

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

AMERICAN LEGION MULDOON
POST NO. 29, INC.

Employer

and

Case 19-RC-126549

UNITE HERE! LOCAL 878

Petitioner

DECISION AND DIRECTION OF ELECTION

The above-captioned matter is before the National Labor Relations Board (“Board”) upon a petition duly filed under § 9(c) of the National Labor Relations Act (“Act”), as amended. Pursuant to the provisions of § 3(b) of the Act, the Board has delegated its authority in this proceeding to me. Upon the entire record in this proceeding, I make the following findings and conclusions.¹

I. SUMMARY

The Employer is a State of Alaska corporation and is engaged in the business of selling alcoholic beverages, food, and gaming at its place of business in Anchorage, Alaska (“facility”).² The Employer employs about seven bartenders at the facility. Petitioner filed the instant petition seeking to represent the bartenders.³

About April 14, 2014, Petitioner made a demand on the Employer for recognition as the collective bargaining representative of the employees in the petitioned-for unit. At hearing, the parties stipulated that the Employer “will” recognize Petitioner. However, the record reveals that the Employer’s intent regarding recognition was to proceed to a secret ballot election conducted by the Board to determine whether the petitioned-for bartenders desire to be represented by Petitioner.

¹ The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed. Neither party presented witness testimony. Further, the parties waived their respective right to file a brief.

² At hearing, the parties stipulated that during the past 12 months, the Employer’s gross volume of sales exceeded \$500,000, and, during that same period of time, it purchased goods valued in excess of \$50,000 from suppliers located within the State of Alaska, which suppliers had purchased and received said goods directly from suppliers located outside the State of Alaska. In light of the foregoing and the record as a whole, I find that the Employer is engaged in commerce within the meaning of §§ 2(6) and (7) of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

³ At hearing, the parties stipulated that Petitioner is a labor organization within the meaning of § 2(5) of the Act. The record does not reveal the existence of any contract or other bars to further processing of the instant petition.

Neither party contests the composition or scope of the unit in that it should include all bartenders employed at the facility. At hearing, the Employer maintained that it currently does not employ any full-time bartenders but does employ part-time bartenders who do not work over 30 hours a week for the Employer at the facility.

The Board's longstanding and most widely used formula to determine voting eligibility for part-time or on-call employees is the *Davison-Paxon* formula, under which an employee is considered to have a sufficient regularity of employment to demonstrate a community of interest with unit employees if that employee regularly averages 4 or more hours of work per week for the last quarter prior to the election eligibility date. *Davison-Paxon*, 185 NLRB 21, 23-24 (1970); *Steppenwolf Theatre*, 342 NLRB 69, 71 (2004). The Board has made it clear that the *Davison-Paxon* formula should be followed absent a showing of special circumstances. *Trump Taj Mahal Casino*, 306 NLRB 292, 295 (1992). See also *Columbus Symphony Orchestra, Inc.*, 350 NLRB 523, 524 (2007). The last quarter preceding the eligibility date refers to the "13-week period immediately before the eligibility date," not the last calendar quarter. *Woodward Detroit CVS, LLC*, 355 NLRB 1129 (2010).

Here, the parties neither contend nor does the record disclose that special circumstances exist, which would warrant not following the *Davison-Paxon* formula in this case with respect to the voting eligibility of part-time bartenders. In light of the above, the record as a whole, and the absence of special circumstances, I have included the *Davison-Paxon* formula in the section below where I have directed an election in this matter.

II. CONCLUSION

Based on the record as a whole and the above, I find that a question concerning representation exists within the meaning of § 9(c)(1). Specifically, the parties do not dispute that the Employer's operations fall under the Board's jurisdiction and they do not raise any bars to further processing of the instant petition. With respect to the unit description, the parties do not dispute that the unit shall include bartenders working at the Employer's facility. Accordingly, I shall direct an election in the following appropriate unit ("Unit"):

All full-time and regular part-time bartenders employed by the Employer at its Anchorage, Alaska facility; excluding all other employees, and guards and supervisors as defined by the Act.

There are approximately 7 employees in the Unit found appropriate.

III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Region among the employees in the Unit at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible to vote are all employees in the unit who

regularly averaged 4 or more hours of work per week for the 13-week period prior to the eligibility date. 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 that 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 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 **UNITE HERE! LOCAL 878**.

A. LIST OF VOTERS

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 alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with me 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. The Region 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, Jackson Federal Building, 915 Second Ave., Room 2948, Seattle, WA 98174, on or before **May 15, 2014**. 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 to (206) 220-6305. Because the list is to be made available to all parties to the election, please furnish a total of four (4) copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B. NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations 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.

C. 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. This request must be received by the Board in Washington, DC by **5:00 p.m. (ET) on May 22, 2014**. The request may be filed through E-Gov on the Board's web site, <http://www.nlr.gov>, but may not be filed by facsimile.⁴

DATED at Seattle, Washington on the 8th day of May, 2014.



Ronald K. Hooks, Regional Director
National Labor Relations Board, Region 19
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Seattle, Washington 98174

⁴ To file a request for review electronically, go to www.nlr.gov and select the "File Case Documents" option. Then click on the E-file tab and follow the instructions presented. Guidance for E-filing is contained in the attachment supplied with the Region's original correspondence in this matter, and is also available on www.nlr.gov under the E-file tab.