UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13

UNITED MAINTENANCE COMPANY, INC.

Employer

and **Case 13-RC-106926**

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1

Petitioner

and

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 727

Intervenor

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (the Board). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.[1]

I. ISSUE

The single issue presented in this case is whether the collective-bargaining agreement between the United Maintenance Company, Inc. (Employer) and the International Brotherhood of Teamsters, Local 727 (Local 727) bars the petition for election filed by the Service Employees International Union, Local 1 (Petitioner/SEIU Local 1).[2]

[1] Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.
2. I find that United Maintenance Company, Inc. (the Employer) is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The record demonstrates that the Petitioner is a labor organization within the meaning of the Act.
3. 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.

[2] A second issue presented in this case was resolved after the June 25, 2013 hearing. The second issue centered on the Petitioner's opposition to the inclusion of the window washer classification in the petitioned-for unit. Since the

II. DECISION

For the reasons discussed in detail below, I find that the Employer's contract with Local 727 does not bar the election because Local 727 has clearly and unequivocally disclaimed interest as the exclusive bargaining representative of the Employer's employees. Accordingly, **IT IS HEREBY ORDERED** that an election be conducted under the direction of the Regional Director for Region 13 in the following bargaining unit as identified in the Petitioner's amended petition:

> All full-time and regular part-time janitors, lead janitors and window washers employed by the Employer at its facility currently located at O'Hare International Airport; but excluding all clericals, professional employees, managerial employees, guards and supervisors as defined in the Act.

III. STATEMENT OF THE FACTS[3]

The City of Chicago contracted its custodial services at O'Hare Airport to a company called Scrubs. The Petitioner represented Scrubs' custodial employees and window cleaners and has represented the privatized janitors working at O'Hare Airport since 2004. On December 17, 2012, the City of Chicago awarded its Scrubs contract to the Employer, and the Employer subcontracted 10% of its work to Geralex. While the Employer hired some former Scrubs employees, it did not retain a representative complement that would have required a bargaining obligation between it and the Petitioner.

Beginning sometime in January 2013, the Petitioner and Local 727 commenced their organizing campaigns to represent the Employer's employees. On March 30, 2013, Local 727 purported to represent a majority of the employees, and the Employer voluntarily recognized it as the exclusive bargaining representative for its employees. On April 3, 2013, the parties entered into a four-year collective-bargaining agreement.

After learning of the labor agreement between the Employer and Local 727, the Petitioner filed a complaint with Change to Win, the labor federation that both the SEIU and Teamsters

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hearing, the Petitioner has communicated to the Region its willingness to accede to the inclusion of the window washing employees, and has amended its petition accordingly.

[3] Petitioner also seeks to represent the employees of Geralex, which is a subcontractor for the Employer. Local 727 executed a labor agreement with Geralex April 29, 2013. The Petitioner filed a separate petition for election, 13-RC-106888, for the Geralex employees, and Geralex alleged that the Region should dismiss the petition because of its contract with Local 727. The Region held a hearing in 13-RC-106888 on June 24, 2013, and a hearing in the current proceeding was held June 25, 2013. Therefore, I take administrative notice to those background facts shared between the two hearings, which all parties were made aware of at both hearings.

belong to, against Local 727 claiming jurisdictional priority over the bargaining unit work sometime in early April 2013.[4]

About May 3, 2013, James P. Hoffa, General President of the International Brotherhood of Teamsters, by letter told Local 727 that by virtue of its membership and SEIU's membership in Change to Win, the parties were bound to the constitution's dispute resolution mechanism and procedures. The letter said that in resolution of the dispute between SEIU and Teamsters, the International Teamsters was instructing Local 727 to immediately disclaim interest in the bargaining unit work at O'Hare Airport. Hoffa did not testify at the hearing, but Stephanie Brinson, General Counsel for Local 727, testified that she received Hoffa's letter and that Local 727 disclaimed interest in the United Maintenance unit in direct response to Hoffa's instructions.

The evidence in 13-RC-106926 and 13-RC-106888 establishes that none of the local representatives from either the Petitioner or Local 727 participated in any of the efforts to resolve the jurisdictional dispute. Brinson testified that Local 727 was not a participant in the challenge proceedings, that she never personally participated in any proceedings and that she did not receive a copy of the Petitioner's challenge. She also testified that she had no knowledge whether their international affiliates participated in mediation or arbitration to resolve the matter. Yet, at the hearing she reasoned, based upon her interpretation of Hoffa's letter, that the jurisdictional dispute was resolved voluntarily after SEIU's complaint was filed. Similarly, Balanoff testified that after he reported his complaint to his international representative, he never saw the actual complaint that was. He also testified that he learned of the resolution from SEIU's chief counsel who informed him that the jurisdictional dispute had been resolved and that Local 727 would disclaim interest on *all* the privatized janitors at the airport.

