

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 12**

ENTERPRISE LEASING COMPANY  
OF ORLANDO, LLC

Employer

and

Case 12-RC-121659

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, LOCAL 385

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Enterprise Leasing Company of Orlando, LLC (the Employer)<sup>1</sup> is owned by Enterprise Holdings. The Employer provides car rental services under the brand names Enterprise, Alamo and National. The Employer provides those services at Orlando International Airport and at other locations in the Orlando, Florida area.

On January 31, 2014, International Brotherhood of Teamsters, Local 385 (the Petitioner) filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act, seeking to represent all full-time and regular part-time service agents employed by the Employer at Orlando International Airport. On February 14, 2014, a hearing officer of the Board held a hearing in this matter at the Tampa Regional Office. The Employer filed a post-hearing brief.<sup>2</sup>

The Employer contends that the petition should be dismissed because it intends to subcontract all of the work currently being performed by the service agents in the petitioned-for unit by August 15, 2014. The Union argues that the petition should be processed and an election held. There is no dispute regarding the composition of the unit and the parties raised

---

<sup>1</sup> During the hearing, the parties agreed to amend the petition to reflect the Employer's correct name.

<sup>2</sup> The Employer's brief has been carefully considered. The Petitioner did not file a brief.

no other issues. Thus, the sole issue to be resolved is whether the layoff of the Employer's service agents is certain and imminent.

I have considered the evidence and arguments presented by both parties and have concluded that the Employer's decision to subcontract the work performed by its service agents is neither certain nor imminent. I therefore find that the petition is timely and shall direct an election as set forth below.

## **I. FACTS**

The Employer has operations at both the A side terminal and B side terminal at Orlando International Airport (the Airport). The A side operations are approximately twice as large as the B side operations. The Employer employs rental agents, customer service agents, greeters, return agents, and service agents at the Airport.

Service agents work on both the A side and B side of the Airport. After a car is returned by a customer, the service agents remove items from cars, clean the interior, check and fill fluids, check and fill the fuel tank, and check the tires. The Employer's service agents clean and service approximately 3.9 cars per hour.

In March 2011, the Employer entered into a contract with a company called Optima Max, pursuant to which Optima Max employees were to perform the same work as the Employer's service agents. Also, in early 2011, the Employer began exploring the possibility of contracting out 100 percent of the work performed by its service agents and concluded that by doing so it would save around \$2 million per year. Sometime in 2011, the Employer decided to proceed with the plan to lay off all of its service agents and subcontract the work performed by the service agents to another company.

As of March 2011, the Employer employed 111 service agents. During that month, the Employer hired its last four service agents.<sup>3</sup> As the number of service agents employed by the Employer decreased, the number employed by Optima Max, pursuant to its contract with the Employer, increased.

The Employer introduced a chart into evidence showing that in 2011 it employed 111 service agents and contracted out the service agent work of 23 full-time equivalents (FTEs); in 2012 it employed 89 service agents and contracted out the service agent work of 39 FTEs; in 2013 it employed 77 service agents and contracted out the service agent work of 42 FTEs; and in 2014, as of shortly before the hearing, it employed 61 service agents and contracted out the service agent work of 45 FTEs.<sup>4</sup>

The Employer's vice president testified that the Employer currently employs 60 service agents, of whom two are part-time employees and the rest are full-time employees.

On March 29, 2012, after Optima Services had apparently changed its name to OP Max Support Services, LLC (OP Max), OP Max entered into a contract to provide service agent work for the Employer, effective by its terms on February 1, 2012. That contract requires OP Max to "maintain the level of staffing necessary to meet the business needs of the [Employer]." The contract can be terminated by either party giving 60 days advance written notice.

