

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10

ANGELICA TEXTILE SERVICES, INC.,

Employer

Case 10-RD-099829

and

DAVID RAY PIERCE, AN INDIVIDUAL

Petitioner

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, LOCAL UNION #519,

Union

DECISION AND DIRECTION OF ELECTION

The Employer, Angelica Textile Services, Inc., is a New York corporation with an office and place of business located in Ooltewah, Tennessee, where it is engaged in providing linen service to hospitals and clinics. The Union is International Brotherhood of Teamsters, Local Union #519. The Petitioner, David Ray Pierce, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. A hearing officer of the Board held a hearing. The Petitioner and a representative for the Employer appeared at the hearing and both waived the right to file post-hearing briefs. No representative for the Union attended the hearing, although the record indicates that the Union was served with a copy of the petition and Notice of Representation Hearing a week prior to the hearing.¹

¹ I am also advised that counsel for the Union advised the hearing officer that the Union would not be attending the hearing.

THE FACTS

The Petitioner seeks an election in a unit of all full-time and regular part-time drivers employed by the Employer at its Ooltewah, Tennessee, facility, excluding all other employees, office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act. The record indicates that the Union was certified to represent employees in the above-described unit in 2009, following a Board-conducted election in 10-RC-15741.² Thereafter, the Union and the Employer entered into a collective bargaining agreement covering terms and conditions of employment of unit employees; the contract term extended from March 2, 2010, to March 1, 2013. The Union and the Employer held one bargaining session the day before the contract expired and there was no agreement reached. A few days later, the instant petition was filed by the Petitioner. There are approximately 16 employees currently in the unit.

THE ISSUES

There were three issues raised at the hearing: (1) labor organization status of the Union; (2) appropriateness of unit; and (3) voting eligibility of two employees laid off by the Employer before the filing of the petition herein: David Patterson and James Pritchard.

Notwithstanding that no representative of the Union attended the hearing, there is ample evidence that the Union is a labor organization within the meaning of Section 2(5) of the Act. There is no dispute that the Union was certified to represent unit employees and entered into a collective bargaining agreement with the Employer covering terms and conditions of employment of unit employees. The record indicates that an employee of the Employer has functioned as Union steward during the term of the agreement, and that the Employer has

² The election was held pursuant to a Stipulated Election Agreement entered into by the Employer and the Union.

remitted membership dues to the Union on behalf of its employees pursuant to a checkoff provision in the agreement. Accordingly, I find that the Union is an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work, and is, therefore, a labor organization within the meaning of Section 2(5) of the Act.

As to the unit issue, the Employer and the Petitioner stipulated that the unit as described herein is an appropriate one within the meaning of the Act. The record indicates that the unit described herein is coextensive with the stipulated unit in 10-RC-15741, and the unit covered by the recently expired collective bargaining agreement between the Employer and the Union. In view of the above, I find that the unit described herein is an appropriate one within the meaning of the Act.

Turning to the voting eligibility issue, the question is whether two laid off employees, David Patterson and James Pritchard, are eligible to vote in the election directed herein. Neither employee was present or testified at the hearing. As to Patterson, both the Employer and the Petitioner assert that he should be ineligible to vote. As to Pritchard, the Employer, contrary to the Petitioner, asserts that he should be eligible to vote.

It is well settled that the test applicable to determining whether laid off employees are eligible to vote is whether there exists a reasonable expectancy of re-employment in the near future. See Madison Industries, 311 NLRB 865 (1993). The record shows that Patterson has been on an injury lay-off for over two years and has received workman's compensation payments. The Employer recently received notice that Patterson re-injured his shoulder, and thereafter sent him written notice two weeks before the petition herein was filed that he had been

permanently laid off. The record indicates that Patterson is evidently seeking employment elsewhere. In view of the above, I find that Patterson has no reasonable expectancy of re-employment with the Employer and therefore is ineligible to vote in the election.

As to Pritchard, the record shows that he was receiving workman's compensation payments and was on injury lay-off until the middle of February 2013, when he notified the Employer he had been released to work. At that time, the Employer had no work for him and laid him off. The Employer indicated at the hearing that Pritchard is eligible for recall until August 2013. In view of the above, I find that for Pritchard, there exists a reasonable expectancy of re-employment, and therefore is eligible to vote in the election.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union is a labor organization within the meaning of Section 2(5) of the Act and claims 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. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers employed by the Employer at its Ooltewah, Tennessee facility, excluding all other employees, office clerical employees, professional employees, managerial employees, guards and supervisors, as defined in 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 or not they wish to be represented for purposes of collective bargaining by Teamsters Local Union No. 519, Affiliated with the International Brotherhood of Teamsters. The date, time, and place of the election will be specified in the Notice of Election that will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who are 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 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 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 (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. 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, only after I shall have determined that an adequate showing of interest among the employees in the unit found appropriate has been established.

To be timely filed, the list must be received in the Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303, on or before March 29, 2013. 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 website, www.nlr.gov, by mail, by hand or courier delivery, or by facsimile transmission at

(404) 331-2858. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party. 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 list will continue to be placed on the sending party.

C. Notice 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 a minimum of 3 working days prior to 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 non-posting 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, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 P.M., (EDT) on April 5, 2013. The request may be filed electronically through E-Gov on the Board's web site, www.nlr.gov,³ but may not be filed by facsimile.

