

NOT INCLUDED
IN BOUND VOLUMES

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Pasadena, MD

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ECOLOGY SERVICES, INC., ECOLOGY SERVICES
CURBSIDE COLLECTION SERVICES, LLC,
ECOLOGY SERVICES ANNE ARUNDEL COUNTY
CARTAGE, LLC, A SINGLE EMPLOYER

and

TEAMSTERS LOCAL UNION NO. 311,
AW INTERNATIONAL BROTHERHOOD
OF TEAMSTERS

Case 5-RC-16235

DECISION AND DIRECTION OF SECOND ELECTION

The National Labor Relations Board has considered objections to an election held July 30, 2008, and the attached administrative law judge's report recommending disposition of them.¹ The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 71 votes cast for and 77 votes against the Petitioner, with no challenged ballots.

¹ Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the judge's findings and recommendations,² and finds that the election must 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

² The judge was sitting as a hearing officer in this representation proceeding. 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.

The Petitioner's request to withdraw Objection 1 was approved by the Regional Director. In the absence of exceptions, we adopt, pro forma, the judge's recommendations that Objections 2 through 6 be overruled.

In its Motion to Reopen Hearing Record, the Employer requests that the record be reopened for the limited purpose of taking the testimony of the Board agent who conducted the election. The Employer states in its motion that the Board agent's testimony will support its contention that no voter was disenfranchised and thus challenge the accuracy of the judge's credibility findings on this issue. The Board has long held that it will not reopen a record so that a party may attack a judge's credibility resolutions. See, e.g., *P & T Metals, Inc.*, 316 NLRB 1189 fn. 2 (1995). Thus, we deny the Employer's motion.

In agreeing with the judge's recommendation to sustain Objection 8, we do not rely on *Glacier Packing Co., Inc.*, 210 NLRB 571, 573 (1974), cited by the judge.

election and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). 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 election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by Teamsters Local Union No. 311, a/w International Brotherhood of Teamsters.

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 whenever proper objections are filed.

Dated, Washington, D.C., March 17, 2009.

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD