

NOT TO BE INCLUDED  
IN BOUND VOLUMES

PHG  
Springfield, VA

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

COMFORT SOLUTIONS, INC.

Employer

and

SHEET METAL WORKERS INTERNATIONAL  
ASSOCIATION, LOCAL UNION NO. 100

Case 5-RC-16680

Petitioner

DECISION AND CERTIFICATION OF REPRESENTATIVE

The National Labor Relations Board, by a three-member panel, has considered a determinative challenge in an election held July 15, 2011, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows three for and one against the Petitioner, with two challenged ballots.

The Board has reviewed the record in light of the exceptions<sup>1</sup> and briefs, has adopted the hearing officer's findings and recommendations,<sup>2</sup> and finds that a certification of representative should be issued.

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<sup>1</sup> The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record and find no basis for reversing the findings.

In addition, some of the Employer's exceptions imply that the hearing officer's rulings, findings, and conclusions demonstrate bias and prejudice. On careful examination of the hearing officer's decision and the entire record, we are satisfied that the Employer's contentions are without merit.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Sheet Metal Workers International Association, Local Union No. 100, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:<sup>3</sup>

Included: All full-time and regular part-time technicians performing HVAC service, repair, and installation employed by the Employer at its Springfield, VA facility.

Excluded: All office and clerical workers, professional employees, guards, and supervisors as defined in the Act.

Dated, Washington, D.C., June 29, 2012.

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Mark Gaston Pearce, Chairman

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The Employer excepts to the absence of information in the hearing officer's report about its appeal rights, but it presented no argument in support of these exceptions. In accordance with Sec. 102.46(b)(2) of the Board's Rules and Regulations, we shall disregard them. See *Holsum de Puerto Rico, Inc.*, 344 NLRB 694 fn. 1 (2005), enfd. 456 F.3d 265 (1st Cir. 2006). In any event, that information had been furnished to all counsel earlier in the proceeding, and the hearing officer appended the standard appeals language to the decision before the appeal period expired. The Employer, represented by experienced labor counsel, timely filed its exceptions and brief without seeking an extension of time.

<sup>2</sup> In the absence of exceptions, we adopt pro forma the hearing officer's recommendation to overrule the Petitioner's challenge to the ballot of Akash Rathie. Because, as explained below, we sustain the challenge to Carlos Bonilla's ballot, Rathie's ballot is not determinative and therefore should not be opened.

In adopting the hearing officer's recommendation to sustain the challenge to the ballot of Carlos Bonilla, we agree with her findings that the record establishes that Bonilla is a statutory supervisor. In particular, we note that Bonilla uses independent judgment in directing the work of the Employer's installation technicians: on a daily basis, he instructs the technicians on how to address unforeseen issues and problems that arise when the technicians install heating and air conditioning systems in customers' homes. The evidence also shows that Bonilla takes corrective action when the technicians encounter problems or commit errors. In addition, Bonilla's direction of the technicians is responsible: memoranda the Employer issued to him in 2008 and 2009 demonstrate that he is held accountable for the work of others. Indeed, the Employer's contention, that the memoranda held Bonilla accountable for only his own work (and not that of others), conflicts with its admission that Bonilla generally does not perform the installation work.

<sup>3</sup> The unit description is as set forth in the Stipulated Election Agreement and the record.

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Brian E. Hayes, Member

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Richard F. Griffin, Jr., Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD