

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

Bainbridge, Ohio

PROGRESSIVE WELDING & ENGINEERING, INC.

Employer

and

PLUMBERS & PIPEFITTERS UNION, LOCAL
UNION 189, AFL-CIO

Petitioner

Case 9-RC-17207

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 1/ 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 following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 2/

All multicraft employees employed by the Employer who work at or out of its Bainbridge, Ohio facility, excluding all office clerical employees, and all 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, 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 **Plumbers & Pipefitters Union, Local Union 189, AFL-CIO**.

LIST OF ELIGIBLE VOTERS

In order to insure 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 using full names, not initials, and their addresses which may be used to communicate with them.

Excelsior Underwear, Inc., 156 NLRB 1236 (1966); **N.L.R.B. v. Wyman-Gordon Company**, 394 U.S. 759 (1969); **North Macon Health Care Facility**, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 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. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **March 3, 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.

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, D.C. 20570. This request must be received by the Board in Washington by **March 10, 1999**.

Dated February 24, 1999

at Cincinnati, Ohio

/s/ Richard L. Ahearn
Richard L. Ahearn, Regional Director, Region 9

1/ Both parties have timely filed briefs, which I have duly considered in reaching my decision.

2/ The Employer, a corporation, is an industrial mechanical contractor with its principal offices located in Bainbridge, Ohio. Although the Employer was apparently at one time party to a project agreement with a local of the Boilermakers Union, none of its approximately 18 or 19 multicraft employees are currently covered by a collective-bargaining contract.

The Petitioner seeks to represent essentially a unit comprising of all full-time and regular part-time plumbers and pipefitters employed by the Employer at and out of its Bainbridge, Ohio facility, excluding all office clerical employees, all other employees and all guards and supervisors as defined in the Act. The record discloses that the Employer has a stable workforce consisting of approximately 18 or 19 multicraft employees. The Petitioner would include in the unit it seeks to represent approximately 14 or 15 employees who it maintains perform essentially plumbing and pipefitting work and constitute a “craft” group. The Petitioner would exclude the remaining “core” employees from the unit for various reasons. At the hearing, the Petitioner maintained that Richard Anders and Robert Kennedy do not work on a sufficiently regular basis to warrant their inclusion in the unit but at the end of the hearing the Petitioner altered its position, to conform with the record testimony, and conceded that Anders and Kennedy were regularly employed by the Employer. The Petitioner, nevertheless, would exclude Anders and Kennedy; along with Dale Skaggs and Alonzo Shanks; from the unit on the ground that they are employed as millwrights rather than as plumbers and pipefitters. In addition, the Petitioner would exclude Paul Houser from the unit on the basis that he is a boilermaker or a supervisor within the meaning of Section 2(11) of the Act. On the other hand, the Employer contends that all of its employees perform any tasks assigned and that any appropriate unit must include all of its full-time and regular part-time (referred to by the Employer as full-time/part-time) employees. Moreover, the Employer maintains that Houser does not possess any indicia of supervisory authority which would warrant excluding him from the unit. Contrary to the Petitioner, the Employer would also exclude Michael Canes (Cains) from the unit apparently on the ground that he is, at best, an irregular part-time employee who does not share a sufficient community of interest with the other employees to warrant his inclusion in the unit. Finally, the Petitioner agreed to proceed to an election in any unit found appropriate.

The Employer performs multicraft mechanical or maintenance repair work for a number of industrial customers. For the last 5 years, however, approximately 90 percent of the Employer’s work has been for Mead Paper at its Chillicothe, Ohio plant. The Employer obtains work from Mead either through competitive bids or occasionally by direct assignment. It appears that a substantial amount of the work performed by the Employer for Mead, as well as for other customers, is during scheduled shutdowns by the contracting employer. However, the Employer may perform specific jobs while the contracting employer is fully operational.

The owner and president, Steve Houseman, along with stipulated supervisor John Bechie, is primarily responsible for the day-to-day operations of the Employer. Moreover, Houseman

and Bechie are ultimately responsible for all hiring, discharging or disciplining of employees and for all other major employment decisions. However, the record discloses that the Employer operates very informally and employees may leave work early if they complete a job without any prior approval. In addition, Houser or another of the senior employees may be given oversight at specific jobs to make sure assigned work is performed to the satisfaction of the customer. However, as discussed in more detail later in the decision, neither Houser nor any other employee assigned to oversee specific jobs possesses or independently exercises supervisory indicia within the meaning of Section 2(11) of the Act.