The Employer introduced into evidence an undated internal memorandum from its vice-president of daily rental for the Greater Orlando area (including Orlando International Airport, Sanford Airport, and Disney World) and another Employer official to its general manager and a fourth Employer official, titled "Communication Strategy for Reduction in Service Agent Work

---

<sup>3</sup> The Employer's vice president testified from summary records introduced in evidence by the Employer that the Employer has not hired any service agents at the Airport since it hired those four service agents, though one service agent was transferred to the Airport from another facility in the following month, April 2011.

<sup>4</sup> The number of FTEs is determined by dividing the total number of hours worked by contractor employees into 40. Two of the Employer's current service agent employees are part-time employees and the rest work full-time for the Employer.

Force at MCO.”<sup>5</sup> The memorandum states that the Employer would be eliminating its service agents and one production manager at the Airport and replacing all service agent positions at its “Quick Turn Around” facility with “contract labor” effective September 1, 2011. Attached to the memorandum is a “Communication Timetable” outlining detailed steps to be taken to implement this decision and communicate about it to employees, between August 29, 2011 and September 16, 2011. Thus, it is apparent that this memorandum and timetable were prepared sometime before September 1, 2011, and that the Employer planned to subcontract all of its service agent work by September 1, 2011.

However, the Employer did not contract out the remaining service agent work at that time. Instead, according to the Employer’s vice-president, the Employer decided to postpone implementation of the contracting out of service agents until it resolved problems it was then experiencing with Optima Services in the performance of car shuttling services at the Airport, an operation involving approximately 350 FTEs.

Sometime in 2012, the Employer hired a new contractor, GCA Services, to perform most of the car shuttling services for the Employer at the Airport. Op Max (formerly Optima Services) continues to perform some car shuttling for the Employer. The contracting out of shuttling work to GCA Services has apparently reduced the problems the Employer had been having with the subcontracting of the car shuttle service, as further discussed below.

Since at least March 2012, OP Max employees have worked alongside the Employer’s service agents at the Airport, and have performed the same work as those service agents.<sup>6</sup> The Employer’s service agents and OP Max service agents work in nearby sections of the same general work area, and use the same equipment, which the Employer leases from the Airport.

---

<sup>5</sup> MCO is the airport code for Orlando International Airport.

<sup>6</sup> The exact nature of the services to be provided by OP Max is set forth in an attachment to its agreement with the Employer.

However, OP Max's employees report to supervisors and managers employed by OP Max, and wear uniforms provided to them by OP Max.<sup>7</sup>

Enterprise Holdings has subcontracted all of its service agent work at other facilities not involved in this proceeding, including its Fort Myers, Florida facilities in April 2011, its Ft. Lauderdale, Florida facilities in June 2011, and its Atlanta, Georgia facilities. The Employer's vice-president at the Airport spoke with managers of these other facilities and learned that those facilities had successfully subcontracted the service agent work and had saved money by doing so. The parties stipulated that during 2011 and 2012, the Employer engaged in a financial and best practices analysis to determine whether subcontracting the service agent work was a viable option that would allow the Employer to be profitable. According to the Employer's vice-president, OP Max performs its work in a quality manner and on average, its employees clean one more car per hour than the number of cars per hour cleaned by the Employer's service agents.

On the evening of October 7, 2013, the Employer's vice-president sent an email message to his immediate supervisor, the Employer's general manager, regarding the subject, "FW: Communication Strategy SA Outsourcing MCO." The message states that the Employer's vice-president believed that the Employer needed to reconsider the outsourcing option as part of its cost savings strategy; that shuttling contractor GCA was doing a much better job; that OP Max, its "supplemental cleaner" (i.e. service agent contractor) was performing "much better" regarding both quality and quantity (of its work); and stating, "I firmly believe we need to reconsider this option as part of our cost savings strategy."

