

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

THE SEA GATE ASSOCIATION
Employer¹

and

INTERNATIONAL UNION, SECURITY,
POLICE AND FIRE PROFESSIONALS OF AMERICA
Petitioner

Case No. 29-RC-080589

and

LAW ENFORCEMENT EMPLOYEES
BENEVOLENT ASSOCIATION
Intervenor²

DECISION AND DIRECTION OF ELECTION

The Sea Gate Association (“Sea Gate” or “the Employer”) operates a gated residential community in Brooklyn, New York and, among other things, provides security services there. A unit of police officers employed by the Employer has been represented for collective bargaining purposes by the Law Enforcement Employees’ Benevolent Association (“LEEBA” or “the Intervenor”) since approximately 2008. On May 9, 2012, the International Union, Security, Police and Fire Professionals of America (“SPFPA” or

¹ The Employer’s name appears as amended at the hearing.

² Although no formal motion to intervene was made or granted at the hearing, the participation of the Law Enforcement Employees Benevolent Association (“LEEBA”) in the instant case is based on its status as the incumbent union representing the petitioned-for employees, and based on its recent collective bargaining agreement covering those employees. LEEBA is hereby granted status as the Intervenor.

“the Petitioner”) filed a petition under Section 9(c) of the National Labor Relations Act (“the Act”), seeking to represent the same unit of police officers.

Section 9(b)(3) of the Act contains various provisions regarding the representation of guards. First, it defines guards as those who “enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer’s premises.” Second, it provides that guards must have their own separate bargaining unit, excluding other employees who are not guards. And finally, Section 9(b)(3) provides that the National Labor Relations Board (“the Board”) may certify only a so-called guard union to represent guards. Specifically, the latter provision states that the Board may not certify a labor organization to represent a bargaining unit of guards “if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.”

In the instant case, there is no dispute (1) that LEEBA and SPFPA are both labor organizations, as defined in Section 2(5) of the Act; (2) that the petitioned-for bargaining unit of police officers employed by Sea Gate is an appropriate, guards-only unit; and (3) that LEEBA is qualified under Section 9b)(3) to represent guards inasmuch as it admits only guards to membership. However, LEEBA contends that SPFPA admits certain nonguard employees to membership, and therefore is not qualified to represent guards under Section 9(b)(3).

A hearing on this issue was held before Nicholas Heisick, a Hearing Officer of the Board. As described in more detail below, the Hearing Officer allowed LEEBA to make an offer of proof in support of its position regarding the Petitioner’s status under 9(b)(3). The Hearing Officer also called SPFPA’s organizing director, Steve Maritas, to testify,

and allowed LEEBA to question the witness. Finally, LEEBA received some records from SPFPA pursuant to a subpoena. However, the Hearing Officer quashed the remaining portions of LEEBA's subpoena (calling it a "fishing expedition"), and closed the hearing. After the hearing, LEEBA also filed a motion to reopen the record, claiming that newly discovered evidence regarding the Petitioner's status had become available. The Region has not yet ruled on the motion.

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

For the reasons discussed below, I conclude that LEEBA has failed to proffer a sufficient basis for believing that the Petitioner admits nonguards to membership, so as to disqualify it from representing guards under Section 9(b)(3). I specifically affirm the Hearing Officer's rulings to quash LEEBA's subpoena and to close the record, and I deny LEEBA's motion to reopen the record. I will therefore direct an election in the petitioned-for unit, with both unions on the ballot.

The Hearing, including the Offer of Proof and Subpoena Issues

In its written offer of proof (Board Exhibit 3), LEEBA made four assertions. First LEEBA argued that the reference to "fire professionals" in the Petitioner's name and constitution may indicate that the Petitioner admits nonguards to membership. At the hearing, LEEBA's representative acknowledged that the Board has found some firefighters to be guards as defined in the Act,³ but did not proffer any specific basis for believing that any "fire professionals" in the Petitioner's membership would be deemed

³ See, e.g., Reynolds Metals Co., 198 NLRB 120 (1972); and MGM Grand Hotel, 274 NLRB 139 (1985). Cf. BPS Guard Services, Inc., d/b/a Burns International Security Services, 300 NLRB 298 (1990).

nonguards.