The jobs performed by the Employer consist primarily of maintenance and repair work on various equipment owned by the contracting employers. The Employer will change or repair piping, pumps, valves, motors, winders and other parts on various equipment, including on occasion certain boilers (referred to by the Employer as vessels). In performing this work, the Employer also is responsible, on most jobs, for calibrating and setting the equipment to meet certain predetermined specifications. The record discloses that in the construction industry changing pumps, valves and piping and making related repairs are generally referred to as plumbing and pipefitting work. In the industry, the calibrating and setting of machinery and equipment are classified as millwright work while boiler (vessel) repairs and maintenance are normally performed by boilermakers. In addition, the record discloses that the Employer on rare occasions does various iron work and has even performed painting. In performing plumbing and pipefitting work, employees are required to use pipe wrenches and related tools as well as various welding equipment. Employees performing millwright work use vernier calipers, dial calipers, micrometers, feeler gauges and optical laser alignment equipment. It is not clear from the record whether any specialized equipment is needed in performing boiler (vessel) work.

The record discloses that all of the Employer's multicraft employees are capable of performing, and are assigned to perform, plumbing and pipefitting and millwright work. Although a number of employees also perform boiler (vessel) repairs and maintenance, it appears that some employees perform little, if any, of this work. However, the reason that fewer employees have been assigned to boiler (vessel) repairs appears to be the result of the fact that boiler (vessel) jobs constitute a small portion of the Employer's work rather than for any craft reasons or specific skills possessed by employees.

The record discloses that over the past several years most employees have performed almost an equal amount of plumbing and pipefitting and millwright work, including the four employees, Anders, Kennedy, Shanks and Skaggs, whom the Petitioner would exclude from its "plumbing and pipefitting craft unit" as millwrights. For example, Anders, Kennedy and Skaggs have performed almost an equal amount of pipefitting and plumbing and millwright work while Skaggs has performed, by the Employer's account, approximately 50 percent plumbing and pipefitting, 40 percent boiler (vessel) and only 10 percent millwright work. In addition, the record discloses that Houser, whom the Petitioner would exclude from the unit as a boilermaker, has divided his work, during the past several years, almost equally between plumbing and pipefitting and millwright assignments and has not performed any typical boilermaker duties. On the other hand, Kenneth Stanley and Howard Collier, whom the Petitioner would include in the "plumbing and pipefitting unit," have spent during the past year approximately 30 to 40

percent of their time performing boiler (vessel) repairs with the remainder of their work being divided between plumbing and pipefitting and millwright type assignments.

It is also clear that the Employer assigns employees to jobs as needed rather than based on any perceived craft skills. Although employees upon being assigned to a project may tend to perform either plumbing and pipefitting or millwright work, there is no evidence that the Employer attempts to divide assignments along craft lines. Moreover, the record discloses that some jobs are predominantly plumbing and pipefitting while others may consist almost entirely of millwright work. In addition, the type of work on specific projects apparently vary from day-to-day and the employees assigned to the jobs perform all necessary work. Indeed, on the day of the hearing, all employees assigned to the Mead job, including those whom the Petitioner would include in its “plumbing and pipefitting unit,” were performing exclusively millwright work. Most employees are also qualified to use the various tools associated with the plumbing and pipefitting and the millwright trades. For example, the employees whom the Petitioner would exclude from the unit as millwrights or boilermakers use welding and other plumbing and pipefitting equipment and tools. On the other hand, most of the employees whom the Petitioner maintains are plumbers and pipefitters are qualified to use millwright tools, including the laser alignment equipment. Ironically, the record indicates that Skaggs, whom the Petitioner would exclude from the unit as a millwright, is one of the employees not yet trained or qualified to use the laser equipment. Although some employees may carry more plumbing and pipefitting tools while others may have more millwright equipment, all employees have access to any tools necessary to complete the job to which they are assigned.

Although the Employer is required, by business considerations, to lay off employees from time to time, including Houser who is currently on a voluntary layoff, it appears that the 18 employees listed on the Employer’s Exhibit No. 1 constitute a regular and stable workforce and neither party contends that any of these employees are ineligible to vote on the ground that they work insufficient hours to have an interest in employees’ terms and conditions of employment. The only exception is Michael Canes (Cains), who is not listed on Exhibit No. 1 and is discussed in more detail later in this decision, whom the Employer, contrary to the Petitioner, would exclude from the unit as an irregular part-time employee. The employees for the most part work 10 hours per day, Monday through Thursday; however, on certain jobs they may work a 12-hour shift. All employees are hourly paid and receive approximately \$15.50 per hour, except for Houser who earns an additional \$3 or \$4 per hour, apparently due to his longevity with the Employer and overall experience. All employees receive overtime pay for work in excess of 40 hours per week and are entitled to the same fringe benefits. However, some employees have declined to participate in the Employer’s health insurance program.

