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

Indianapolis, IN

JBM, INC., d/b/a BLUEGRASS SATELLITE[1]
Employer

and Case 25-RC-10327

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 135
Petitioner

and

THE PRODUCTION WORKERS UNION,
LOCAL 707, NPW
Intervenor

SECOND SUPPLEMENTAL DECISION AND
DIRECTION OF RUNOFF ELECTION

Pursuant to a Supplemental Decision issued by the Regional Director on June 15, 2006, and amended by the Board to permit the working team leaders ("WTLs") to vote subject to challenge, an election was conducted by mail ballot commencing July 12, 2006 and August 2, 2006, among certain employees of the above-named Employer to determine whether or not they desired to be represented by the Petitioner or Intervenor for the purposes of collective bargaining.[2] The Tally of Ballots made available to the parties at the count of ballots on August 23, 2006 shows the following results:

The name of the Employer appears as amended at the February 13, 2006, hearing.

[1] [2] The appropriate unit as set forth in the Supplemental Decision and Direction of Election is as follows:

> All full-time and regular part-time technicians, trainers, and clerks employed by the Employer at all its Illinois, Indiana, Iowa, Kentucky, and Ohio facilities (excluding the Columbus, Ohio facility); BUT EXCLUDING all sales employees, professional employees, guards and supervisors, including head area

Approximate number of eligible voters 747 Void ballots 28 Votes cast for the Petitioner 172 Votes cast for the Intervenor 107 Votes cast against participating labor organizations 123 Valid votes counted 402 Challenged ballots 43 Valid votes counted plus challenged ballots 445

The challenged ballots are sufficient in number to affect the results of the election. In addition, on August 30, 2006, the Employer timely filed objections to the election.

Following an investigation,[3] consideration of the Intervenor's June26, 2006 Request for Review of the Supplemental Decision and Direction of Election, and for the reasons discussed more fully below, I am affirming my earlier decision that Working Team Leaders ("WTLs") are supervisors within the meaning of Section 2(11) of the Act and not eligible to vote in this election. Therefore, the challenges to the ballots cast by WTLs will be sustained, and the ballots will be neither opened nor counted. In addition, pursuant to a stipulated agreement approved by the undersigned, I direct that none of the remaining challenged ballots be opened and counted[4]. Further, I approve the Employer's withdrawal of its objections, and finally, I direct that a runoff election be held in this matter to determine if the employees in the appropriate bargaining unit wish to be represented by the Petitioner for the purposes of collective bargaining.

I. PROCEDURAL HISTORY

On January 26, 2006, the International Brotherhood of Teamsters, Local 135 (the "Petitioner"), filed a petition under Section 9(c) of the Act in the above captioned matter. The Petitioner sought to represent certain employees of JBM, Inc., d/b/a Bluegrass Satellite (the "Employer") at its Indianapolis, Indiana facility. The Employer maintained the only appropriate unit was a multi-facility unit, which included fourteen facilities in Illinois, Indiana, Iowa,

technicians and working team leaders, as defined in the Act, and all other employees.

[3] The parties were requested to, and did furnish various evidence in support of their respective positions.

[4] The parties agreed to open and count the ballot of Cerano Blasingame should his ballot be determinative following the resolution of the challenges to ballots cast by WTLs. Based on my determinations below and the Revised Tally of Ballots issued below, his ballot is no longer determinative and therefore will be neither opened nor counted.

Kentucky, and Ohio,[5] comprised of all head area technicians, working team leaders, technicians, clerks, and trainers. The Petitioner contended that head area technicians and working team leaders were supervisory employees within the meaning of Section 2(11) of the Act and should be excluded from the unit. Thereafter, a hearing was held February 13, 2006, before a hearing officer of the National Labor Relations Board, to determine the appropriate unit for collective bargaining. On March 10, 2006, a Decision issued, in which the undersigned concluded that no compelling circumstances existed which warranted disturbing the established multi-facility bargaining history between the Employer and The Production Workers Union, Local 707, NPW (the "Intervenor") and, therefore, the following employees of the Employer constituted 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 technicians, trainers, and clerks employed by the Employer at all its Illinois, Indiana, Iowa, Kentucky, and Ohio facilities (excluding the Columbus, Ohio facility); BUT EXCLUDING all sales employees, professional employees, guards and supervisors as defined in the Act, and all other employees.