Second, LEEBA argued that certain communications officers represented by the Petitioner at Princeton University in New Jersey are not guards because they “do not perform patrol functions but remain at a fixed point in the public safety building and take calls for service and dispatch patrol officers.” The current contract between Princeton University and the Petitioner (Board Exhibit 6) describes the bargaining unit as follows:

[A]ll full-time and regular part-time Traffic and Parking Control Officers, Campus Access Officers, Patrol Officers, and Communications Officers employed by the University in its Department of Public Safety, Museum Security Officers employed in the Art Museum, and Library Security Officers employed in the Firestone Library, as certified in NLRB Case No. 22-RC-10772, but excluding all office clerical employees, managerial employees, security officers from and above the rank of sergeant, the Security Supervisor at the Art Museum, the Security Supervisors at the Firestone Library, casuals, all other supervisors as defined in the Act and all other employees.

LEEBA did not proffer any specific evidence regarding the communications officers’ duties, but simply asserted “upon information and belief” that those officers do not perform patrol duties.

Similarly, LEEBA argued that “transportation services representatives” represented by the Petitioner at Cornell University in New York are not guards because their duties include only “manning visitor information booths on campus, servicing campus parking facilities, collecting parking fines and issuing parking tickets.” Board Exhibit 4, a Certification of Representative issued by Region 3 of the Board in 2002 (Case No. 3-RC-11447, pursuant to a stipulated election agreement) describes the certified bargaining unit as follows:

All full-time and regular part-time transportation service representatives performing guard duties as defined in Section 9(b)(3) of the Act, as amended, employed by Cornell University in its Transportation and Mail Services

Department in Ithaca, NY, but excluding all employees currently represented by a labor organization, all office clerical employees, professional employees, supervisors as defined in the Act, and all other employees.

The current contract between Cornell and the Petitioner (Board Exhibit 5) contains similar language, and expressly refers to the unit as certified in Case No. 3-RC-11447. SPFPA's witness, Steve Maritas, testified that he did not know the specific duties of the transportation service representatives at Cornell. No other specific evidence was submitted or proffered on that issue. When the Hearing Officer asked LEEBA for any specific evidence that the transportation service representatives at Cornell do not perform guard duties, LEEBA's representative stated that it needed the documents it had subpoenaed from the Petitioner because "we have no proof, other than the paperwork."

Fourth, LEEBA's offer of proof asserted that SPFPA has merged with some other (unspecified) unions in the past few years and has accepted their members. LEEBA stated that it had subpoenaed the Petitioner's membership lists and other documents "to better support its contention that SPFPA is a mixed unit." LEEBA did not submit or proffer any specific reason for believing that any members which SPFPA obtained by merging with other unions would not qualify as guards.

As noted above, LEEBA received some records from SPFPA pursuant to its subpoena, but not all. At the hearing, SPFPA moved to quash the remaining portions of the subpoena. The Hearing Officer, calling LEEBA's subpoena a "fishing expedition," quashed the remaining portions of the subpoena and closed the hearing.

Discussion

In enacting Section 9(b)(3) of the Act, Congress sought to protect the rights of guards to organize, while avoiding a potential conflict of interest between guards and

nonguard employees (e.g., production employees in a plant) in the event of a strike. Thus, guards have the same statutory right to choose union representation as other employees, but they can be certified only in a separate bargaining unit, represented by a separate union admitting only guards to membership and unaffiliated with any nonguard unions. If there is "definitive evidence" that an alleged guard union admits nonguards (such as production employees) to membership, that union cannot be certified to represent a unit of guards. Burns International Security Services, Inc., 278 NLRB 565, 568 (1986) ("Burns"). However, it is inevitable that some "borderline" or "close call" classifications will occasionally arise, who appear to perform some guard-related duties, which may or may not establish them as guards under the Board's interpretation of Section 9(b)(3). As the Board stated in Burns:

Whether employees are guards may not have been litigated because of inadvertence or the stipulation of the parties. Further, duties change over time and because of new technologies. Thus, to apply Section 9(b)(3) in a strictly literal sense would require us to find that ... [a guard union] is not certifiable because it admits "close call" nonguards to membership. This is contrary to the clear intent of Congress. It would either effectively prohibit large national unions for guards, or would require guard unions to so strictly police their membership to exclude employees whose status presents close factual issues that numerous statutory guards would be precluded from exercising the right to representation under the Act.