The Employer's vice-president testified that on the following day, October 8, 2013, he and the general manager met and discussed the potential cost savings of using subcontractors; the quality of the service agent work being performed by OP Max, which he testified is superior

---

<sup>7</sup> Neither party has taken the position that the Employer and OP Max are joint employers, or that the service agents employed by OP Max belong in the petitioned-for unit of service agents employed by the Employer.

to the performance of the Employer's own service agents; the shuttling work being performed by GCA; and that the fact that GCA was now performing shuttling work and that was no longer a barrier preventing the full outsourcing of the service agent work. According to the vice-president, he and the general manager discussed a timeline for outsourcing the service agent work. The vice president further testified that because of the heavy volume of the Employer's business during the Thanksgiving and Christmas holidays, and during the months of February, March and April, which are the busiest time of the year in Florida, they decided to delay their announcement of the decision to outsource the service agent work until May 15, 2014, and to implement the outsourcing of the service agent work on August 15, 2014, a slow period in the business.<sup>8</sup>

The Employer's vice-president testified that he could envision no circumstances that would cause the Employer to abandon its plan to outsource its service agents. As of the hearing date, the Employer had not announced its decision to outsource all of the service agent work to its service agents or OP Max.<sup>9</sup> The Employer did not introduce in evidence any documents showing that it had finalized a decision to contract out, or outsource, the work of its 60 remaining service agents. However, the Union stipulated that the Employer's vice-president and general manager made the aforementioned decision as testified to by the Employer's vice-president.<sup>10</sup>

## **II. ANALYSIS**

The Board considers several factors when assessing "contracting unit" cases, including (1) whether the contraction is definite and imminent, (2) whether the contraction is a result of

---

<sup>8</sup> It is not clear from the record whether the decision to outsource service agents affects any of the Employer's Orlando, Florida area facilities other than the Airport.

<sup>9</sup> OP Max has informed the Employer that it could take over all of the service agent work with two weeks notice.

<sup>10</sup> It is apparent from the record that the Union agent who so stipulated had no independent knowledge of the date of the Employer's cessation of business, and solely relied on the testimony of the Employer's vice-president, the only witness at the hearing, regarding his October 8, 2013, conversation with the Employer's general manager.

a "fundamental change" in the nature of the Employer's business, (3) and whether a "substantial and representative complement" of employees will remain after the contraction, considering both the number of employees and their job classifications. *MJM Studios of New York, Inc.*, 336 NLRB 1255 (2001). A mere reduction in the number of employees does not warrant dismissing a petition. *Id.*, at 1256.

The Board will not dismiss a petition if the employer's alleged plan to contract the unit is too remote in time or speculative. In *MJM Studios, supra*, the Board stated that there must be "definite evidence" of a contracting unit "in the near future." 336 NLRB at 1256 (emphasis added).

In *Hughes Aircraft Company*, 308 NLRB 82 (1992), the Board agreed with the Acting Regional Director's conclusion that the union's petitions for units of plant protection officers and security receptionists should be dismissed because of the employer's intent to subcontract within 90-days all uniformed plant protection officer work and security receptionist work. In that case, the employer began considering plans to reduce costs, including the possibility of subcontracting certain work. In November 1991, February 1992, and April 1992, the employer informed its employees of the possibility that it would subcontract some functions to save costs. In February 1992, the employer made a tentative decision to subcontract its security functions and the final decision to do so was made in May 1992. On June 5, the employer informed employees that the transition to subcontractors would be complete by August 16, and that employees would be subject to layoff between August 3 and August 16. On June 19, the employer signed contracts with two subcontractors requiring that the subcontractors take over the security functions within 30 to 45 days. The Board agreed that the employer's conduct – mandating a reduction in operating costs, planning to reduce those costs by subcontracting the plant protection/security work, soliciting bids from subcontractors for the plant protection/security work, meeting with potential subcontractors to discuss specifications, signing agreements with the successful bidders, as well as keeping the current employees apprised of the employer's

plans and of the time of their anticipated lay off – supported the employer’s assertion that the permanent subcontracting of the work of the petitioned-for units was imminent and certain.

