

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

Naples, FL

COLLIER COUNTY PUBLISHING CO.  
d/b/a NAPLES DAILY NEWS

and

Case 25-RC-10090  
(formerly Case 12-RC-8440)

GRAPHIC COMMUNICATIONS  
INTERNATIONAL UNION, AFL-CIO

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 February 6, 7, and 8, 2002, 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 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:

All full-time and regular part-time drivers, maintenance employees, mailroom employees, pre-press employees, and pressroom employees employed by the Employer at its Naples, Florida facility; BUT EXCLUDING all other employees, office clerical employees, confidential employees, managerial employees, professional employees, guards and supervisors as defined in the Act.<sup>1</sup>

The unit found appropriate herein consists of approximately 80 employees for whom no history of collective bargaining exists.

## I. STATEMENT OF FACTS

The Employer, Collier County Publishing Company d/b/a Naples Daily News (hereinafter referred to as the "Employer") is engaged in the publication and distribution of several newspapers in the South Florida area. The Employer currently publishes three newspapers from its Naples, Florida facility, the *Naples Daily News*, a daily newspaper, the *Bonita Banner*, a bi-weekly newspaper, and the *Marco Island Eagle*, a weekly newspaper. All three of these newspapers are produced at the Naples, Florida facility, which houses all of the Employer's production departments. There are four different production departments at that facility, the mailroom, which handles packaging and distribution of the newspapers, pre-press, circulation and press.

The Petitioner seeks an election within a unit comprised of the approximately 80 production employees employed by the Employer Naples, Florida facility, including the press foremen and assistant press foremen. The Petitioner contends that none of these individuals are supervisors under Section 2(11) of the Act. The Employer contends, however, that both of the press foremen and both of the assistant press foremen are supervisors within the meaning of Section 2(11) of the Act.<sup>2</sup> The question of the alleged supervisory status of the press foremen

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<sup>1</sup> The parties have stipulated that this is a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

<sup>2</sup> Both parties have stipulated that the assistant pre-press foremen, positions currently held by Jeffrey Krouse and Jim Brannigan, the assistant mailroom foreman, a position currently held by William P. Bellamy, and the assistant transportation foreman, a position currently held by Ken Williams, may vote subject to challenge with the question of whether or not they are supervisors under Section 2(11) of the Act to be determined subsequently, if necessary. Since no evidence was offered at the hearing regarding the supervisory status of any of these positions or individuals, those four individuals will be permitted to vote at the election subject to challenge based on their possible supervisory status.

and assistant press foremen was the only issue upon which evidence was offered at the hearing and it is the only issue which this decision and direction of election will address.

As stated earlier the production employees at the Employer's Naples, Florida facility are broken into four departments, mailroom, pre-press, circulation, and press. Since the only issue at the hearing was the supervisory status of the foremen and assistant foremen in the press department, only the operations of that department were detailed. The press department is divided into two shifts. There is a day shift and a night shift. The day shift works from approximately 9:00 AM until 5:30 PM five days a week. The night shift works from approximately 8:00 PM until 4:30 AM seven days a week. The day shift is responsible for the printing of so-called pre-runs. These are special supplements to the daily newspaper along with certain sections, such as real estate, that can be printed ahead of time. The day shift in the press department works Monday through Friday. The night shift is responsible for the printing of the actual daily newspaper. Since the paper comes out seven days a week, the night shift also must operate seven days a week. Employees on the night shift only work five days a week with each of them having two nights a week off on a staggered basis.