Id. at 569. In Burns, the Board rejected the employer's attempt to show that employees represented by the guard union (including alarm station operators, location leaders, mail couriers, dispatchers and other categories) were not guards. The Board found that these employees performed at least "some guard-like duties" and were "borderline cases." Id. at 567. Under those circumstances, the Board declined to find the union noncertifiable under Section 9(b)(3). *See also* Children's Hospital of Michigan, Henry Ford Health

System, et al., 317 NLRB 580 (1995), *enfd sub nom. Henry Ford Health System v. NLRB*, 105 F.3d 1139, (6th Cir. 1997)(absent "definitive" evidence of nonguard status, parties not allowed to establish noncertifiability by collateral litigation of the guard status of another employer's employees); and Rapid Armored Corp., 323 NLRB 709 (1997).

Furthermore, Section 102.66(c) of the Board's Rules and Regulations allows a hearing officer to revoke a subpoena if the evidence being sought "does not relate to any matter under investigation or in question in the proceedings ... or if for any other reason sufficient in law the subpoena is otherwise invalid." Generally, a party's right to subpoena attaches only after the Board has determined that substantial and material factual issues exist to warrant a hearing. Park Chevrolet-Geo, Inc., 308 NLRB 1010 (1992). It is also well established that a party seeking a subpoena cannot use it as a "fishing expedition" to explore any and all possible contentions but, rather, must furnish some facts (direct or inferential) upon which to base a reasonable belief of a specific contention in question. Morrison Turning Co., Inc., 83 NLRB 687, 689 (1949); Modern Upholstered Chair Co., Inc., 84 NLRB 95, n.2 (1949). In the Burns case cited *supra*, the Board upheld the hearing officer's decision to quash a subpoena where the employer asserted no facts or even inferences to support its claims that the union admitted nonguards to membership and/or was affiliated with a nonguard union. 278 NLRB at 566. Thus, a party's right to subpoena records from a labor organization does not attach for wholly speculative claims, unsupported by any facts or even inferences, regarding the labor organization's status.

In the instant case, I find that LEEBA failed to proffer a sufficient basis for litigating the Petitioner's certifiability under Section 9(b)(3) of the Act. None of the four

points in LEEBA's offer of proof contained the type of definitive evidence required to allow such litigation under Burns, *supra*. Specifically, the mere fact that the words "fire professionals" appear in SPFPA's name and constitution does nothing to prove that SPFPA admits nonguard firefighters to membership. LEEBA proffered no probative evidence that SPFPA admits to membership any "fire professionals" whose specific duties would render them nonguards under such cases as Reynolds, MGM and Burns cited in footnote 3, *supra*. Similarly, LEEBA's contentions regarding SPFPA's members employed as communications officers (along with other officers in Princeton's public safety department) or transportation services representatives (in the certified unit at Cornell) are wholly speculative. When questioned about the basis for these contentions, LEEBA's representative conceded that LEEBA needed to subpoena documents because it had "no proof." Finally, LEEBA's contention that SPFPA acquired nonguard members when it merged with other unspecified unions was not supported by fact or even inference. In short, I find that LEEBA's offer of proof lacked the definitive basis, as required by the Board in Burns, for allowing LEEBA to litigate SPFPA's certifiability as a guard union under Section 9(b)(3). For the same reasons, I find that LEEBA failed to provide a basis for any reasonable belief of SPFPA's alleged admission of nonguard members, so as to mandate SPFPA's production of additional documents under LEEBA's subpoena. Burns, *supra*, 278 NLRB at 566.

Based on the foregoing, I hereby affirm the Hearing Officer's rulings, both to quash the remaining portions of LEEBA's subpoena and to close the hearing without further litigation.

LEEBA's Post-Hearing Motion to Reopen the Record

One week after the hearing closed, on the day that briefs were due, LEEBA filed a motion to reopen the record, claiming that newly discovered evidence regarding the Petitioner's status had become available. In order to explain LEEBA's claim, prior cases involving this Employer must first be noted as background. Administrative notice is therefore taken of the cases below.

LEEBA became the certified representative of the guards employed by Sea Gate in 2008 in Case No. 29-RD-1096. There is no dispute that the collective bargaining agreement which LEEBA subsequently negotiated with Sea Gate was scheduled to expire on April 30, 2012, but that the parties had not reached a new agreement by the time of the contract's expiration.