Based upon the evidence adduced at the prior hearing, it was not possible to determine the 2(11) supervisory status of the head area technicians and the working team leaders. As a result, the March 10, 2006 Decision indicated that should the Petitioner elect to proceed to an election in the larger multi-facility unit and upon a sufficient showing of interest, the record would be re-opened in order to receive additional evidence as to the 2(11) status of the head area technicians ("HATs") and WTLs. No party requested review of the unit determination contained in the March 10, 2006 Decision, however, the Employer and Intervenor filed Special Appeals with the Board concerning the time allowed the Petitioner to submit a sufficient showing of interest in the expanded unit. These appeals were denied by the Board on May 8, 2006. On May 16, 2006, the undersigned issued an Order Reopening Hearing And Notice Of Hearing for the limited purpose of receiving additional evidence regarding the 2(11) status of the head area technicians and working team leaders at all facilities which comprise the unit found appropriate.

Thereafter, a hearing was held June 1, 2006, before a hearing officer of the National Labor Relations Board, to determine whether head area technicians and working team leaders are supervisors within the meaning of Section 2(11) of the Act. On June 15, 2006, a Supplemental Decision and Direction of Election issued, in which the undersigned concluded both the HATs and WTLs possess and exercise sufficient indicia of supervisory status that they are supervisors, as contemplated under Section 2(11) of the Act. As such, they must be excluded from the unit found to be appropriate in this matter. On June 26, 2006, the Intervenor filed a Request for Review with the Board challenging the Supplemental Decision's conclusion that WTLs and

[5] The relevant warehouse facilities are in Illinois (1)—Bloomington; Indiana (2)— Evansville and Indianapolis; Iowa (1)—Davenport; Kentucky (4)—Elizabethtown, Lexington, London and Louisville; and Ohio (6)—Cincinnati, Cleveland East, Cleveland West, Edison, Wilmington, and Youngstown.

HATs were supervisors under the Act. On July 19, 2006, the Board issued an order amending the Supplemental Decision to permit the WTLs to vote under challenge and denying the Intervenor's Request for Review in all other respects. Pursuant to the amended Supplemental Decision a mail ballot election was conducted among employees on July 12, 2006 and August 2, 2006.[6] The ballots in the election were counted on August 23, 2006.

II. RESOLUTION OF CHALLENGED BALLOTS

On August 23, 2006, the count was conducted and certain ballots were challenged by the Board Agent and the parties to the election. Such challenged ballots were sufficient in number to affect the results of the election. There were three types of challenged ballots: (1) ballots challenged by the Board Agent pursuant to a Board Order pertaining to the WTLs; (2) ballots challenged by the Employer based on the employment status of certain employees as of the eligibility date; and (3) ballots challenged by the Board Agent the ballots were not submitted within their inner envelopes. All of the challenged ballots with the exception of the challenged ballots pertaining to the WTLs have been resolved through a stipulated agreement.

A. EMPLOYEES CHALLENGED BY THE BOARD AGENT PURSUANT TO BOARD ORDER

At the election, the Board Agent challenged 20 ballots pursuant to the Board Order that permitted the WTLs to vote subject to challenge.[7] The supervisory status of the WTLs was previously addressed in the Supplemental Decision and Direction of Election dated June 15, 2006, wherein it was determined that the WTLs were indeed supervisors as contemplated by Section 2(11) of the Act. On June 26, 2006 the Intervenor filed a Request for Review of the Supplemental Decision challenging this determination. In support of this Request for Review the Intervenor contends that the evidence submitted by the Employer at the June 1, 2006 hearing on the issue of the WTLs' alleged supervisory authority differed from that presented by the Employer at the February 13, 2006 hearing. The Intervenor contends that the Second Supplemental Decision did not consider testimony from the prior hearing in determining the status of the WTLs and that such a conflict in the evidence should be resolved against the party asserting supervisory status. The Intervenor's arguments in the Request for Review have been considered and the records from both hearings have been reviewed. I find that the Intervenor's contentions are without merit and that all findings of fact and conclusions of law contained in the

6 The Region mailed out ballots to eligible bargaining unit employee on July 12, 2006. Following the Board's Order ballots were subsequently mailed to all WTLs on August 2, 2006.