The Employer does not have any formal apprenticeship programs and the only training it provides employees is on the job by having them assist or observe more senior employees. The Employer does not require employees to be certified or licensed in any particular trade. Indeed, Shanks was a certified millwright when he worked for Fluor Daniels before being hired by the Employer. However, Shanks has allowed his certification to lapse because “it is not needed to work for the Employer.” Although employees may refer to each other as pipefitters or millwrights, it is clear that this is merely the way employees address each other and is not the result of being assigned to a specific classification by the Employer. Thus, the Employer makes

no effort to segregate its employees into different crafts for workers' compensation and other employment records. Finally, the record discloses that over the past several years the Employer has performed two or three small prevailing wage jobs, including one during the past year, at Ohio State University. The Employer is required to classify employees when working on prevailing wage jobs, and at the Ohio State project it appears the Employer classified all employees as boilermakers when they were assigned to do boiler (vessel) repairs or installation and as plumbers and pipefitters when performing piping or related work. There was apparently no millwright work on the Ohio State job or, at least, the Employer did not classify any employees as millwrights. In classifying employees, the Employer designated all of them as boilermakers or pipefitters depending on the work being performed rather than based on any craft or trade skills possessed by the employees.

As the Petitioner correctly observes in its brief, the Board will find that a distinct "craft group" in the construction industry may constitute a separate appropriate unit for the purposes of collective bargaining. *E.I. DuPont & Co.*, 162 NLRB 413 (1966); *The Plumbing Contractors Association of Baltimore, Maryland, Inc., et al.*, 93 NLRB 1081 (1951) (cited by the Petitioner at the hearing in support of its position). With respect to the appropriateness of a bargaining unit in the construction industry, as in all other settings, the Board determines whether the requested unit is appropriate based on the community of interest among the employees. *Johnson's Controls, Inc.*, 322 NLRB 669 (1996), citing *Dezcon, Inc.*, 295 NLRB 109 (1989). In determining whether a craft unit is appropriate, the Board applies the following general rule which it succinctly described in *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994):

In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits and cross training.

I have carefully considered the factors set forth by the Board in *Burns & Roe Services Corp.*, supra, in reaching my finding that a craft unit limited to the Employer's plumbers and pipefitters is not appropriate in this case.

Contrary to the Petitioner's position at the hearing and in its brief, it is clear from the record that the Employer's employees who perform plumbing and pipefitting work do not constitute a clearly identifiable and functionally distinct craft group with common interests that distinguishes them from the Employer's other employees. *Johnson's Controls*, supra; *Burns & Roe Services Corp.*, supra. Rather, the record discloses that the Employer assigns its employees, including those whom the Petitioner would exclude as millwrights or boilermakers, according to need. All employees perform the same duties for substantial periods and all work is functionally integrated. Indeed, the record discloses that most employees whom the Petitioner would exclude

from its “plumbing and pipefitting craft unit” spend approximately 50 percent of their time performing plumbing and pipefitting work. Moreover, the one employee the Petitioner would exclude as a boilermaker has not spent any of his time in recent years performing boilermaker work. Rather, the employee spends his entire time performing plumbing and pipefitting or millwright assignments. Moreover, the Employer does not have any formal training or apprenticeship programs and employees’ skills have been developed on the job where they perform overlapping duties. Finally, all employees share the same supervision and receive similar wages, benefits and cross training. Accordingly, it is clear that no separate craft lines exist in the Employer’s operation or, alternatively, the craft lines are so blurred as to preclude a finding that a craft unit of the Employer’s “plumbers and pipefitters” is appropriate for the purposes of collective bargaining. *Longcrier Co.*, 277 NLRB 570 (1985).

The primary case relied on by the Petitioner in support of its position at the hearing and in its brief, *Schaus Roofing and Mechanical Contractors, Inc.*, 323 NLRB 781 (1997), is clearly distinguishable. In *Schaus*, the employer participated in an apprenticeship program for the sheet metal workers which were found to constitute an appropriate craft unit. Moreover, a number of the employees in the sheet metal craft were journeymen who were assigned work based on availability and skills. Indeed, in *Schaus*, sheet metal workers were assigned to perform skilled air system designs, fabrication, installation and balancing work and the skill liquid systems work was assigned to pipefitters. Accordingly, in *Schaus* the employer assigned skilled work along separate craft lines. Here, the Employer does not participate in any apprenticeship program and employees are assigned to perform work as needed rather than by job classification or along craft lines. *Longcrier Co.*, supra; *Burns & Roe Services Corp.*, supra at 1308 n. 9. Succinctly, every factor alluded to by the Board in *Burns & Roe Services Corp.*, supra, which militates against finding a separate craft unit appropriate exists in the subject case. Thus, the Employer here does not have a formal training or apprenticeship program, the work of all employees is functionally integrated, the duties of all employees overlap, employees are assigned work according to need rather than along craft or jurisdictional lines and all employees share common interests, including wages, benefits and cross training. *Burns & Roe Services Corp.*, supra at 1308.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the only appropriate unit must include all of the Employer’s multicraft employees who work at and out of its Bainbridge, Ohio facility. *Longcrier Co.*, supra; *Burns & Roe Services Corp.*, supra. Accordingly, I shall direct an election among the employees in such unit.