In the meantime, about two months before the contract expiration date, Local 813 of the International Brotherhood of Teamsters ("Teamsters Local 813") filed a petition to represent the Sea Gate guards on February 29, 2012,⁴ in Case No. 29-RC-075513. Two days later, on March 3, SPFPA filed a petition to represent the same unit in Case No. 29-RC-075739. Both representation cases were scheduled for hearing on March 12. SPFPA failed to appear for the hearing that day, and its petition was dismissed. Teamsters Local 813 (which is obviously not a guards' union) withdrew its petition in Case No. 29-RC-075513. However, according to LEEBA,⁵ Teamsters Local 813 asked the Employer on the same day (March 12) to recognize it voluntarily as representative of the guards,

⁴ All dates hereinafter are in 2012 unless otherwise indicated.

⁵ LEEBA made certain factual assertions in its motion to reopen the record, as described in more detail below. The instant Decision makes no findings of fact regarding these allegations, but simply recounts them in order to give context to LEEBA's motion.

although the Employer declined to do so. Meanwhile, the Employer continued to bargain with LEEBA for a successor contract, but the parties did not reach agreement before the prior contract expired on April 30.

On May 2, two days after the contract expired, SPFPA filed another petition in Case No. 29-RC-080127 to represent the same unit of guards. However, SPFPA withdrew that petition. Finally, on May 9, SPFPA filed the instant petition (Case No. 29-RC-080589), and the hearing was held on May 23.

In the meantime, on May 9, LEEBA filed an unfair labor practice charge in Case No. 29-CA-080677, alleging that the Employer failed and refused to bargain with LEEBA in good faith, in violation of Section 8(a)(5) of the Act. LEEBA alleged that the Employer intentionally bargained in bad faith in order to allow its contract with LEEBA to expire, to allow other labor organizations to file petitions covering the same unit of guards, and thereby to allow Teamsters Local 813 to replace LEEBA as the guards' bargaining representative. The Region found insufficient evidence of the alleged violation, and the charge in that case was dismissed on June 26. Nevertheless, the allegations must be noted in order to understand LEEBA's allegations in its motion to reopen the record.

In its motion to reopen the record, LEEBA alleges that immediately after the hearing in the instant representation case closed on May 23, SPFPA director of organizing Steve Maritas admitted to LEEBA president Kenneth Wynder that he (Maritas) did not "care" about the Sea Gate guards, and that he had filed the representation petition only as a "favor" to the Teamsters. As noted above, LEEBA alleges that Teamsters Local 813 asked the Employer for voluntary recognition on May 12, the same day it withdrew its

petition in Case No. 29-RC-075513. Thus, viewing these allegations in conjunction with the unfair labor practice allegations, LEEBA contends that the Employer deliberately let the contract negotiations extend past the contract expiration date, as part of a conspiracy to allow SPFPA and/or Teamsters Local 813 to file representation petitions, and to allow the Employer to recognize Teamsters Local 813 voluntarily as representative of the guards even though it is not a guard union, thereby “circumventing” the requirements of Section 9(b)(3) and “perpetrating a fraud” on the Agency. LEEBA contends that Maritas’ alleged comment after the hearing (i.e., that SPFPA filed its petition only as a “favor” to the Teamsters) essentially confirms the existence of this conspiracy. Finally, LEEBA claims that this newly-discovered evidence proves that the Petitioner (SPFPA) is closely affiliated with Teamsters Local 813 as a nonguard union, and is therefore non-certifiable under Section 9(b)(3).

Discussion

In assessing an alleged “indirect affiliation” between a guard union and a nonguard union, the Board distinguishes between minor or preliminary assistance on the one hand, and continued, material assistance on the other hand:

[M]utual sympathy, common purpose, and assistance between such unions [is] not, without more, indicative of “indirect affiliation” within the meaning of Section 9(b) of the Act. Thus, a mere showing that the guard union had used the meeting hall of a nonguard union rent-free; that assistance was provided to the guard union in its organizational stage; or that the nonguard union had recommended an attorney and mimeographed membership cards for the guard union, was found insufficient to establish that the guard union was not free to formulate its own policies and decide its own course of action independently. Such facts alone will not necessarily support a finding of indirect affiliation within the meaning of Section 9(b)(3).

International Harvester Co., 145 NLRB 1747, 1749 (1964)(internal quotation marks and citations omitted). By contrast, a guard union which continues to accept substantial financial assistance from a nonguard union, or which allows the nonguard union to participate in its negotiations or other affairs, will be seen as improperly “affiliated.” Id., 145 NLRB at 1750.

