

**UNITED STATES OF AMERICA**  
**BEFORE THE NATIONAL LABOR RELATIONS BOARD**  
**REGION 13**

PAN-O-GOLD BAKING COMPANY

Employer

and

Case 13-RC-103125

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS LCOAL UNION 142

Petitioner

**HEARING OFFICER'S REPORT ON CHALLENGED BALLOT**

This report contains my findings and recommendations regarding the challenged ballot affecting the results<sup>1</sup> of the election<sup>2</sup> conducted under the direction of the Regional Director of Region 13 of the National Labor Relations Board on June 13, 2013 among the employees in the bargaining unit.<sup>3</sup>

Pursuant to Section 102.69 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, after reasonable notice to all parties, a hearing was held in Chicago, Illinois on July 15, 2013 before the undersigned hearing officer.<sup>4</sup> During the hearing the parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to produce all relevant evidence bearing on the challenge. After careful consideration of the entire record and all the evidence presented including the demeanor of the witnesses, and based upon my credibility resolutions,<sup>5</sup> I recommend that the Petitioner's challenge to the ballot of Tom Krause be overruled.

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<sup>1</sup> The tally of ballots shows that there were approximately eight (8) eligible voters. Four (4) ballots were cast in favor of the Petitioner and three (3) ballots were cast against the Petitioner, there were no void ballots and one (1) challenged ballot which was sufficient in number to affect the results of the election.

<sup>2</sup> The election was conducted pursuant to a petition filed on April 18, 2013 and a Decision and Direction of Election that issued on May 14, 2013. The payroll eligibility date for the election was April 13, 2013.

<sup>3</sup> All full-time and regular part-time route sales representatives/drivers employed by the Employer at its facility currently located at 1931 E. Main Street, Griffith, Indiana; excluding all clerical employees and guards, professional employees and supervisors as defined in the Act.

<sup>4</sup> The Notice of Hearing directed the Hearing Officer to prepare and serve upon the parties a report containing resolutions of credibility of witnesses, findings of fact and recommendations to the Board concerning the disposition of the Challenge.

<sup>5</sup> Any failure to completely detail all conflicting evidence does not mean conflicting evidence was not considered. *Bishop and Malco, Inc. d/b/a Walker's* 159 NLRB 1159 (1966).

## **THE CHALLENGED BALLOT**

The Petitioner challenged the ballot of Tom Krause on the basis that he is a Section 2(11) supervisor, and therefore, was ineligible to vote. At hearing, the Petitioner withdrew its challenge to Krause's eligibility based upon his supervisory status, and both parties stipulated that Krause was not a supervisor within the meaning of the Act. After withdrawing its challenge to Krause's supervisory status, the Petitioner posited an alternative basis for its challenge: Krause should be not allowed to vote because his job classification was not included in the bargaining unit found by the Regional Director in his Decision and Direction of Election. Krause's eligibility for inclusion in the Unit based on his title is the sole issue in contention. *Coca-Cola Bottling of Miami*, 237 NLRB 936 (1978) (a party may raise an alternative/unalleged ground for a properly challenged ballot during a hearing.)

The Petitioner takes the position that Krause is a non-supervisory District Manager for the Employer. The Employer contends that Krause's title is Route Supervisor. Although the parties presented conflicting positions as to Krause's title, I find that a determination as to the Krause's exact title is not necessary to resolve the issue of his inclusion or exclusion the Unit.

The burden of proving a voter's ineligibility rests on the party seeking the voter's exclusion. *Arbors at New Castle*, 347 NLRB 544, 545-546 (2006); *Sweetener Supply Corporation*, 349 NLRB 1122 (2007). In the instant case, it is the Petitioner's burden to show that Tom Krause should be excluded from the Unit. Outside of a brief opening statement, the Petitioner did not present any witnesses or evidence in support of its position. The Petitioner and the Employer were granted leave to file briefs in support of their positions regarding the ballot of Krause. In its brief, the Petitioner failed to present any case law that supported its position that Krause's title of District Manager, or in the alternative, Route Supervisor automatically excluded him from the Unit. Instead, the Petitioner chose to rely solely on an unsupported assertion that job title equates to an automatic exclusion from the Unit. I find that the evidence presented by the Petitioner is insufficient to sustain its challenge. Based on the Petitioner's failure to present any witnesses, evidence, or relevant case law in support of its position, a finding that Krause should be excluded from the Unit is not warranted.

## **CONCLUSION AND RECOMMENDATIONS**

The following are my conclusions. As discussed in this report, I did not find that the evidence presented was sufficient to sustain the challenge filed by the Petitioner, Teamsters Local 142. Thus, the Petitioner has not met its burden of proof to demonstrate

that Tom Krause should be excluded from the Unit. I recommend that the Petitioner's challenge to Tom Krause's ballot be overruled, and that his ballot be opened and counted.<sup>6</sup>

Dated at Chicago, Illinois this 8th day of August, 2013.

/s/ Sylvia L. Taylor  
Sylvia L. Taylor, Hearing Officer  
National Labor Relations Board  
Region 13  
209 South LaSalle Street, Suite 900  
Chicago, Illinois 60604

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<sup>6</sup> Under the provisions of Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, exceptions to this report may be filed with the Board in Washington, D.C. within fourteen (14) days from the date of issuance of this report. Immediately upon filing such exceptions, the party filing same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director of Region 13. If no exceptions are filed, the Board may adopt the recommendations of the Hearing officer.

**CERTIFICATE OF SERVICE**

The undersigned caused the enclosed Hearing Office's Report on Challenged Ballot to be served on August 8, 2013, by United States mail, postage prepaid, upon the following address shown below:

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