There are eleven employees on the press department day shift. That number includes the foreman, the assistant foreman, three electricians who perform maintenance on the presses, and six press operators. The press operators are further broken down into operators and apprentices. The Employer has a formal five-year apprentice program with written performance guidelines. Employees who complete the apprentice program become operators. Of the six press operators on the day shift four are actual operators and two are apprentices. The press operators and apprentices on the day shift report to the day shift foreman, Casey Cote. The assistant day shift foreman is Steve Metz, who also reports to the day shift foreman. There are nine employees on the night shift in the press department. That number includes the foreman, the assistant foreman, four press operators and three apprentices. The press operators and apprentices on the night shift report to the night shift foreman, Mark Consolmagno. The assistant night shift foreman is Ken Scheidell, and he also reports to the night shift foreman. Both the day shift foreman and the night shift foreman report to the Press Room Manager, Jerry Buck. The Press Room Manager's regularly scheduled hours are on the day shift Monday through Friday, but he does come to the facility at night approximately twice a week to check on operations there and discuss matters with the night shift foreman. The Press Room Manager reports directly to the newspaper's publisher, Corbin Wyant.

The function of the press department is to print the newspaper. The newspaper is printed on a Goss Metro Press, which is located in the pressroom. The press itself is a very large piece of machinery with different levels. The lower level of the press is called the reel room. The reel room is where large spools of paper are loaded onto the press. Several press operators and apprentices work in the reel room everyday loading the spools of paper onto the press. From the reel room, the paper goes to the upper level of the press where the printing plates are located. There are nine printing units on the press, and they are operated by press operators. The plates are inked, and then when the paper goes through, a printed impression is left on the paper. The paper then goes through several webs before it is run to the folder. This is where the machine actually assembles the sections of the paper. The press foremen spend a substantial percentage of their time at the folder checking the newspapers for quality. If the foremen notice that colors

in the newspaper are not properly aligned or that the text is not printing in the center of the page, they correct the problem or direct one of the operators to correct the problem. The press foremen are responsible for ensuring that the newspaper meets overall quality standards.<sup>3</sup>

The press foremen also have several other duties besides checking the quality of the newspaper as it comes off the press. Each day the press foremen give the press operators and apprentices their daily work assignments. These daily assignments consist of not only what part of the press an employee will be assigned to run that day, but also what assignments the employees will be responsible for prior to the start of the press run. The press run frequently does not begin until an hour or more after the start of a shift, and employees perform other work such as routine maintenance or cleaning prior to the start of the run. In furtherance of these duties, the night shift press foreman created a form entitled "Work Assignments", which he uses to record to which section of the press he has assigned employees each day. In addition to assigning work to the other pressroom employees, both press foremen have the authority to grant overtime, change employees' start or ending times, call in replacement employees, and approve vacation and paid time off requests on their own discretion.<sup>4</sup> This authority is especially important for the night shift press foreman, who is responsible for ensuring that the printing of the daily newspaper is completed by 3:55 AM each day in order to ensure that the newspapers are delivered to subscribers on time.

The press foremen also play a significant role in the hiring and firing of pressroom employees. The Press Room Manager initially receives any resume or application submitted for an opening in the pressroom. The Press Room Manager then forwards these resumes and applications to either the day shift or night shift press foremen depending on which shift has the opening. The press foreman then reviews the resumes and applications and decides who should be interviewed for the opening. The press foreman relays that information to the Press Room Manager who schedules the interviews. The interviews are conducted by the press foreman, who then informs the Press Room Manager which candidate he would prefer to be hired. The Press Room Manager then, based on the recommendation from the press foreman, informs the candidate that he is being offered the position.<sup>5</sup> The paperwork for the hire is then completed by

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<sup>3</sup> In assuring the overall quality of the newspaper, the press foremen have the authority to determine if an advertisement can be printed according to an advertiser's specifications. The press foremen can change those specifications and can also decide not to run the ad at all.

<sup>4</sup> The record also indicates that the night shift press foreman created a new schedule for night shift pressroom employees in August 2001 that completely changed the way they scheduled their days off. This schedule changed employees' days off from a rotating system to a fixed system whereby employees bid on days off based on seniority. This was done on the authority of the press foreman.

<sup>5</sup> The Press Room Manager testified at the hearing to a specific incident involving an applicant named John Morrison. The Press Room Manager thought that Morrison was an excellent candidate, and he was interviewed by both press foremen for openings on their respective shifts. Both Press foremen indicated that they would prefer another candidate, and on both occasions, the other candidate was hired.

the Press Room Manager and the Employer's human relations office. The press foremen also have the authority to discharge employees, and the day shift press foreman has used this authority on at least two occasions to discharge employees in the pressroom.

The press foremen also have the authority to discipline pressroom employees. In furtherance of this authority, the day shift press foreman created a work rule whereby anyone caught sleeping in the reel room would be suspended immediately. The day shift press foreman created said rule and promulgated it on his own authority. The night shift press foremen also created a list of work rules and distributed them to employees at a July 2001 meeting. Once again this was done solely on his authority.

The press foremen are also responsible for evaluating all of the press operators, including apprentices, on their respective shift. These evaluations occur annually. Each press foreman meets with the Press Room Manager to complete the evaluations. The Press Room Manager uses a computer program to enter the information provided to him by the press foremen. The Press Room Manager relies primarily on the information provided to him by the press foremen about an employee's performance to create the employee's evaluation. After the evaluation has been completed, the Press Room Manager and the press foreman meet with the employee to discuss the evaluation. How well an employee does on his annual evaluation is a factor the Employer uses in determining whether an employee will receive a raise and how large that raise will be. The press foremen are also responsible for monitoring the progress of the apprentices on their shift. Apprentices' wages start at \$10.00, and their annual raise is based in part on whether they can perform a certain list of skills. It is the responsibility of the press foremen to determine whether the apprentice has learned those skills. The press foremen then complete a checklist for each apprentice indicating which skills an apprentice has learned and which ones he has not. The press foremen also nominate an employee from his shift each quarter for a special award. The Press Room Manager alternates the award between the day shift and the night shift, but the decision by the press foreman as to which employee on his shift will receive the award is always followed. The award is worth approximately \$100.

The press foremen also complete several daily reports involving the operation of the press, the number of newspapers run, and the amount of waste generated. They also conduct safety meetings for pressroom employees six to twelve times a year. At these meetings they play videotapes provided by the Employer and answer employees' questions. The press foremen also have bi-weekly meetings with the Press Room Manager to discuss pressroom issues. These meetings occur every second Thursday and are attended by the two press foremen and the Press Room Manager only. Both press foremen have also attended management training seminars as part of their work duties. These management training seminars were not attended by any rank-and-file employees.

The record evidence is more limited regarding the duties of the assistant press foremen. The day shift assistant press foreman assists the day shift press foreman in performing his duties. He checks the newspapers for quality and helps direct other employees. He also fills in for the day shift press foreman, when he is absent for vacation or sick leave. The night shift assistant press foremen also fills in for the night shift press foreman when he is absent. Unlike the day shift, however, this occurs on a regular basis. As detailed above, the night shift in the pressroom

operates seven days a week. Each of the employees, including the foreman and assistant foreman, though, only work five days a week. That means that the press foreman is absent at least two days out of every week. On those nights he is replaced by the assistant press foreman.

## II. DISCUSSION

### A. The Status of Press Foremen

The Employer seeks to exclude employees who occupy the positions of press foreman from the unit on the grounds that the employees who hold those positions are supervisors within the meaning of Section 2(11) of the Act. In representation proceedings the burden of proving that an individual is a statutory supervisor rests upon the party making the assertion, NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 167 L.R.R.M. 2164 (2001). Here the record clearly indicates that the individuals who hold the position of press foreman are statutory supervisors.

Section 2(3) of the Act excludes from the definition of the term "employee" any individual employed as a supervisor, and Section 2(11) of the Act defines a supervisor as a person who possesses any of the twelve powers listed therein, or the authority to effectively recommend such personnel actions if in doing so s/he exercises independent judgment. In determining whether an individual is a statutory supervisor, the Board and the courts are reluctant to interpret Section 2(11) with an expansive approach since the finding of supervisory status denies to the individual the rights and protections of the Act, Holly Farms Corp. v. NLRB, 517 U.S. 392 (1996). To this end, the Board closely examines the record in its determination of supervisory status, and conclusionary statements made by witnesses in their testimony, without supporting evidence, are insufficient to establish supervisory authority, Sears, Roebuck & Co., 304 NLRB 193 (1991). Section 2(11) is interpreted in the disjunctive, so the possession of any one of its enumerated powers confers supervisory status, NLRB v. Health Care & Retirement Corp. of America, 511 U.S. 571 (1994); Ohio Power Co. v. NLRB, 176 F.2d 385, 24 LRRM 2350 (6th Cir., 1949) cert. denied 338 US 899 (1949); Queen Mary, 317 NLRB 1303 (1995).

In the present case, the record clearly indicates that the press foremen possess the power to effectively recommend the hire of employment applicants. They also possess the authority to discharge employees, and this authority has been used by the day shift press foreman on at least two occasions. The press foremen can reward employees both through the evaluation process which plays a role in determining whether employees receive a raise and how much that raise will be and through nominating employees for the quarterly performance award. The press foremen also assign work to employees on a daily basis. The work assignment forms completed by the night shift press foreman show that employees' work assignments change nightly and are determined by the press foreman. The press foremen have created work rules which may lead to an employee being disciplined. They change employees hours of work, and the night shift press foreman even created a new schedule for employees on the night shift completely changing how employees' days off are determined.

In addition, a finding of supervisory status in this case is bolstered by the secondary indicia of supervisory status exhibited by the press foremen. A finding that the press foremen are not supervisors would effectively leave the pressroom unsupervised on the night shift. Press foremen are paid substantially more than other pressroom employees.<sup>6</sup> Press foremen also spend a substantial portion of their time completing daily reports that other pressroom employees are not required to complete. The press foremen also attend bi-weekly meetings with the Press Room Manager to discuss pressroom operations. Other pressroom employees do not attend these meetings. The press foremen also attended management training seminars not attended by other pressroom employees.

In light of the above, it is concluded that the press foremen at the Employer's Naples, Florida facility are supervisors within the meaning of Section 2(11) of the Act. They are therefore excluded from the agreed-upon bargaining unit as supervisors and are ineligible to vote in any election in this matter.

#### B. The Status of Assistant Press Foremen

The record evidence regarding the job duties of the assistant press foremen is not dispositive of the issue regarding their supervisory status. The record generally indicates that the assistant press foremen assist the press foremen in performing their duties and fill in for the press foremen when they are absent. The record also indicates that the night shift assistant press foreman regularly fills in for the night shift press foreman two days a week. The record also indicates that on one occasion the night shift assistant press foreman issued a written reprimand to an employee for tardiness. This isolated incident of discipline, however, is not sufficient to convey supervisory status. Neither is the fact that the assistant press foremen sometimes fill in for the press foremen when they are absent. Without evidence that the assistant press foremen exercised some Section 2(11) authority when filling in for the press foremen, no finding of supervisory status can be made. Billows Electrical Supply, 311 NLRB 878,879 (1993). However, it does raise an issue regarding the supervisory status of the assistant press foremen, and that, combined with the fact that assistant foreman in other departments are being allowed to vote subject to challenge on their alleged supervisory status, leads to the conclusion that the assistant press foreman should also be allowed to vote in the election subject to challenge. The issue of their supervisory status could thus be more fully explored in a future proceeding if necessary. Therefore, the assistant press foremen will be allowed to vote in the instant case subject to challenge based on their possible supervisory status.

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<sup>6</sup> The press foremen receive a wage of \$22.26 an hour plus the night shift press foreman receives a \$.50 an hour shift differential. The assistant press foremen are the next highest paid pressroom employees and they receive approximately \$19.00 an hour.

### III. 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 in the unit who are 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 unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit 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 Graphic Communications International Union, AFL-CIO.

### IV. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

### V. LIST OF VOTERS

To insure that all eligible voters 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 directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart

Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **March 22, 2002**. 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. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

#### VI. 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 March 29, 2002.

DATED AT Indianapolis, Indiana, this 15<sup>th</sup> day of March, 2002.

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