In the International Harvester case, for example, the Harvester Guards Union was certified to represent a unit of guards in November 1962. That union hired an attorney to represent it during contract negotiations (March to June 1963), but was unable to reach an agreement with the employer. Thereafter, the attorney asked a Teamster local president to assist in the negotiations, and the president indeed attended and actively participated in two negotiation sessions in July 1963. The Teamsters also helped organize a subsequent strike and picketing at the employer’s site later in July 1963; gave the guard union thousands of dollars to pay the pickets; and helped settle the strike in August 1963. Under those circumstances, the Board found that the guard union was no longer independent from the Teamsters, and revoked its certification. Id. at 1749-50.

Conversely, even a guard union which was previously affiliated with a nonguard union may retain its certification if such affiliation ceases. In U.S. Corrections Corp., d/b/a Lee Adjustment Center, 325 NLRB 375 (1998), a local of the Service Employees International Union (SEIU) filed a petition to represent a unit of correctional officers in Kentucky, but the petition was dismissed because the SEIU was unqualified to represent the officers under Section 9(b)(3). Thereafter, the officers in question organized the “Kentucky Corrections Officers Association” (KCOA) and filed another petition. An SEIU business agent, Paul Hounshell, assisted in the preliminary organizational efforts

and appeared at the pre-election hearing on behalf of the new KCOA. The Board found that such limited, preliminary assistance did not disqualify KCOA, which was certified to represent the officers in November 1996. At subsequent meetings in January and early February 1997, Hounshell actively participated in contract negotiations and drafted a tentative agreement. The Board held that SEIU's assistance as of mid-February had exceeded the restrictions imposed by Section 9(b)(3). However, after the employer filed a motion to revoke KCOA's certification in mid-February 1997, both KCOA and the employer were notified that the SEIU would no longer assist KCOA. In fact, Hounshell did not attend subsequent negotiation sessions or otherwise participate in KCOA's affairs. Based on the fact that SEIU's assistance had thereafter ceased, the Board declined to revoke KCOA's certification. *Id.*, 325 NLRB at 377. Thus, it is obvious from these cases that the Board must examine the specific facts of each case, including the nature and duration of any affiliation, to assess a guard union's certifiability at a given time. Circumstances may change, and the Board must base its assessment on specific record evidence at the relevant time. Lee Adjustment Center, *id.* at fn. 7; Bonded Armored Carrier, Inc., 195 NLRB 346, fn. 2 (1972)(Board rejects speculative allegation before election, but notes that petition to revoke certification could be entertained later, if circumstances changed). *See also* Security Consultants Group, Inc., 2011 WL 933637 (NLRB March 17, 2011, Case No. 16-RC-10961).

In the instant case, LEEBA has moved to reopen the record based on "newly discovered evidence," i.e., that director of organizing Maritas allegedly stated that he filed SPFPA's petition only as a "favor" to Teamsters Local 813. LEEBA essentially contends that this statement confirms a conspiracy among the three parties (the Employer, SPFPA

and Teamsters Local 813) to delay contract negotiations beyond the expiration date, to allow SPFPA and/or Teamsters Local 813 to file representation petitions, and to allow the Employer to recognize Teamsters Local 813 voluntarily as representative of the guards even though it is not a guard union. According to LEEBA, this evidence would show that SPFPA is sufficiently affiliated with Teamsters Local 813 to disqualify it under Section 9(b)(3).

There are several problems with LEEBA's arguments. First of all, this Region found insufficient evidence to support the allegation in the unfair labor practice charge in Case No. 29-CA-080677, i.e., that the Employer deliberately stalled negotiations in violation of Section 8(a)(5) as part of the alleged conspiracy. Second, the conspiracy seems extremely unlikely in light of the Employer's actual refusal to recognize Teamsters Local 813.⁶ However, even if LEEBA's factual assertion were true (that SPFPA did a "favor" to Local 813), it would show only some short-term assistance or coordination between SPFPA and Local 813. The proffered evidence fails to show Local 813's substantial assistance or sustained participation in SPFPA's affairs sufficient to prove "indirect affiliation" under such cases as International Harvester and Lee Adjustment Center cited *supra*. In other words, the evidence proffered does not show that, if SPFPA won the election and was certified by this agency to represent Sea Gate's guards, it would not be free to formulate its own policies and decide its own course of action independent from Local 813. Of course, a petition to revoke any such certification could be filed if, in fact, evidence of improper affiliation arose at a later date. However, even if LEEBA's

⁶ See Signal Transformer Co., 265 NLRB 272 (1982)(violation of Section 8(a)(2) to recognize a new union while valid petition is pending and incumbent union has not abandoned its claim to represent the unit).

claims were true (including Maritas' alleged statement), they do not show the type of sustained assistance or control sufficient to disqualify SPFPA at this point in time.

