

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

**GERALEX, INC., D/B/A
GERALEX JANITORIAL SERVICES**

Employer

and

Case 13-RC-106888

**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. ISSUES

This case presents the issues of whether the collective-bargaining agreement between Geralex, 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), and whether the Region should dismiss the petition because it is premature in light of Geralex's anticipated expansion plans.

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 Geralex, Inc., d/b/a Geralex Janitorial Services (the Employer) are 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. The Petitioner claims to represent certain employees of the Employer.
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.

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. I also find that the petition is not premature and that an immediate election is warranted. 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 and lead janitors 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 FACTS²

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 United Maintenance, and United Maintenance subcontracted 10% of its work to Geralex (Employer). While United Maintenance hired some former Scrubs employees, it did not retain a representative complement that would have required a bargaining obligation between it and the Petitioner.

A. Contract Bar/Disclaimer of Interest

Beginning sometime in January 2013, the Petitioner and Local 727 commenced their organizing campaigns to represent United Maintenance's employees. The evidence, however, does not establish that the Petitioner's organizing efforts at that time included the employees of Geralex. Thomas Balanoff, President of SEIU Local 1 and Vice President of SEIU's International Executive Board, testified that he was not personally aware of Geralex's presence at O'Hare Airport when SEIU Local 1 began its organizing campaign, and that it would be speculation for him to conclude what knowledge, if any, others on his staff may have had regarding Geralex.

On March 30, 2013, Local 727 purported to represent a majority of United Maintenance's employees. United Maintenance voluntarily recognized Local 727 as the exclusive bargaining representative for its employees, and on April 3, 2013, the United Maintenance and Local 727 entered into a four-year collective-bargaining agreement. After learning of the labor agreement

² Petitioner also seeks to represent the employees of United Maintenance, which is the primary contractor to the Employer. Local 727 executed a labor agreement with United Maintenance April 3, 2013. The Petitioner filed a separate petition for election, 13-RC-106926, for the United Maintenance employees, and United Maintenance alleged that the Region should dismiss the petition because of its contract with Local 727. The Region held a hearing in 13-RC-106926 on June 25, 2013, and a hearing in the current proceeding was held June 24, 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.

between United Maintenance and Local 727, Balanoff caused a complaint to be filed with Change to Win, the labor federation that both the SEIU and Teamsters belong to, against Local 727 claiming jurisdictional priority over the bargaining unit work.³ Unbeknownst to Balanoff, Geralex later recognized Local 727 as its employees' exclusive representative and they entered into a labor agreement on April 29, 2013. Because Balanoff lacked knowledge of Local 727's efforts to organize the Geralex employees and there was no agreement between Geralex and Local 727 at the time the jurisdictional complaint was filed, the evidence supports the inference that the initial jurisdictional complaint was limited to United Maintenance's employees.

Also on 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 filed and had no knowledge whether that complaint listed only its jurisdictional dispute with United Maintenance employees or included the Geralex unit as well. He testified that about May 3, 2013, which was after he became aware of Local 727's contract with Geralex, SEIU's chief counsel informed him that the jurisdictional dispute had been resolved and that Local 727 would disclaim interest on *all* the privatized janitors at the airport.

³ Balanoff testified that because jurisdictional disputes are initiated at the international level, 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.

On May 6, 2013, Local 727 sent its disclaimer letter to United Maintenance. But Local 727 failed to take any written action concerning the Geralex employees at that time. Brinson testified that the failure to contact Geralex on May 6, 2013, was an administrative oversight and that Geralex should have also received a disclaimer letter at the time United Maintenance received its letter. She also testified that although Hoffa's May 3, 2013, letter did not mention the Geralex unit, a broad reading of his letter encompasses the Geralex unit. Additionally, Local 727's Business Agent Nicholas Micaletti, who exclusively serviced both the United Maintenance and Geralex contracts and regularly visited the two units, testified that on May 6, 2013, Local Secretary-Treasurer John Coli told him to stop visiting the units because there was a jurisdictional dispute and that their international was asking them to walk away from both contracts. Micaletti said that because of the international's directives, he stopped servicing both units as of May 6, 2013.

Local 727 learned of its failure to disclaim the Geralex unit from a party to the current representation proceeding. After learning of the current proceeding, Local 727 sent a disclaimer letter to Geralex's President Alejandra Alvarado, about three days before the hearing. Alvarado admitted to receiving the letter. The letter said that Teamsters Local 727 was disclaiming any and all interest in the previously recognized unit. 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 the Employer's employees in the future. Additionally, Local 727 has not engaged in any contemporaneous conduct contradicting its disclaimer.

B. Expansion of the Proposed Unit

Geralex employs about 52 employees. Its President, Alejandra Alvarado testified that about the second week of March 2013, she learned that United Maintenance anticipated doubling Geralex's contract at some point in the future. To prepare for this expansion, Geralex has participated in job fairs, interviewed a number of candidates and narrowed its selection of job applicants. It anticipates hiring about 60-70 employees who will all perform bargaining unit work. Despite Geralex's affirmative steps to find qualified applicants, United Maintenance has repeatedly forestalled and postponed the expansion's implementation, leaving Geralex with no written commitments explaining the details of the expansion or a timeline specifying when the expansion is to take place. At first, Geralex's deadline was May, then United Maintenance postponed it to June, and as of their last meeting held on the topic, United Maintenance had failed to provide any further information concerning the expansion. Despite the lack of a clear commitment from United Maintenance as to when the expansion will occur, the Employer requests that the Region dismiss the petition because of its intentions to expand its operations in the future.

IV. ANALYSIS

A. Contract Bar/Disclaimer of Interest

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, 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),⁴ 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 contemporaneous actions contradicting its position. Its letter addressed to Geralex's President said that it "disclaims any and all representational interest in the previously recognized unit of airport workers located at Chicago-O'Hare Airport." While Local 727 and the Employer have a bargaining relationship regarding a separate unit 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).

The evidence also establishes that Petitioner and Local 727 resolved their jurisdictional dispute through their constitutional dispute resolution provision, and the Board gives deference

⁴ 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.

to said constitutional provisions as they are inherently adversarial.⁵ *VFL, supra*. 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 its good faith interpretation of the 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).

B. Expansion of the Proposed Unit

Having found that there is no contract bar, I also find that the petition is not premature and that an immediate directed election is warranted. In cases of expanding units, there is no rigid rule used to determine when an immediate election is warranted. Rather, the Board takes into consideration certain factors in deciding whether a “substantial and representative” complement has been reached. Those factors include:

- (1) the size of the present work force at the time of the representation hearing;
- (2) the size of the employee complement who are eligible to vote;
- (3) the size of the expected ultimate employee complement;
- (4) the time expected to elapse before a full work force is present;
- (5) the rate of expansion, including the timing and size of projected interim hiring increases prior to reaching a full complement;
- (6) the certainty of the expansion;
- (7) the number of job classifications requiring different skills which are currently filled;
- (8) the number of job classifications requiring different skills which are expected to be filled when the ultimate employee complement is reached; and
- (9) the nature of the industry.

Toto Industries (Atlanta), Inc., 323 NLRB 645, 645 (1997).

In the present case, the evidence concerning the expansion is vague and fails to identify with any certainty when the expansion is to occur. Each time that Geralex has moved forward with plans for expansion, United Maintenance has postponed its plans, and has not provided Geralex with any further information concerning the expansion. Nonetheless, even assuming that the expansion does occur in the imminent future, the Employer is not creating new classifications, as the newer employees will be assuming work currently performed by the janitors. Also, the current size of those eligible to vote is roughly half of its anticipated unit size

⁵ 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*. Additionally, although Balanoff may not have realized at the time he initiated the complaint that Local 727 was campaigning to represent Geralex’s employees, and after the jurisdictional complaint was filed that Local 727 had secured a labor agreement with Geralex, the evidence establishes that the Geralex unit was included in the complaint’s resolution. Both the testimony of Brinson and Micaletti when taken as a whole show that their international intended them to disclaim interest at Geralex based on the resolution of the Petitioner’s complaint.

after the expansion. Given that all of the Employer's job classifications are filled, and the uncertain time until the expected expansion is to occur, I find that the present complement of employees is sufficiently representative and substantial to warrant holding an immediate election.

V. CONCLUSION

Based on 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, and I also find that the petition is not premature and that an immediate election is warranted.

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 subsequently, subject to the Board's Rules and Regulations.⁶ Those eligible to vote all full-time and regular part-time janitors and lead janitors; 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.

⁶ 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.

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 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.nlr.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
209 South La Salle Street, Suite 900
Chicago, Illinois 60604-1443