7 At the election, the Board Agent challenged the following ballots pursuant to a Board Order: Anthony Anderson, Stacy Burkholder, Richard Carpenter, Jeffrey Cleeton, Milton Creech, Phillip Duff, Brian Ely, Frank Gray, Randall Hall, Kelley Hancock, James Hebebrand, Patrick Hubbard, Ryan Kemp, Daniel Lamont, Tony Leach, Joseph Nicholas, Jeffrey Perkins, Timothy Shahan, Michael Siebers, and Jeffery Wilson.

June 15, 2006 Supplemental Decision and Direction of Election are hereby affirmed and incorporated by reference and supplemented by the findings below.

At the hearing held on February 13, 2006, the Employer offered one witness, Richard C. Schneider, the Employer's Director of Resources. Mr. Schneider's testimony primarily concerned the extensive interchange of employees among the Employer's different facilities. This was of course relevant to the determination of whether a multi-facility unit was appropriate in the instant case. Mr. Schneider, who did not observe the day-to-day performance of HATs and WTLs, also testified in an extremely general fashion about the duties of HATs and WTLs. He asserted that HATs and WTLs did not have the authority to hire or fire employees but provided no testimony regarding HATs and WTLs' ability to effectively recommend such actions as well as other indicia of supervisory authority. The undersigned determined that due to the limited and general testimony offered at the February 13, 2006 hearing regarding the supervisory status of HATs and WTLs, no determination could be made regarding said supervisory status and that further evidence would need to be obtained.

At the June 1, 2006 hearing the Employer offered three witnesses including two HATs who were in a position to actually observe the day-to-day performance of WTLs. These two witnesses offered far more detailed and specific evidence than Mr. Schneider concerning the job duties of WTLs. Their testimony was based on personal knowledge since the WTLs report directly to HATs. The two HATs testified concerning the independent judgment used by WTLs in assigning and reassigning work to the technicians. They also testified to numerous specific incidents in which WTLs effectively recommended both promotions and discipline. These actions were then carried out based solely on the recommendations of the WTLs. This testimony was supported by substantial documentary evidence as well. The testimony of these witnesses did not contradict the testimony of Mr. Schneider at the February 13, 2006 hearing. They simply presented a much more detailed and specific picture of WTLs' job duties than the limited and general testimony of Mr. Schneider. Therefore, the undersigned did not err in relying on the evidence offered at the June 1, 2006 hearing to determine that the WTLs are supervisors within the meaning of Section 2(11) of the Act.

Therefore, based on the above and for the reasons set forth in the Supplemental Decision and Direction of Election issued on June 15, 2006, I again conclude that the WTLs possess and exercise sufficient indicia of supervisory status and thus are supervisors as contemplated under Section 2(11) of the Act. As such, they must be excluded from the unit found to be appropriate in this matter and are not eligible to vote. Accordingly the challenges to ballots cast by the 20 WTLs are sustained and their ballots shall be neither opened nor counted.

B. EMPLOYEES CHALLENGED BY THE EMPLOYER

At the election, the Employer challenged 19 ballots based on the employment

status of certain employees as of the eligibility date. [8] Pursuant to a stipulation, approved by the undersigned, the parties have agreed to resolve those ballots challenged by the Employer. The parties have agreed not to open and count all of the ballots, with the exception of Cerano Blasingame. As to the challenged ballot of Cerano Blasingame, the parties have agreed to open and count his ballot should it be determinative after the resolution of the challenges to the ballots cast by WTLs.

C. EMPLOYEES CHALLENGED BY THE BOARD AGENT

At the election, the Board Agent challenged four ballots on the grounds that they were not in an inner envelope.[9] Pursuant to a stipulated agreement, approved by the undersigned, the parties agreed that the challenges to these ballots be sustained and the ballots be neither opened nor counted.

III. OBJECTIONS

On August 30, 2006, the Employer filed objections alleging that: (1) the Regional Director improperly directed that the voting in the instant case be by mail ballot and such determination was an abuse of discretion; and (2) at the count of the ballots on August 23, 2006, William Groth, Esq., attorney for Local 135, IBT and an agent thereof, improperly maintained a list and made a record of individuals casting ballots in the election and such conduct improperly compromised the secrecy of the voting process. Subsequently, on September 6, 2006, the Employer requested in writing to withdraw the objections. The written request to withdraw the objections filed by the Employer is hereby approved.

