

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

ATI PORTLAND FORGE, A DIVISION OF
TDY INDUSTRIES, INC. ^{1/}

Employer

and

Case 9-RD-2213

BARRY KENT BRIGHT, AN INDIVIDUAL

Petitioner

and

UNITED STEEL, PAPER AND FORESTRY, RUBBER,
MANUFACTURING, ENERGY, ALLIED INDUSTRIAL AND
SERVICE WORKERS INTERNATIONAL UNION, AFL-CIO, CLC ^{2/}

Union

REGIONAL DIRECTOR'S DECISION
AND DIRECTION OF ELECTION

I. INTRODUCTION

The Employer, a corporation with places of business in Portland, Indiana and Lebanon, Kentucky, is engaged in the business of manufacturing carbon and alloy steel forged components. The parties executed a Stipulation and Motion to the Regional Director (Stipulation) setting forth the facts and issues raised by this petition which I approved on May 18, 2011. The parties stipulated that there is no collective-bargaining agreement covering the employees in the bargaining unit and, therefore, no contract bar. In accordance with the Stipulation the parties have waived their right to a representation hearing pursuant to Section 102.63(a) of the Rules and Regulations of the National Labor Relations Board and have waived their right to file briefs in the instant matter.

The Stipulation states that pursuant to a Recognition Agreement dated November 15, 2010, the Employer voluntarily recognized the Union as the collective-bargaining representative

^{1/} The name of the Employer appears as stipulated to by the parties.

^{2/} The name of the Union appears as stipulated to by the parties.

of all full-time and regular part-time production and maintenance employees employed by the Employer at its Lebanon, Kentucky facility, but excluding all office clerical, technical and quality assurance employees (including CMM operators), temporary employees, guards, professional and confidential employees, and supervisors as defined by the National Labor Relations Act. The parties agree that there are approximately 100 employees in the bargaining unit.

Petitioner filed a petition with the National Labor Relations Board under Section 9(c) of the Act on January 20, 2011^{3/} seeking to decertify the Union as the representative of the bargaining unit. The Union asserts that the decertification petition is untimely filed because an employer's lawful recognition of a union should bar a petition for "a reasonable period of time" in accordance with the Board's pre-*Dana* holdings. *Dana Corporation*, 351 NLRB 434 (2007). Contrary to the Union, the Petitioner and Employer contend that the petition is timely in accordance with *Dana Corp.* and such decision should not be overturned.

I have fully considered the parties' Stipulation. As discussed below, I find that the recognition bar doctrine does not block the petition in this case and I will, therefore, direct an election. To provide a context for my discussion of this issue, I will provide the stipulated facts and then the legal reasoning that supports my conclusion on this issue.

II. FACTUAL OVERVIEW AND LEGAL ANALYSIS

As stipulated by the parties, on July 1, 2007 the Employer and Union entered into a neutrality agreement. Thereafter, they executed a Recognition Agreement, dated November 15, 2010. The Recognition Agreement provides, inter alia, that the Employer, after being satisfied that the majority of its employees in the bargaining unit selected the Union by signing unambiguous union authorization cards, voluntarily recognizes the Union as the employees' exclusive collective-bargaining representative.

By letter, dated January 3, the Employer notified Region 9 of the Board of its voluntary recognition and by letter, dated January 7, pursuant to *Dana*, the Region transmitted to the Employer Notices to Employees for posting. On January 11, the Employer posted such notices at its Lebanon, Kentucky facility and on January 20, Petitioner filed the decertification petition 9-RD-2213 which included an appropriate and sufficient showing of interest.

The Union contends that the petition is untimely filed because the Employer's lawful recognition should bar a petition for a "reasonable period of time," in accordance with the Board's pre-*Dana* holding. See *Keller Plastics Eastern, Inc.*, 157 NLRB 583 (1966). However, the Board held in *Dana* that in order to apply the recognition-bar doctrine, unit employees or a rival union must first be given an opportunity to petition the Board for an election, thereby modifying its prior decisions. I am bound by the Board's decision in *Dana*, therefore, I find that the petition filed by Petitioner, coupled with an appropriate and sufficient showing of interest is timely, as it was filed within 45 days of the posting of the aforementioned Notices to Employees.

^{3/} Hereinafter all dates refer to the year 2011 unless otherwise stated.

III. EXCLUSIONS

The parties stipulated that Martin Bradshaw, Operations Manager; Greg Drane, Director, Engineering; Richard Osbourn, Maintenance Manager; Joseph H. Mattingly, Manager, Human Resources; David Sandusky, Senior Buyer; Joseph T. Fogle, Supervisor; Robert Harris, Supervisor; Joseph Lee, Supervisor; Doug Brockman, Supervisor; Trent Tucker, Supervisor; Scott Hoosier, Processing Area Coordinator; and James Crumback, Supervisor, Die Shop; are supervisors within the meaning of Section 2(11) of the Act and, accordingly, I will exclude them from the unit found appropriate.

IV. CONCLUSIONS AND FINDINGS

Based upon the Stipulation in this matter, I conclude and find as follows:

1. 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.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. 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.
4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed by the Employer at its Lebanon, Kentucky facility, but excluding all office clerical, technical and quality assurance employees (including CMM operators), temporary employees, guards, professional and confidential employees, and supervisors as defined by the National Labor Relations Act.

V. 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 on whether they wish to be represented for purposes of collective bargaining by United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC. 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.

VI. VOTING 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 and Direction of Election, 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.

VII. 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.). Upon receipt of the list and if the conditions set forth above to warrant an election are satisfied, I will make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **May 31, 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 by facsimile transmission at (513) 684-3946. Because the list will be made available to all parties if it is determined to proceed to an election, please furnish **three** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office. *To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.*

VIII. NOTICE OF POSTING OBLIGATION

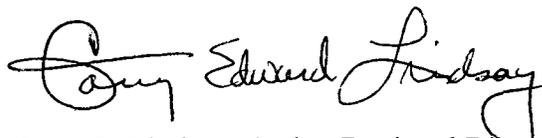
According to Section 103.20 of the Board's Rules and Regulations, the Employer, if an election is subsequently ordered, must post the Notices to Election provided by the Board in

areas conspicuous to potential voters for a minimum of 3 working days prior to the date 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.

IX. 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 on **June 7, 2011**. The request may not be filed by facsimile. The request may be filed electronically through the Agency's website, www.nlr.gov^{4/}, but may not be filed by facsimile.

Dated at Cincinnati, Ohio this 24th day of May 2011.



Gary E. Lindsay, Acting Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
550 Main Street
Cincinnati, Ohio 45202-3271

Classification Index

316-6700
316-6733
324-4020
324-4090-1500
342-2067
342-2067-6700

^{4/} To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.