On May 6, 2013, Local 727 in writing told the Employer that it was disclaiming any and all representational interests in the previously recognized unit employed by the Employer. Two weeks later, on May 24, 2013, the Employer responded to the Local's disclaimer by letter and said that it refused to acknowledge Local 727's attempt to disclaim interest.

On June 10, 2013, more than one month after Local 727 disclaimed interest, the Petitioner filed its current petition for representation, and the Region served Local 727 with notice of the petition. Although Local 727 chose not to intervene, it provided uncontroverted testimony at the hearing, through Brinson, of its unconditional disclaimer and of its lack of intent to represent United Maintenance employees in the future. Additionally, Local 727 has not engaged in any conduct contradicting its May 6, 2013 disclaimer.

[4] Petitioner's President Thomas Balanoff testified in related hearing 13-RC-106888, and according to his testimony, jurisdictional disputes are initiated at the international level. Therefore, the Petitioner's international affiliate pursued its jurisdictional claim. Local 727 and the Petitioner are affiliates of their international unions, and their international unions are members of the same labor federation, Change to Win, which has its own governing constitution that includes a dispute resolution procedure for resolving jurisdictional disputes. The procedures state that any aggrieved affiliate may file a complaint for violating its Established Bargaining Relationships clause, and that the involved parties shall meet and confer in an effort to resolve their dispute. If the parties are unable to voluntarily resolve their dispute, then they may agree to mediation or arbitration, should arbitration become necessary.

IV. ANALYSIS

I find that Local 727's disclaimer was effective, and, therefore, its contract with the Employer does not bar the election. In *American Sunroof Corp.*, 243 NLRB 1128, 1129 (1979), the Board held that absent special circumstances such as evidence of collusion between the incumbent and the petitioning union, as was the case in *Mack Trucks*, a contract would not bar an election where the contracting union had properly disclaimed interest in the unit employees.

Since its decision in *American Sunroof Corp.*, the Board has permitted incumbent unions to disclaim interest pursuant to no-raider provisions, absent evidence of ill-will or an attempt to avoid the contract's obligations. In *VFL Technology Corp.*, 332 NLRB 1443 (2000), the petitioner filed a jurisdictional complaint against the incumbent union pursuant to the parties' constitution. The matter was taken before an impartial umpire who determined the incumbent was in violation of their constitution. *Id*. Consequently, the incumbent disclaimed interest, which the Board held to be valid because it was a clear and unequivocal revocation of its bargaining interest. *Id*. at 1444. In distinguishing the facts of *VFL* from those of *Mack Trucks*, 209 NLRB 1003 (1974),[5] the Board held that its holding in *Mack Trucks* should not be broadly read and that it was limited to those circumstances where an incumbent disclaims interest due to a collusive agreement between it and the petitioning union. *Id*. The Board held that the parties' constitutional procedure for resolving jurisdictional disputes had been historically viewed by the Board as inherently adversarial, and that the evidence did not establish that the incumbent's motive was improper, a tactical maneuver, sham or initiated in bad faith. *Id*. Therefore, the Board held that the disclaimer was valid and its contract would not serve as a bar for the election. *Id*.

Applying the above-cited law to the facts of this proceeding, I find that Local 727's contract with the Employer does not serve as a bar to the election. Local 727, by letter, clearly and unequivocally informed the Employer in writing of its disclaimed interest in the bargaining unit, and it took no subsequent actions contradicting its position. Its email to the Employer specifically references the United Maintenance unit, and the attached disclaimer letter said that it "disclaim[ed] any and all representational interest in the previously recognized unit of airport workers located at Chicago-O'Hare Airport." While the Local and the Employer have a bargaining relationship regarding a separate unit of shuttle drivers at a different location, its letter to the Employer clearly identifies the unit employees it no longer wishes to represent. Therefore, there is no question as to which unit it disclaims. *See Retail Associates*, 120 NLRB 388, 391 – 392 (1958) (a valid disclaimer must clearly and unequivocally disclaim interest in the unit employees.); *see also* CASE HANDLING MANUAL, REPRESENTATION PROCEEDINGS, Section 11120 ("There is no special form for a disclaimer. In general, it should state that the disclaiming union waives and disclaims any right to represent (described) employees."); *American Sunroof Corp.*, 243 NLRB 1128 (1979) (Board held that a valid disclaimer by the incumbent union removes the contract bar).

5 In *Mack Trucks*, the Board held that while it was the Board's policy to accommodate no-raider agreements, such agreements would not be used to supersede an otherwise valid and binding collective-bargaining agreement.

The Employer argues that there is a lack of evidence concerning the resolution and that I should not rely upon the mere assertion that a resolution was reached. Employer Exhibit 10 (and Petitioner Exhibit 1) was admitted into evidence for its truth of the matter, and the document asserts that a resolution was reached between the Locals' international affiliates. No objection was made when the document was admitted and the Employer did not argue that it was submitting its exhibit for any limited purpose. Therefore, the evidence establishes that a jurisdictional dispute arose between the parties and that it was resolved through their constitutional dispute resolution provision.[6] Moreover, the evidence does not establish that Local 727 colluded with SEIU Local 1 in any way or that Local 727 is attempting to evade its current bargaining obligation. Its disclaimer is solely in response to instructions from its international representative and had the international not gotten involved in its bargaining relationship with the Employer, it would be representing the unit. Thus, its disclaimer is valid. *See International Paper*, 325 NLRB 689, 692 (1998) (a valid disclaimer must show that the disclaimer is made in good faith and that there is a sincere affirmation to permanently abandon the unit.)[7]

V. CONCLUSION

Based on the above evidence, I find that the Employer's contract with Local 727 does not bar the election because Local 727 has clearly and unequivocally disclaimed interest as the exclusive bargaining representative.

VI. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued

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[6] That the resolution was reached voluntarily between SEIU and the International Brotherhood of Teamsters does not mean that it was not resolved through the Change to Win constitution's dispute resolution mechanism. The procedures expressly encourage a voluntary resolution after a complaint is filed and before the need for mediation or arbitration arises. Therefore, the parties' resolution is a creature of the dispute resolution mechanism, which the Board has found to be inherently adversarial. *VFL*, *supra*.

[7] The Employer argues in its brief that I should rely upon the holding in *Mack Trucks*, *infra* to dismiss the current petition. While I agree that the holding in *VFL* appears to be at odds with the holding in *Mack Trucks*, my findings are consistent with current Board law and its policies as articulated in CASE HANDLING MANUAL, REPRESENTATION PROCEEDINGS, Section 11120 and OUTLINE OF LAW AND PROCEDURES IN REPRESENTATION CASES, Section 8-100; *but see*, *Garden Manor Farms, Inc.*, 341 NLRB 192 (2004) (Board refusing to address the apparent contradiction between *VFL* and *Mack Trucks* because the Board granted the petitioner's request to withdraw its petition before the Board could render its decision and despite Member Schaumber's dissent demanding from the Board a clear legal standard on the disclaimer issue and no-raider provisions.)

Similarly, the Employer contends that the Board's broad language in *East Manufacturing*, 242 NLRB 5 (1979), ("to permit an incumbent and vital labor organization to disavow its lawful contractual obligations when it is not defunct derogates our contract-bar doctrine.") also requires a finding that Local 727's disclaimer is invalid. However, in that very case the Board noted that the case presented "peculiar circumstances." *Id.* at 6, and, as a result, the Board has declined to follow *East Manufacturing* on a number of a cases, beginning as early as 3 months after issuing the *East Manufacturing* decision. See, e.g., *American Sunroof Corp.*, 243 NLRB 1128; *VFL Technology*, 332 NLRB 1443. Applying the language of *East Manufacturing* literally, without recognition of the peculiar circumstances that generated that language, would have the result that unions would never be able to disclaim interest during a contract term, which is obviously contrary to cited precedent.

subsequently, subject to the Board's Rules and Regulations.[8] Those eligible to vote all full-time and regular part-time janitors, lead janitors and window washers; excluding, all clericals, professional employees, managerial employees, guards and supervisors as defined in the Act. 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 strikes who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States 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 designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the Service Employees International Union, Local 1.

VII. 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, DC 20570-0001. This request must be received by the Board in Washington by **July 26, 2013**.

In the Regional Office's initial correspondence, the parties were advised that the Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to

[8] In order to assure 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 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 hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 13 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 209 South La Salle Street, Suite 900, Chicago, Illinois 60604-1443 on or before **July 19, 2013**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

Because this is a mail ballot election, we request that one copy of the list be furnished in the form of mailing labels, if possible, for use by the Regional Office in mailing the voting kit to employees. While you are not required to comply with this request, your cooperation in doing so will assist in promptly sending mail ballots to each employee's correct address and maximize employee participation in the election.

If you have any questions, please contact the Regional Office.

the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at www.nlrb.gov. On the home page of the website, select the E-Gov tab and click on E-Filing. Then select the NLRB office for which you wish to E-File your documents. Detailed E-Filing instructions explaining how to file the documents electronically will be displayed.

DATED at Chicago, Illinois this 12th day of July 2013.

/s/ Peter Sung Ohr
Peter Sung Ohr, Regional Director
National Labor Relations Board
Region 13
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Chicago, Illinois 60604-1443