³ To file the request for review electronically, go to www.nlr.gov and select the E-Gov tab. Then click on the E-Filing link on the menu and follow the detailed instructions. Guidance for

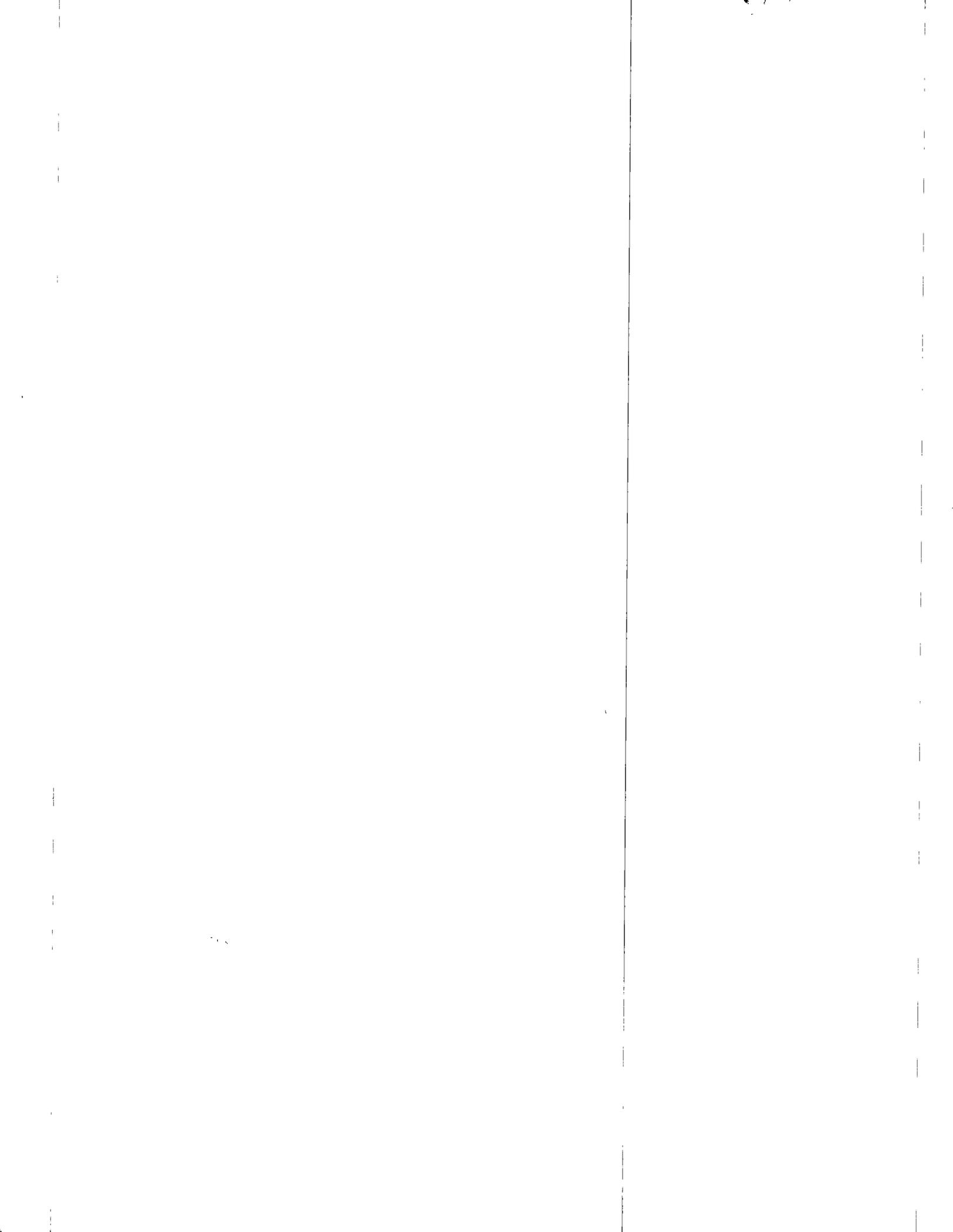
Dated at Atlanta, Georgia, on this 22nd day of March, 2013.



A handwritten signature in cursive script that reads "Claude T. Harrell Jr.".

Claude T. Harrell Jr., Regional Director
National Labor Relations Board
Harris Tower, Suite 1000
233 Peachtree St., N.E.
Atlanta, Georgia 30303-1531

E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's website, www.nlr.gov.



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**AFFIDAVIT OF SERVICE OF: Decision and Direction of Election, dated
March 22, 2013.**

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on **March 22, 2013**, I served the above-entitled document(s) by **regular mail** upon the following persons, addressed to them at the following addresses:

LARRY CURTIS , REPRESENTATIVE
ANGELICA TEXTILE SERVICES
9506 OOLTEWAH INDUSTRIAL BLVD
OOLTEWAH, TN 37363-6700

DAVID RAY PIERCE
12903 GRIFFITH HWY
WHITWELL, TN 37397

SHANE COBB , REPRESENTATIVE
TEAMSTERS LOCAL UNION 519
4431 BONNY OAKS DR
CHATTANOOGA, TN 37416-3351

SAMUEL MORRIS , ATTORNEY
GODWIN, MORRIS, LAURENZI,
BLOOMFIELD
50 N FRONT ST
STE 800
MEMPHIS, TN 38103-2181

WESLEY TROTTERCHAUD, LOCAL
PRESIDENT
TEAMSTERS LOCAL 519
2306 MONTCLAIR AVE
KNOXVILLE, TN 37917-2213

March 22, 2013

Date

JOSELLE CHATMAN, Designated Agent of
NLRB

Name



Signature