

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21**

ROAD WORKS, INC.

Employer

and

Case 21-RC-21306

SOUTHERN CALIFORNIA DISTRICT COUNCIL
OF LABORERS AND ITS AFFILIATED LOCAL
LABORERS INTERNATIONAL UNION OF
NORTH AMERICA, LOCAL 1184

Petitioner

**REPORT ON CHALLENGES
AND
ORDER DIRECTING HEARING
AND
NOTICE OF HEARING**

This Report¹ contains my recommendations regarding the three determinative challenged ballots in the election conducted on August 18, 2011, among the employees of the Employer, in the unit agreed appropriate for the purposes of collective bargaining.² As described below, I conclude that the challenged ballots shall be considered at a hearing, and herein Order and give Notice of such hearing.

Procedural History

Pursuant to a Stipulated Election Agreement approved on July 29, 2011, an election by secret ballot was conducted on August 18, 2011, among the employees in the unit

¹ This report has been prepared under Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

² All field construction employees, including foreman, performing asphalt and concrete crack filling and sealing, by any method on any surface, employed by the Employer at or out of the Employer's facility located at 303 Short Street, Pomona, California; excluding all other employees, officers, guards and supervisors as defined by the Act.

agreed appropriate for the purposes of collective bargaining. The tally of ballots which was served upon the parties immediately following the election showed that of approximately 13 eligible voters, 6 cast ballots for, and 4 against, the Petitioner. There were no void ballots and 4 challenged ballots, which are sufficient in number to affect the results of the election.

The Challenged Ballots

During the election, the ballot of Daniel Blocker was challenged by the Union's observer on the grounds that he is a confidential employee and a nephew of an owner. Specifically, the Union contends that Blocker is a confidential employee and is closely related to president/owner Larry Blocker and other executives of the Employer, including Kelly Blocker, Michael Blocker and Nathan Blocker. The Employer maintains that Daniel Blocker possesses job duties and terms and conditions of employment that are similar to those of other employees who were eligible to vote in the election and as such is eligible to vote. Specifically, the Employer asserts that Blocker has worked as a crew laborer at all points in time. The Employer further notes that he has no unique workplace authority and has no access to workplace information or the Employer's decision-making process. As to Blocker's alleged familial relationship, the Employer asserts that he is not an owner or the child of anyone with an ownership interest. The Employer added that Blocker enjoys no special status and should be considered an eligible voter like the nephew of the owner in Blue Star Ready-Mix Concrete Corp., 305 NLRB 429 (1991).

During the election, the ballot of Javier Castro was challenged by the Board agent on the grounds that his name did not appear on the eligibility list provided by the Employer. The Employer contends that Javier Castro was not eligible to vote in the election because he resigned

from his employment on or about March 10, 2011.³ The Employer noted that under the Daniel/Steiny voter eligibility formula, individuals who quit their employment are not eligible voters, Steiny & Co., Inc., 133 NLRB 246 (1961) as modified at 308 NLRB 1323 (1992).

Contrary to the Employer, the Union contends that Javier Castro is eligible to vote in the election because he was never terminated from his employment for cause and did not quit voluntarily prior to the completion of the last job for which he was employed. The Union further maintains that Castro has a reasonable expectation of reemployment.

During the election, the ballot of Mike Wessel was challenged by the Union's observer on the grounds that he is a supervisor. The Union contends that Wessel is a supervisor within the meaning of Section 2(11) of the Act. In this regard, the Union asserts that Wessel has the ability to effectively recommend personnel decisions affecting bargaining unit employees, such as the hiring, firing and discipline of employees, including the issuance of written reprimands to his subordinates. The Union further contends that Wessel has the authority to assign work to employees and to responsibly direct employees at work. The Employer maintains that Wessel is eligible to vote in the election because he has no Section 2(11) authority. The Employer further noted that Wessel is employed by the Employer as a laborer foreman and that his duties are equivalent to other eligible voters, who are similarly employed as foremen.

Finally, the Employer noted that the burden of providing supervisory status falls on the party asserting it. NLRB v. Kentucky River, 532 U.S. 706, 711-712 (2001); Oakwood Healthcare, 348 NLRB 686 (2006).

³ The parties stipulated to use the Daniel/Steiny formula for voter eligibility herein.

Upon consideration of the evidence presented and adduced by the investigation, I conclude that the challenges to the ballots cast by Blocker, Castro, and Wessel raise substantial and material issues of fact that can best be resolved after a hearing.

Conclusion

In view of the conflicting positions of the parties and the substantial and material factual and legal issues raised by the above-noted challenged ballots, I conclude that the issues surrounding the challenged ballots can best be resolved by a hearing. Accordingly, pursuant to Section 102.69(d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on the challenges to the ballots cast by Daniel Blocker, Javier Castro, and Mike Wessel.

ORDER

IT IS HEREBY ORDERED that a hearing be held before a duly designated Hearing Officer for the purpose of receiving evidence to resolve the issues raised by the challenges to the ballots cast by Daniel Blocker, Javier Castro, and Mike Wessel.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing the resolution of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the challenges to the ballots cast by Daniel Blocker, Javier Castro, and Mike Wessel. The provisions of Section 102.69 of the above Rules shall govern with respect to the filing of exceptions or an answering brief on the exceptions to the Hearing Officer's report.

NOTICE OF HEARING

PLEASE TAKE NOTICE that, on September 26, 2011, **and such consecutive days thereafter until concluded**, at 9:00 a.m., PST, in Hearing Room 903, Ninth Floor, 888 South Figueroa Street, Los Angeles, California, a hearing will be conducted for the purposes set forth in the above Order, at which time and place the parties will have the opportunity to appear in person, or otherwise, and give testimony.

Dated at Los Angeles, California on September 12, 2011.

/s/D. Bruce Hill
Acting Regional Director
Region 21
National Labor Relations Board