DECISWR\ND0419675.RTF*