

NOT INCLUDED IN
BOUND VOLUMES

LSP
Rochester, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MCNEIL SECURITY, INC./INVIZION

Employer

and

Case 03-RC-11751

UNITED FEDERATION OF SPECIAL POLICE
AND SECURITY OFFICERS, INC.

Petitioner

and

INTERNATIONAL UNION, SECURITY, POLICE
AND FIRE PROFESSIONALS OF AMERICA (SPFPA)

Intervenor

DECISION AND DIRECTION OF SECOND ELECTION

The National Labor Relations Board, by a three-member panel, has considered objections to an election held May 24, 2007, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 15 for the Petitioner, 57 for the Intervenor, and 74 against both labor organizations, with 1 challenged ballot, an insufficient number to affect the results of the election.¹

¹ Although the Intervenor also challenged 12 ballots cast by the lead transportation security officers, the parties agreed not to count those ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations,² and finds that the election should be set aside and a new election held.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the first election and who retained their employee status during the eligibility period and

² We adopt the hearing officer's finding that the Employer's officials engaged in objectionable conduct by following Union agent Maritas on several occasions prior to and during the election in public areas of the Rochester airport where the Employer had no property interest or security responsibility on behalf of its airport client. Even assuming, arguendo, that the Employer could lawfully preclude Maritas from talking to on-duty bargaining unit security officers in passenger access and baggage screening areas where it did have security duties, we agree with the hearing officer that closely following a known union agent in other public areas where he posed no security risk was "out of the ordinary" conduct, not justified by any security concerns or regular operational procedures. Unit employees observed this activity, which would reasonably tend to interfere with their Sec. 7 rights to communicate with Maritas.

Given the closeness of the election, the repeated following of Maritas, standing alone, warrants setting aside the election results. In light of this conclusion, we find it unnecessary to pass on the hearing officer's recommendation to sustain the Intervenor's objections alleging that the Employer ordered Maritas to leave public areas in which he had a right to be present (Objection 2); photographed employees while they were talking to Maritas (Objection 3); and ordered the Intervenor's employee election observer to remove a Union sticker from her uniform (Objection 14).

their replacements. Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, 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 employees engaged in an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by United Federation of Special Police and Security Officers, Inc., or by International Union, Security, Police and Fire Professionals of America, or by neither union.

To ensure that all eligible voters 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 that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with

this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C., June 17, 2010.

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Mark Gaston Pearce, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD