

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 3**

**ANHEUSER-BUSCH, LLC**

**Employer**

**and**

**Case 03-RC-185455**

**TEAMSTERS LOCAL 1149**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Anheuser-Busch, LLC (Employer) operates a brewery in Baldwinsville, New York. Teamsters Local 1149 (Petitioner or Union) has petitioned to represent all full-time and regular part-time Lead Labor Schedulers and Administrative Office employees at the Baldwinsville facility.<sup>1</sup> The sole issue in dispute is whether Stacy Olson, holding the position of Administrative Office, is to be excluded from the proposed bargaining unit as a confidential employee. As discussed below, based on the record and relevant Board law, I find that Stacy Olson is not a confidential employee.

**FACTS**

Stacy Olson's title is Administrative Office. She works in the people department, where she reports to Shannon Hack, the Senior People Manager. Hack is responsible for labor relations at the Baldwinsville facility, including serving as the Employer's chief labor negotiator, and overseeing employee discipline, the grievance process, employee training and development, recruiting, and staffing. Besides Olson, Hack supervises Gina McAllister, the Assistant People Manager; Angela Pazer, the People Supervisor; and Joann Blaisdell and Mary Beth Pupchek, the Lead Labor Schedulers. No one in the people department is classified as an office clerical and

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<sup>1</sup> The Union currently represents a unit of production, maintenance, and utilities employees, and a unit of quality assurance laboratory workers, at the Employer's Baldwinsville facility.

the record does not reveal who, if anyone, serves as Hack's designated secretary, answers her telephone or does her typing.

Hack testified that she considers Olson her "subject matter expert" on employee attendance policy, FMLA, and payroll processes. Olson's duties include running payroll, a significant aspect of which is monitoring and properly coding employee attendance in the Employer's time and attendance system. When employee absences occur, Olson checks whether the absence is covered by already-granted FMLA leave, and if it is not, communicates with the employee about whether he or she wants to use available leave to cover an absence. Olson monitors for attendance violations (i.e., an absence for which an employee does not have or cannot use available leave) and "white card" violations (i.e., an employee's failure to timely call in an absence or tardiness). When attendance or white card violations occur, Olson notifies Hack and/or McAllister, as well as informs the employee's manager of the need for the manager to meet with the employee to investigate the violation. If a notice of violation is issued to an employee for attendance or white card violations, it is done by Hack and/or McAllister, after which it is forwarded to the employee's manager to give to the employee; the Union is notified by Olson shortly thereafter. By virtue of the role Olson plays in the attendance process, she knows in advance of employees or the Union when a notice of violation will be issued to an employee for absenteeism or a white card violation, although this is only shortly before the employee and Union are informed.

Olson has also trained new managers on attendance and white card policies, including using a PowerPoint presentation which she compiled from preexisting slides. Olson has not formulated any of the policies covered in these trainings. In addition, documentary evidence reveals that in October 2015, Olson prepared a revision to the standard operating procedure

document covering absence qualifying procedures. The record does not reveal the extent of the revisions, and Olson testified that she does not recall doing it.

Olson checks on a data base maintained at the Employer's corporate business service center which governs the FMLA process, as to whether employee absences are covered by FMLA. She also communicates with the Employer's business service center regarding outstanding employee requests for FMLA leave and monitors the status of FMLA requests in the database. Hack testified that, in one instance, Olson pointed out that the Employer had incorrectly denied an employee's FMLA leave and the decision was corrected. Olson testified, and was not contradicted, that Hack determined that the leave should be approved and directed that a correction be made. Olson sends, under her name, a standardized letter to employees notifying them of the decision to grant or deny their requests for medical leave, but she does not make the ultimate decision to grant or deny these requests. The record establishes that the business service center make these determinations, in the situation regarding the FMLA leave.

By virtue of her role in monitoring and coding qualified and unqualified absences and available employee leave, Olson's data entry work determines which employee hours qualify for benefits under the Employer's bonus program, and the amount of vacation lump sum payments for separating employees. However, Olson does not establish the program rules or the vacation policy.

Olson has a limited role in dealing with grievances. Upon receipt of a grievance in the people department office, Olson logs it in a database, creates a paper file folder, places the grievance in the folder, and files it. Hack testified that Olson "has an opportunity" to see Employer responses to grievances before they go to the Union, but failed to offer any details how or how often this opportunity might arise. The record reveals no evidence that Olson plays any

role in devising or typing grievance answers. Olson testified that she does not deal with or even see grievance answers and her testimony was not rebutted.

Olson has never attended a bargaining session during contract negotiations. Hack testified that during negotiations Olson pulled wage and FMLA leave data that Hack used in contract negotiations. Hack also testified that Olson has been “involved in” negotiations and that she consults with her and seeks her opinion regarding FMLA and sick leave policies during bargaining because of Olson’s status as a “subject matter expert” in those areas. The record reveals no evidence, however, that Olson drafts, or types the Employer’s proposals. She does not attend bargaining and the Employer does not assert that she attends negotiating strategy meetings or has access to information regarding the Employer’s negotiation strategies. Hack testified that Olson “had an opportunity” to see bargaining proposals before they were presented to the Union, but provided no explanation as to how such an opportunity might arise. She also maintained that Olson “provided input” to her about the FMLA proposal, but provided no detail about the nature of the input or how it related to negotiations. Olson testified that she played no such role in contract negotiations. She stated that any role she has played during contract negotiations was limited to pulling data, on Hack’s request, from the payroll and attendance systems that Hack may have used in bargaining. Olson denies knowing the specific reason for the data requests, and testified unrebutted that she has never seen a bargaining proposal or been consulted about one.

Olson regularly attends people department staff meetings, during which there may have been some discussion of contract negotiations. However, those meetings were also attended by the department’s Lead Labor Schedulers. These Schedulers are members of the proposed bargaining unit herein, and the Employer does not assert that they are confidential employees.

The record contains no evidence about how these meetings relate to negotiations or the precise information discussed at the meetings. Finally, as noted previously, the Employer presented no evidence that Olson serves as Hack's designated secretary, types proposals or attends meetings at which proposals or bargaining strategies are discussed.

## **ANALYSIS**

### **Board Law**

As a matter of policy, the Board excludes from bargaining units as "confidential" "those employees who assist and act in a confidential capacity to persons who formulate, determine, *and* effectuate management policies in the field of labor relations." *B. F. Goodrich Co.*, 115 NLRB 722, 724 (1956)(emphasis in original). This is commonly referred to as the "labor nexus" test, and was endorsed by the United States Supreme Court in *NLRB v. Hendricks County Rural Electric Membership Corp.*, 454 U.S. 170 (1981). As the Board has elaborated:

Under this definition it is insufficient that an employee may on occasion have access to certain labor related or personnel type information. What is contemplated instead is that a confidential employee is involved in a close working relationship with an individual who decides and effectuates management labor policy and is entrusted with decisions and information regarding this policy before it is made known to those affected by it.

*Intermountain Electric Association*, 277 NLRB 1, 4 (1985).

The burden of proof is on the party asserting that an employee is to be excluded from a bargaining unit because she is confidential. *Waste Management de Puerto Rico*, 339 NLRB 262, 282 (2003).

Mere access to confidential information does not establish confidential status. *Bakersfield Californian*, 316 NLRB 1211, 1212 (1995). In particular, an employee's access to personnel records and the fact that the employee can bring information to the attention of management, which may ultimately lead to disciplinary action by management, is not enough to

qualify an employee as confidential. *RCA Communications*, 154 NLRB 34, 37 (1965); *Ladish Co.*, 178 NLRB 90, 90 (1969). Further, although an employee may become aware of information relating to discipline before it is formally presented to the employees involved or the union, if that information is in the process of being forwarded to the interested parties, the mere exposure to that information does not make the employee a confidential one. *Bakersfield Californian*, supra. In addition, an employee who prepares statistical data for use by an employer during contract negotiations is not confidential because the employee cannot determine from the data prepared by her what policy proposals may result. *American Radiator Corp.*, 119 NLRB 1715, 1720-21 (1958).

#### **Application of Board Law to the Facts**

The record supports the finding – which the Union does not contest – that Hack formulates, determines, and effectuates management policies in the field of labor relations. It thus remains to be seen whether Olson serves in a confidential capacity to Hack.

The Employer has not carried its burden to establish Olson’s confidential status. As noted above, “a confidential employee is involved in a close working relationship with an individual who decides and effectuates management labor policy and is entrusted with decisions and information regarding this policy before it is made known to those affected by it.” Such evidence is absent here.

Thus, Olson’s mere access to employee’s payroll, attendance, and leave information is not enough to render her confidential. *Bakersfield Californian*, supra. Olson’s ability to bring attendance violations and white card violations to Hack’s attention, which may result in employee discipline, does not render Olson confidential. *RCA Communications*, supra; *Ladish Co.*, supra. Olson’s knowledge, prior to employees or the Union, of pending issuance of notices

of violation for absenteeism and white card violations does not render her confidential, because that information is in the process of being made known to the concerned employee and the Union. *Bakersfield Californian*, supra. The fact that Olson pulled pay and attendance data for Hack that Hack may have used in contract negotiations does not render Olson confidential, because Olson did not know what labor policy proposals would have resulted from the data provided. *American Radiator Corp.*, supra.

Hack testified in a vague manner about Olson having been “consulted” or providing “input” into bargaining proposals regarding FMLA, but provided no detail about the nature of the consultations, the information provided or how it related to bargaining. Given Olson’s denial that she did anything other than provide data Hack requested, the Employer has not carried its burden to present specific detailed evidence showing that Olson was aware of or contributed to the Employer’s bargaining proposals. Finally, Olson’s attendance at people department staff meetings where bargaining may have been discussed cannot be deemed to have rendered her confidential in light of the fact that those same meetings were attended by the Lead Labor Schedulers, who the Employer does not claim are confidential employees. This is especially true where the record does not reveal what was discussed at these meetings and why it might be confidential. Finally, as noted above, the Employer does not contend that Olson serves as Hack’s designated secretary, types bargaining notes and proposals or plays any role in devising bargaining proposals or strategies.

Based on the above and extant Board law, I find that the Employer has not met its burden of showing that Stacy Olson is to be excluded from the proposed bargaining unit as a confidential employee, and I shall direct an election in the unit found appropriate.

## **CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings 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 Petitioner is a labor organization with the meaning of Section 2(5) of the Act and 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 Lead Labor Schedulers and Administrative Office employees employed at the Employer's Baldwinsville, New York facility; excluding guards, confidential employees, professional employees and supervisors as defined in the Act, and all other employees.

There are three employees in the bargaining unit found appropriate herein.

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Teamsters Local 1149.

### **A. Election Details**

The election will be held on Tuesday, November 1, 2016<sup>2</sup> from 9 a.m. to 9:30 a.m. in the A Eagle Conference Room at the Employer's facility located at 2885 Belgium Road, Baldwinsville, New York.

### **B. Voting Eligibility**

Eligible to vote are those in the unit who were employed during the payroll period ending October 15, 2016 including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an 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 that 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. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **C. Voter List**

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **October 28, 2016**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on

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<sup>2</sup> The Union has waived its right to the voter list for the full ten day period to facilitate the earliest election possible.

the NLRB website at [www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015](http://www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015).

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

#### **D. Posting of Notices of Election**

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice by **12:01a.m. on Thursday October 27, 2016** and copies must remain posted until the end of the election. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution. Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

#### **RIGHT TO REQUEST REVIEW**

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to [www.nlr.gov](http://www.nlr.gov), select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must

serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: this 26th day of October, 2016.

**/s/ Rhonda P. Ley (PJM)**

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