IV. CONCLUSIONS

For the reasons set forth above, it is hereby determined:

1) That the challenges to the ballots of WTLs Anthony Anderson, Stacy Burkholder, Richard Carpenter, Jeffrey Cleeton, Milton Creech, Phillip Duff, Brian Ely, Frank Gray, Randall Hall, Kelley Hancock, James Hebebrand, Patrick Hubbard, Ryan Kemp, Daniel Lamont, Tony Leach, Joseph Nicholas, Jeffrey Perkins, Timothy Shahan, Michael Siebers, and Jeffery Wilson are sustained and that their ballots shall be neither opened nor counted.

[8] At the election, the Employer challenged the following ballots based on the employment status of the employee as of the eligibility date: Cerano Blasingame, Cody Blocker, Jason Bray, Robert Burley II, James Downing, Michael Eckler, Steve Gerard, Julia Glenn, Justin Gray, Michael Gunn, Brendan Jones, Randy Jones, Valeen Lippert, Joel Nolan, Jason Rowe, Ronnie Russell, Angelina Truesdell, Teresa Walker, and Joseph Wilson.

[9] At the election, the Board Agent challenged the ballots of Danny Breshears, Leighton Ewers, Katie Jones, and Keri Orso on the ground that they did not contain an inner envelope.

2) That the challenges to the ballots of Cody Blocker, Jason Bray, Robert Burley II, James Downing, Michael Eckler, Steve Gerard, Julia Glenn, Justin Gray, Michael Gunn, Brendan Jones, Randy Jones, Valeen Lippert, Joel Nolan, Jason Rowe, Ronnie Russell, Angelina Truesdell, Teresa Walker, and Joseph Wilson are sustained and that their ballots shall be neither opened nor counted;

3) That the challenged ballot of Cerano Blasingame should be opened and counted only if his ballot is determinative after the resolution of the challenges to the ballots cast by WTLs;

4) That the challenges to the ballots of Danny Breshears, Leighton Ewers, Katie Jones, and Keri Orso are sustained that their ballots shall be neither opened nor counted;

5) That a revised Tally of Ballots shall issue;

6) That the Employer's request to withdraw Employer's Objections is approved. V.

REVISED TALLY OF BALLOTS

Based upon the above conclusions, I hereby issue the following Revised Tally of Ballots:

Approximate number of eligible voters	747
Void ballots	28
Votes cast for the Petitioner	172
Votes cast for the Intervenor	107
Votes cast against participating labor organizations	123
Valid votes counted	402
Unresolved Challenged ballots	1
Valid votes counted plus challenged ballots	445
Sustained challenges (voters ineligible)	42

The challenged ballots are NOT sufficient in number to affect the outcome of the election.

A majority of the valid votes counted plus challenged ballots has NOT been cast for any of the choices on the ballot.

VI. DIRECTION OF RUNOFF ELECTION

Based upon the Revised Tally of ballots, the mail ballot election commencing on July 12, 2006, and August 2, 2006, is an inconclusive election. Therefore a runoff election by secret ballot shall be conducted between the choices on the original ballot that received the highest and next highest number of votes: International Brotherhood of Teamsters, Local 135 a/w International Brotherhood of Teamsters and Neither. Such runoff 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 the Supplemental Decision and Direction of Election issued on June 15, 2006, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. 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 International Brotherhood of Teamsters, Local 135 a/w International Brotherhood of Teamsters.

VII. NOTICES OF RUNOFF 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.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Secs. 102.69 and 102.67 of the Board's Rules and Regulations, a request for review of this Second Supplemental Decision may be filed with the Board in Washington, D.C. The request for review must be received by the Board in Washington, D.C. by **October 11, 2006.** Under the provisions of Sec. 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Supplemental Decision, is not part of the record before the Board unless appended to the request for review or opposition thereto that the party files with the Board. Failure to append to the submission to the Board

copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

SIGNED at Indianapolis, Indiana, this 27th day of September 2006.

/s/ [Rik Lineback]
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