PAUL E. HOUSER:

Although Houser is currently on a voluntary layoff, this does not appear to be unusual; indeed, the record shows, and I find, that he is a regular part-time employee who has an expectancy of further employment in the foreseeable future. The Petitioner, as previously noted, would exclude Houser from the unit as a boilermaker or supervisor within the meaning of Section 2(11) of the Act. Contrary to the position of the Petitioner, I have found its contention that Houser should be excluded from the unit as a boilermaker to be without merit. Thus, I must now determine whether Houser is a supervisor within the meaning of Section 2(11) of the Act.

The record discloses that Houser has worked for the Employer for many years and is a personal friend of the Employer's president. On occasions, Houser is assigned to "oversee or supervise" jobs, particularly where the projects are being performed at night. However, the record discloses that other senior employees are occasionally assigned to oversee work on certain jobs. In "supervising" work, Houser is responsible for serving as a liaison with the contracting employer and for assuring that work assigned by the Employer's management officials or the contracting employer is performed as scheduled. Houser may instruct employees as to the order in which work is to be done and may move employees to different tasks to make sure the work is completed as scheduled. However, employees are assigned to the projects by the Employer's management officials and Houser, apparently working along with such employees, merely makes sure the work is completed in a satisfactory manner. In this capacity, Houser functions more as an experienced leadperson who is required to exercise only routine judgment in the performance of his duties.

Houser does not have the authority to hire, discharge or discipline employees. Moreover, it is clear that employees do not view him as an individual who can affect their employment and he has never been informed that he has such authority. Although Houser or any other employee may recommend a relative or acquaintance for employment, the Employer's president or admitted supervisor, John Bechie, makes any final employment decisions. Likewise, the Employer's president or John Bechie investigates any alleged misconduct by employees before acting on any recommendation that may have been made by Houser or any other employee. Houser does not have the authority to address employee grievances, promote employees, lay off employees or grant pay increase. Houser is hourly paid and is entitled to the same benefits as the other employees. Although Houser receives \$3 or \$4 more per hour than the remaining employees, this appears to be a result of his longevity with the Employer, his overall experience and his personal friendship with the Employer's president rather than for the performance of any supervisory functions. Indeed, the record discloses that Houser receives the same pay rate regardless of his work assignment.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that Paul E. Houser is not a supervisor within the meaning of the Section 2(11) of the Act. Houser does not possess or independently exercise any of the indicia of supervisory authority as defined in Section 2(11) of the Act. See, e.g., *Sears, Roebuck & Co.*, 292 NLRB 753, 754 (1989); *Greyhound Airport Services*, 189 NLRB 291 (1971); *Hawaiian Telephone Co.*, 186 NLRB 1 (1970). Accordingly, I shall include Houser in the unit.

MICHAEL CANES (CAINS):

Contrary to the Petitioner, the Employer, as previously noted, would exclude Canes from the unit apparently on the ground that he is an irregular part-time employee with no community of interest with other employees in the unit. The record discloses that Canes has worked for the Employer on a number of occasions over the past several years but has recently worked on only one job. There is no indication when, and if, Canes will be employed in the future. Although the Board generally uses the formula provided for in *Daniel Construction Co.*, 133 NLRB 264 (1961), for determining, in the construction industry, those employees eligible to vote in an

election, the parties here stipulated, as they are permitted to do, that the *Daniel* formula should not be used to determine eligibility. See, *Steiny and Company, Inc.*, 308 NLRB 1323, 1328 n. 16 (1992). Accordingly, in agreement with the stipulation of the parties, I have not used the formula provided for in *Daniel* in determining those employees eligible to vote in the election. I must, therefore, consider whether Canes is eligible to vote based on the traditional criteria of whether he is a regular part-time employee who is currently laid off with a reasonable expectancy of recall in the foreseeable future. The record is inadequate to allow me to make such a determination with any degree of certainty. I shall, therefore, permit Michael Canes (Cains) to vote subject to challenge and I hereby instruct my agent conducting the election to challenge his ballot if he appears at the polls to vote.

The parties stipulated, and the record discloses, that the Employer's owner and president, Steve Houseman, and supervisor, John Bechie, have the authority to hire, discharge or discipline employees or to direct their work in a manner requiring the use of independent judgment and are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude Houseman and Bechie from the unit.

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