Similarly, in *Martin Marietta Aluminum*, 214 NLRB 646 (1974), the Board dismissed a petition for all production and maintenance employees because closure of the plant was “definite and imminent.” The petition in that case was filed on April 19, 1974, the hearing was held on May 21, and the Region Director directed that an election be conducted in June. The Board, in reversing the Regional Director, relied upon the employer’s evidence that it had unsuccessfully sought a purchaser for the plant, announced to its employees and the media that the plant would be closed by August 31, stopped taking orders for the plant, and notified utility companies and suppliers that it was terminating its contracts with them. Furthermore, the employer had discharged a “substantial number of employees,” by the date of the hearing, and the number of employees would have been reduced by about 50 percent by the scheduled election date.

In *Larson Plywood Company*, 223 NLRB 1161 (1976), the Board again took up the issue of what constitutes sufficient evidence of an “imminent and certain” decision. In that case, the record established that the employer intended to liquidate the entire business within 90-days and there was no evidence that any employment relationship would survive liquidation. The Board went on to hold that “no useful purpose would be served by conducting an election . . .” *Id.*

However, in *Gibson Electric, Inc.*, 226 NLRB 1063 (1976), the Board directed that an election should be held notwithstanding the employer’s contention that the relevant project would be completed two months after the hearing, based on evidence submitted by the union that the project was still in “full force” two months after the expected cessation date, and would continue for at least another four months. The Board stated that the employer’s anticipated completion date had clearly been “inaccurate.” Since the project was still in progress, the Board found no impediment to ordering an immediate election. *Id.*

Here, the Employer decided in early 2011 that it would outsource all of the work performed by its service agents by September 1 of that year. However, the Employer's decision was not implemented because of problems it was experiencing with the services being provided by its shuttle services contractor. That shuttle services contractor, now with a new name, is the contractor performing supplemental service agent work and is the contractor to whom the Employer decided in October 2013, to subcontract all service agent work to starting on August 15, 2014, over five months from now. In October 2013, the Employer noted that GCA, the shuttling contractor that replaced Optima Service (now OP Max), as its main shuttle service contractor, was doing a much better job, and that OP Max, its "supplemental cleaner" contractor (i.e. service agent contractor) was performing "much better."

As noted above, the Employer's current contract with OP Max requires that OP Max "maintain the level of staffing necessary to meet the business needs of the [Employer]." Unlike the contracts in *Hughes Aircraft Company*, the contract between the Employer and OP Max does not require that OP Max assume all of the work performed by the employees in the petitioned-for unit. Thus, the Employer is not contractually required to subcontract all of the service agent work to OP Max. Therefore, as was the case in 2011, there is no contractual impediment to the Employer making a decision not to follow through with the undocumented decision of its vice-president and general manager for any number of reasons.

In addition, unlike the employers in the *Hughes Aircraft Company* and *Martin Marietta Aluminum* cases, the Employer has not announced its decision to subcontract all of the service agent work, either to its own employees, or to the OP Max employees. The lack of certainty in the Employer's plans is also demonstrated by the fact that the Employer, a large corporation that is likely to document its plans, failed to produce any written evidence that it had finalized its decision to subcontract all service agent work at Orlando International Airport effective on August 15, 2014, or that it has a written plan to implement that decision, other than the plan it

created in 2011, which specified certain steps to be taken before and on the then-planned date of implementation, September 1, 2011.

Although OP Max has assured the Employer that it can fulfill all of the Employer's needs, it appears from the evidence presented by the Employer that in the past OP Max has not performed service agent work as well as it was performing in October 2013, and it is possible that there may be further problems with OP Max's performance between now and August 15, 2014.

For all of the foregoing reasons, I conclude that there is insufficient evidence to establish that the Employer's decision to subcontract all the work performed by its service agents effective on August 15, 2014 is certain or imminent.