Furthermore, it appears that LEEBA's motion does not meet the requirements of the Board's rules regarding post-hearing motions to reopen the record. Specifically, Section 102.65(e)(1) states in part that a motion to reopen to the record "shall specify briefly ... the additional evidence sought to be adduced, *why it was not presented previously*, and what result it would require if adduced and credited" (emphasis added). The rule allows the Regional Director to take additional evidence only if the evidence was "newly discovered" and "available only since the close of the hearing." As noted above, Maritas testified at the hearing, and LEEBA's representative had an opportunity to question him. LEEBA could have asked Maritas about SPFPA's alleged coordination with the Teamsters in filing and pursuing its petitions, but it did not. I find that LEEBA's motion fails to state why the evidence (testimony regarding Maritas' reasons for filing the petition or any alleged coordination with the Teamsters) was previously unavailable.

In sum, I have concluded that the LEEBA, as the incumbent union representing the bargaining unit of guards employed by The Sea Gate Association, has failed to provide an adequate basis for challenging the Petitioner's certifiability to represent guards under Section 9(b)(3) of the Act. I will therefore direct an election with both unions on the ballot, allowing those guards to choose representation by LEEBA, by SPFPA, or by neither labor organization.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. All of the Hearing Officer's other rulings are free from prejudicial error and hereby are affirmed.

2. The record indicates that The Sea Gate Association is a domestic corporation, with its principal office and place of business located at 3700 Surf Avenue, Brooklyn, New York, where it operates a gated residential community and provides security services. The parties stipulated that, during the past year, which period represents its annual operations generally, the Employer derived gross revenues in excess of \$500,000, and purchased and received at its Brooklyn, New York facility, goods and supplies valued in excess of \$50,000 directly from points located outside the State of New York.

Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I hereby find, that the Law Enforcement Employees' Benevolent Association (LEEBA) and the International Union, Security, Police and Fire Professionals of America (SPFPA) are labor organizations as defined in Section 2(5) of the Act. They claim to represent guards employed by the Employer. As discussed *supra*, I find that they are both qualified to represent guards under Section 9(b)(3) of the Act.

4. A question concerning commerce exists concerning the representation of those employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. I hereby find that the following unit of employees employed by The Sea Gate Association is an appropriate guards-only unit for purposes of collective bargaining:

All full-time and regular part-time police officers, including detectives, employed by the Employer, but excluding all sergeants and officers of higher rank, office clerical employees, professional employees and supervisors as defined in the Labor Management Relations Act of 1947, as amended, and all other employees.

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 the Law Enforcement Employees' Benevolent Association, or by the International Union, Security, Police and Fire Professionals of America, or by neither labor organization. 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 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 7 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.). This list may initially be used by me to assist in determining an adequate showing of interest. 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 **July 12, 2012**.

No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this 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.nrlb.gov,⁷ by mail, or by facsimile transmission at (718) 330-7579. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies, 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

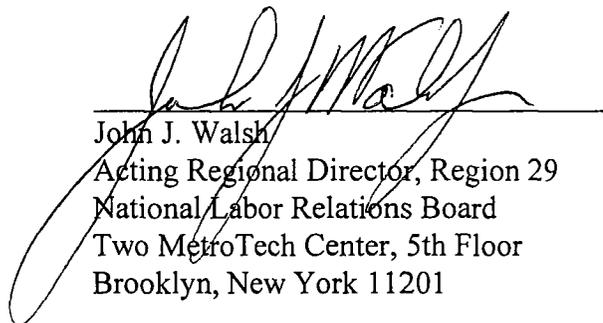
According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least three (3) working days prior to 12:01 of the date of the election. Failure to follow the posting requirement may 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 5 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.

⁷ To file the eligibility list electronically, go to www.nrlb.gov and select the E-Gov tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.

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 **July 19, 2012**. The request may be filed electronically through the Agency's website, www.nlr.gov,⁸ but may **not** be filed by facsimile.

Dated: July 5, 2012.


John J. Walsh
Acting Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201

⁸ 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.

UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

NOTICE

CASE NO. : Case 29-RC-080589

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional director, would serve to cancel the hearing

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds thereafter must be set forth in **detail**;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; **and**
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of the hearing.

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