

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

(San Leandro, CA)

BCI COCA-COLA BOTTLING COMPANY OF  
LOS ANGELES, COCA-COLA REFRESHMENTS  
USA, INC., SAN LEANDRO FACILITY<sup>1</sup>

Employer

and

Case 32-RD-1605

FRED SIDES

Petitioner

and

MACHINISTS AUTOMOTIVE TRADES DISTRICT  
LODGE NO. 190 OF NORTHERN CALIFORNIA,  
INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
AFL-CIO, for and on behalf of EAST BAY  
AUTOMOTIVE MACHINISTS LOCAL LODGE  
NO. 1546<sup>2</sup>

Union

**DECISION AND DIRECTION OF ELECTION**

BCI Coca-Cola Bottling Company of Los Angeles, a wholly owned subsidiary of Coca-Cola Refreshments USA, Inc., a Delaware corporation, herein called the Employer, operates a bottling and distribution facility in San Leandro, California. Machinists Automotive Trades District Lodge No. 190 of Northern California, International Association of Machinists and Aerospace Workers, AFL-CIO, for and on behalf of East Bay Automotive Machinists Local Lodge No. 1546, hereafter the Union, represents a unit

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

<sup>2</sup> The name of the Union appears as amended at the hearing.

of employees at the San Leandro facility. On April 1, 2011, Fred Sides, an individual, herein called the Petitioner or Petitioner Sides, filed the instant decertification petition pursuant to Section 9(c) of the National Labor Relations Act, hereafter the Act. A hearing date was set for April 11, 2011, and a copy of the Notice of Representation Hearing was served on the parties by regular mail on April 1, 2011. On April 7, 2011, the Regional Director rescheduled the representation hearing to April 13, 2011. The parties were notified of the date of the rescheduled hearing by regular mail on April 7, 2011.

Notwithstanding the Region's correspondence with the Union regarding the date and time of the representation hearing, representatives for the Union were not present at the hearing. Petitioner Sides and representatives for the Employer were present for the hearing. None of the parties filed a post-hearing brief.

At the hearing, Petitioner Sides and Employer Maintenance Manager Herbert L. Robinson were the only witnesses. Maintenance Manager Robinson testified that during the past 12 months, the Employer has directly sold products valued in excess of \$50,000 to commercial customers located outside the State of California, and has purchased and received goods at its facility valued in excess of \$50,000 from suppliers located outside the State of California.

Maintenance Manager Robinson and Petitioner Sides provided testimony regarding the labor organization status of the Union. Maintenance Manager Robinson testified that he has been involved in the processing of employee grievances with the Union and that the Employer is currently in contract negotiations with the Union. Petitioner Sides, a maintenance mechanic at the San Leandro facility, testified that the

Union has represented employees at the facility since before he went to work there over 10 years ago. Petitioner Sides testified that he is a member of the Union, that he paid an initiation fee to the Union and that he pays monthly dues to the Union. Petitioner Sides also testified that employees serve as shop stewards and sit on the Union's bargaining committee. Moreover, Petitioner Sides testified that the Union handles employee grievances with the Employer and that the Union has been bargaining for a successor collective-bargaining agreement with the Employer for about a year and a half. Also during the hearing, the Employer introduced a copy of the most recent collective-bargaining agreement between the Union and the Employer, effective September 1, 2003 through June 30, 2009. Furthermore, in *Hartzheim Dodge Hayward*, 354 NLRB No. 22 (2009), the Board found that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Having considered the testimony and evidence presented at the hearing, I find that the Employer is engaged in commerce within the meaning of the Act. I further find that the Union exists for the purpose, in whole or in part, of dealing with employers concerning wages, hours and other terms and conditions of employment, and that the Union is a labor organization within the meaning of Section 2(5) of the Act. *Alto Plastics Mfg. Corp.*, 136 NLRB 850, 851-852 (1962).

It is well settled that in a decertification election the bargaining unit in which the election is held must be coextensive with the certified or recognized unit. *Campbell Soup Co.*, 111 NLRB 234 (1955); *WT Grant Co.*, 179 NLRB 670 (1969); *Bell & Howell Airline Service Co.*, 185 NLRB 67 (1970); *Mo's West*, 283 NLRB 130 (1987). Here, the unit sought by Petitioner is co-extensive with the contractually recognized unit. No other

issues having been raised by the parties at the hearing, I find that a question concerning representation exists and that the Petitioner's petition should be processed. Accordingly, I direct an election.

### **CONCLUSIONS AND FINDINGS**

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

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer and the Petitioner stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Union is a labor organization within the meaning of the Act.

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 Employer and the Petitioner stipulated, and I find, that 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 employees of the Employer presently employed in the Employer's San Leandro, California plant in the capacity of Automotive Mechanics, Plant Maintenance Mechanics, and Apprentice Maintenance Mechanics in the repair and maintenance of all types of automotive equipment and plant equipment; excluding all other employees, guards, and supervisors as defined in the Act.

There are approximately 24 employees in the unit.

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Machinists Automotive Trades District Lodge No. 190 of Northern California, International Association of Machinists and Aerospace Workers, AFL-CIO, for and on behalf of East Bay Automotive Machinists Local Lodge No. 1546**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, 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. 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.

### **Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may 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 hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224, on or before **May 3, 2011**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional office by electronic filing through the Agency's website,

[www.nlr.gov](http://www.nlr.gov),<sup>3</sup> by mail, by hand or courier delivery, or by facsimile transmission at (510) 637-3315. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

#### **Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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

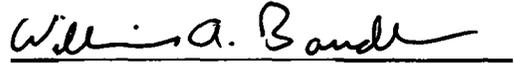
Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on

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<sup>3</sup> To file the eligibility list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

**May 10, 2011.** The request may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov),<sup>4</sup> but may not be filed by facsimile.

Dated: April 26, 2011

  
William A. Baudler, Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, CA 94612-5211

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<sup>4</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.

## POSTING OF NOTICE OF ELECTION

### **PART 193 - OTHER RULES**

1. The authority citation for 29 CFR Part 163 is revised to read as follows:

Authority. Sec. 6 National Labor Relations Act as amended (29 U.S.C. 151, 158) and Section 553 of the Administrative Procedure Act (5 U.S.C. 500.553).

2. Part 103 is amended by adding Subpart B, consisting of Sec. 103.20 to read as follows:

#### **Subpart B - Election Procedures**

##### **Sec. 103.20 Posting of Election Notices**

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

(d) Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Sec. 102.69(a).