Even if the Employer follows through on its decision to subcontract all of the work performed by its service agents, its decision will not be implemented until August 15, 2014, almost six months from now. In addition, although the number of service agents employed by the Employer at the Airport has been reduced from 111 to 60 since 2011, there is no evidence that the number of employee service agents will be significantly reduced from its current level before August 15, 2014, other than by attrition, and there is no evidence that current service agents' employment is scheduled to be terminated for any reason.

In summary, I conclude that the Employer's decision to subcontract the bargaining unit work is not imminent, and that sufficient time remains between now and August 15, 2014, for meaningful bargaining to be conducted in the event the employees in the petitioned for unit

select the Union as their exclusive collective-bargaining representative. Accordingly, I shall direct an election in the unit set forth below.<sup>11</sup>

### **III. Conclusions and Findings**

A. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

B. 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.<sup>12</sup>

C. The Petitioner claims to represent certain employees of the Employer.

D. 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 2(7) of the Act.

E. The following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service agents employed by the Employer at the Orlando International Airport, located at 1 Jeff Fuqua Boulevard, Orlando, Florida, excluding all other employees, dispatchers, clerical employees, irregular part-time employees, temporary employees, managers, guards and supervisors as defined in the Act.

### **IV. 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

---

<sup>11</sup> The Employer argues that the Board's holding in *Douglas Motors Corp.*, 128 NLRB 307 (1960), compels the dismissal of the petition. In that case, the Board concluded that the employer intended to enter into subcontracts that would eliminate all of its production operations by February of 1961, approximately 6-months from the date of the Board's decision. However, the employer also intended to reduce the number of employees from 40 at the time the petition was filed to 20 by July 1960, and to 10 by September 1960. There is no evidence that the Employer intends to engage in a similar reduction of service agents between now and August 15, 2014. Thus, the facts of this case are distinguishable from *Douglas Motors Corp.*

<sup>12</sup> The parties stipulated that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and 2(7) of the Act; it is a Delaware limited liability company operating a car rental agency at the Orlando International Airport; and during the previous 12 months, the Employer derived gross income in excess of \$500,000 and purchased and received goods and services in excess of \$50,000 directly from points outside the State of Florida.

wish to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local 385. 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 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 strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in military service of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or have been discharged for cause since the designated payroll period; (2) 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 (3) employees engaged in an economic strike which commenced 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 have the opportunity to be informed of the issues in the exercise of the 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); N.L.R.B. 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 eligible voters. North Macon Health Care Facilities, 315 NLRB 359 (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. Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 201 East Kennedy Blvd., Suite 530, Tampa, FL 33602, on or before March 7, 2014. 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. Since the list will be made available to all parties to the election, please furnish two copies of the list.<sup>13</sup>

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of three full 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 nonposting of the Election Notice.

### **V. 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 14<sup>th</sup> Street, N.W. Washington, D.C. 20570-0001. This request

---

<sup>13</sup> The list may be submitted electronically through the Agency's website at [www.nlr.gov](http://www.nlr.gov), or by facsimile transmission to (813) 228-2874, as well as by hard copy. To file the list electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. Only one copy of the list should be submitted if it is filed electronically or by facsimile.

must be received by the Board in Washington by 5:00 p.m., EST on March 14, 2014. The request may not be filed by facsimile.<sup>14</sup>

DATED this 28<sup>th</sup> day of February 2014.

A handwritten signature in cursive script that reads "Margaret J. Diaz". The signature is written in black ink and is positioned above a horizontal line.

Margaret J. Diaz, Regional Director  
National Labor Relations Board, Region 12  
201 E. Kennedy Boulevard, Suite 530  
Tampa, Florida 33602

---

<sup>14</sup> The request may be submitted electronically through the Agency's website at [www.nlr.gov](http://www.nlr.gov), as well as by hard copy. To file the request electronically, go to the Agency's website at [www.nlr.gov](http://www.nlr.gov), select **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions.