

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

DE MICCO BROTHERS, INC.
Employer

and

Case No. 29-RC-12051

UNITED PLANT AND PRODUCTION WORKERS
LOCAL 175, INDUSTRIAL UNION OF
JOURNEYMEN AND ALLIED TRADES
Petitioner

And

HIGHWAY ROAD AND STREET CONSTRUCTION
LABORERS, LOCAL 1010, LABORERS
INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO
Intervenor¹

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, a hearing was held before Ioulia Federova, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Regional Director.

Upon the entire record in this proceeding, the undersigned finds:

¹ Highway Road and Street Construction Laborers, Local 1010, Laborers International Union of North America, AFL-CIO, moved to intervene in the instant case based on its status as the recognized collective bargaining representative for the petitioned-for employees. The Hearing Officer granted the motion to intervene on that basis.

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The record indicates that De Micco Brothers, Inc., herein called the Employer, a domestic corporation, with an office and principal place of business located at 1580 Stillwell Avenue, Bronx, New York, has been engaged in the construction industry. During the past year, which period represents its annual operations generally, the Employer, in the course and conduct of its business operations described above, provided services in excess of \$50,000 to the New York City Division of Design and Construction, which enterprise meets the Board's direct standards for the assertion of jurisdiction.

Based on the record, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organizations involved herein claim to represent certain employees of the Employer.

4. 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.

5. Based on the record, I find that the following employees constitute a unit appropriate for the purpose of collective bargaining:

All full-time and regular part-time² employees who perform asphalt and concrete paving and milling of roads employed by the Employer out of its

² Also eligible to vote are all unit employees who have been employed for a total of 30 working days or more within the 12 months immediately preceding the eligibility date, or who have had some employment

1580 Stillwell Avenue, Bronx, New York facility, who work in the five boroughs of New York City, but excluding all employees who are currently represented by Local 1298, Laborers International Union of North America, Local 731, Laborers International Union of North America, and Local 60, Laborers International Union of North America, and excluding all clerical workers, guards and supervisors as defined in Section 2(11) of the Act.

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 whether they wish to be represented for purposes of collective bargaining by United Plant and Production Workers Local 175, Industrial Union of Journeymen and Allied Trades, or by Highway Road and Street Construction Laborers, Local 1010, Laborers International Union of North America, AFL-CIO, or by no union. 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.

A. 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, 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

during that period and who have been employed 45 days or more within the 24 months immediately preceding the election eligibility date. See Steiny & Co., 308 NLRB 1323 (1992).

date, employees engaged in such a 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 who are employed in the unit 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.

B. 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 seven 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.). I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Two MetroTech Center, 5th Floor, Brooklyn, New York 11201, on or before **June 14, 2011**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file the 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 to the Regional Office by electronic filing through the Agency's website, www.nlr.gov, by mail, or by facsimile transmission at (718) 330-7579. 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. The burden of establishing the timely filing and receipt of the lists will continue to be on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

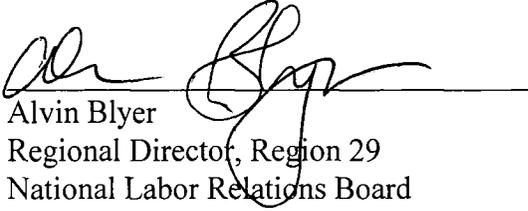
According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to 12:01 a.m. of the date of the election. Failure to follow the posting requirement 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 five 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.

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 by 5 p.m., EST on **June 21, 2011**. The request may be filed electronically through the Agency's website, www.nlr.gov,³ but may **not** be filed by facsimile.

Dated at Brooklyn, New York, on this 7th day of June, 2011.


Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

³ To file the request for review electronically, go to www.nlr.gov, select "File Case Documents," click on the NLRB Case Number, and follow the detailed instructions.