

IN THE MATTER OF AN ARBITRATION

Between:

SCHNEIDER FOODS, A DIVISION OF J. M. SCHNEIDER INC.

(the "Company")

- and -

**THE SCHNEIDER OFFICE EMPLOYEES' ASSOCIATION,
LOCAL 30009 TNG CANADA/CWA**

(the "Union")

and in the matter of five grievances relating to bargaining unit status.

Russell Goodfellow – Sole Arbitrator

Appearances for the Company:

Ted Kovacs, counsel
George Mackie

Appearances for the Union:

Nelson Roland, counsel
Art Lacroix

A hearing was held in this matter in Kitchener on November 2, 2005. Various efforts at mediation were undertaken into the end of January 2006.

AWARD

This award addresses five bargaining unit exclusion grievances. The positions grieved and their incumbents are as follows:

1. Consumer Affairs Manager (formerly Consumer Relations Manager – Carmen Habermehl
2. Manager Application Development (formerly Software Development Manager) – William Armstrong
3. Information Systems Project Manager – Vander Bonachuk
4. Records Retention Manager/Privacy Officer – Karen Trussler
5. Finance Supervisor - Costing – Steve Kraemer.

All five grievances were heard in a single day in an expedited mediation/arbitration format. No formal evidence was presented; however, the incumbents were afforded the opportunity to participate and, in some cases, were asked and answered questions by counsel and the undersigned. Brief submissions were then made by counsel as to the appropriate disposition of each case. Unsuccessful efforts at mediation were undertaken subsequently. My rulings on the grievances will reflect the brevity of the proceedings.

1. Consumer Affairs Manager

The role of the Consumer Affairs Manager – known as the Consumer Relations Manager at the time of the filing of the grievance – is to manage and resolve

consumer complaints. The incumbent in the position, Carmen Habermehl, was previously employed as the Consumer Relations Coordinator – a position within the bargaining unit.

The Union appears to view the new position as simply a reconstituted version of the old, with no significant changes. On the basis of the information presented, I am less able to comment on the relationship between the old position and the new, than I am on the status of the new. I would observe, however, that there does appear to have been an expansion in Ms. Habermehl's areas of responsibility and in the volume of her work, leading to the inclusion in the bargaining unit of a new full-time (formerly part-time) position reporting to her.

The Company argues that the position is at the rank of "Supervisor, Manager or equivalent" within the meaning of the scope clause of the collective agreement based on the level of corporate responsibilities, Ms. Habermehl's role in respect of the full-time assistant, and her involvement in the training and monitoring of call-centre personnel. The first and third of these things are less significant than the second. In respect of her assistant, I am satisfied that Ms. Habermehl is a true manager in all of the usual labour relations respects. These have included the hiring, performance monitoring, review and, ultimately, termination of the first probationary employee in the position (which led to the filing of an as-yet unresolved grievance) and in the hiring and ongoing performance review of the replacement.

Although it is true that much of the foregoing post-dates the grievance, it remains relevant and, in my view, there is no reason to conclude that it is anything less than a true reflection of Ms. Habermehl's actual responsibilities. As such, I conclude that she is properly excluded from the bargaining unit. The grievance in respect of this position is, accordingly, dismissed.

2. Manager Application Development

The Manager Application Development – known as the Software Development Manager at the time of the filing of the grievance – is responsible for software development. The incumbent, William Armstrong, reports to the Director Operations Support who, in turn, reports to the Vice-President Information Services. The position has day-to-day operational responsibilities as well as project-related duties.

In its labour relations aspects, the position presents an interesting contrast to that of Ms. Habermehl and serves to illustrate the important point that numbers are not everything and that it is real responsibilities that matter. Ms. Habermehl supervises one individual but, based on the evidence, does so largely independently; she is the actual decision-maker. Mr. Armstrong has some involvement in the labour relations aspects of the working lives of more individuals – he lists as many as 14 – but his role is not that of a decision-maker; nor, at least under the current management approach, does he appear to exercise powers of effective recommendation. One “exception” involved the hiring of individuals for two positions in which Mr. Armstrong's manager and he disagreed on one of the choices and the manager deferred to Mr. Armstrong's preference; the real

authority, however, appears to remain with the manager and, in the absence of any other such evidence, this is not enough from which to conclude that the position is properly excluded from the bargaining unit.

Taken as a whole, the evidence establishes that Mr. Armstrong, in matters of labour relations, is a mere participant and nothing more. He does not exercise actual or effective decision-making authority over the hiring, firing, discipline, performance appraisals, or salary adjustments of any bargaining unit members. The power resides with, and appears to be exercised by, his manager. At present, the position appears to be one of technical leadership, without any significant labour relations content; it is at the bottom of the organizational chart in the Information Services Leadership Team with no direct reports shown. The position appears to be equivalent to that of a lead head in an industrial setting. It is, therefore, properly included within the bargaining unit. The grievance is upheld in respect of this position.

3. Information Systems Project Manager

The Information Systems Project Manager, Vander Bonachuk, has "operational" and "project" based information systems responsibilities. He manages, in a clearly non-labour relations sense, and directs the work activities of, 15 people on projects for which he is responsible. The closest Mr. Bonachuk comes to actual labour-relations managerial authority is in providing input, along with others, into performance appraisals. There is no basis whatsoever for concluding that Mr. Bonachuk's position

should be excluded from the bargaining unit. The "management" activities are technical management; they have no real labour relations content.

In so stating, I note, as well, that there was some suggestion that Mr. Bonachuk may have, or may have had, access to "confidential" information of an allegedly labour relations kind (*ie.* of a particular down-sizing and of strike contingency planning); however, it was not, and is not, the kind of regular and material involvement that would support an exclusion on the basis of employment in any kind of confidential capacity. (Further, and in any event, it appears that the downsizing in question was in respect of a portion of the Company's operations that lies beyond the scope of the bargaining unit.)

Mr. Bonachuk's position falls within the scope and recognition clause of the collective agreement. The grievance in respect of that position is, accordingly, upheld.

4. Records Retention Manager/Privacy Officer

The position of Records Retention Manager/Privacy Officer presents an interesting and somewhat unusual case. The position involves no direct labour relations responsibilities in a traditional sense; nor is there any reason to conclude that the incumbent, Karen Trussler, exercises decision-making authority at such a level within the Company's operations as to indirectly affect the critical labour relations interests of bargaining unit members. Nevertheless, I find that the position is properly excluded from

the bargaining unit based on the role it plays in respect of highly sensitive information with both direct and indirect labour relations content and the trust, in respect of that information, that the incumbent must have at the highest levels of the Company's management.

The position is responsible for the accumulation, organization, retention and storage of the Company's records – including those of a highly confidential business, legal, and labour relations kind – as well as the resolution of any employee privacy-related disputes or complaints. In the former area, Ms. Trussler has access to the Company's strategic business plans, all of its human resources, collective bargaining, labour relations and legal records, and she provides advice and guidance to the top ranks of management as to record-keeping and privacy/confidentiality issues. While it is true, as the Union points out, that Ms. Trussler does not "work" with these files and would have no reason to study them, she must be able to identify and organize them and has access to them as a central feature of her job. Ms. Trussler has also developed the Company's records retention policy and led a team of Company Vice-Presidents and Directors in that role. Further, she is responsible for ensuring that managerial personnel comply with employee privacy interests in relation to employment and other information; and is responsible for administering the Company's privacy policies. Finally, there is evidence from which to conclude that the position falls within the specific exclusion for "human resources personnel".

In my view, Ms. Trussler's position is excluded from the bargaining unit. The grievance in respect of the position is therefore dismissed.

5. Finance Supervisor - Costing

At the time of the grievance, the Finance Supervisor-Costing position was known as Supervisor-Business Analysis. The incumbent, Steve Kraemer, is responsible for costing Company products. As noted in an August 18, 2005 Company-wide announcement concerning the Consumer Foods Finance Organizational Structure, Mr. Kraemer has recently become responsible for supervising the Company's legacy-based system costing team consisting of four members of the bargaining unit. In respect of bargaining unit members, it appears, Mr. Kraemer has recently been involved in performance appraisals and staffing. Thus far, however, the process appears to be very much a "collaborative" one – to use Mr. Kraemer's own term – with his manager; at least at this stage, there is no evidence of any real independent decision-making authority or exercise of powers of effective recommendation. Accordingly, I find that the position is properly included within the bargaining unit and the grievance in respect of the position is, accordingly, upheld.

I will remain seized to deal with any further issues of remedy arising out of those determinations and declarations, and in respect of the three further bargaining unit exclusion grievances that were referred to me but which were adjourned *sine die*.

DATED at Oakville this 11th day of May, 2006.



Russell Goodfellow - Sole Arbitrator