

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

PARAGON SYSTEMS, INC. ^{1/}

Employer

and

Case 9-RC-126973

COLUMBUS PROTECTIVE SECURITY OFFICERS UNION

Petitioner

REGIONAL DIRECTOR'S DECISION
AND
DIRECTION OF ELECTION

I. INTRODUCTION

Petitioner has petitioned for a bargaining unit consisting of the Employer's security guards performing services under the contract in the Columbus, Ohio operating area, excluding all office clerical employees, professional employees, managers, non-security personnel, temporarily assigned, substituted, and casual employees, sergeants, lieutenants, captains, assistant project managers, project managers, applicants, trainees, offerees, candidates and supervisors as defined by the Act. There are approximately 45 employees in the petitioned for unit. The petitioned for bargaining unit was previously recognized by the Employer's predecessor, DECO, Inc., for purposes of collective bargaining.

For the reasons stated below, I find that it is appropriate to direct an election in the unit found appropriate. There are approximately 45 employees to be petitioned for unit.

II. FACTS

The Employer provides security services under contract with the U.S. Government at various federal installations in the Columbus, Ohio area. Petitioner is an organization in which employees participate and which exists, at least in part, for the purpose of dealing with employers concerning terms and conditions of employment. Thus, Petitioner is a labor organization as defined by Section 2(5) of the Act. See *Litton Business Systems*, 199 NLRB 354 (1972) and *Machinists*, 159 NLRB 137 (1966).

^{1/} The Employer did not appear at the hearing of this matter and the record testimony was that the Employer's name is "Paragon Systems." I take administrative notice, however, of *Paragon Systems, Inc.*, 360 NLRB No. 50 (February 21, 2014), wherein the Employer was referred to as "Paragon Systems, Inc." and find that name to be more accurate since the Employer participated in that proceeding.

DECO, Inc. recognized the Industrial Technical and Professional Employees Union, OPEIU Local 4873, AFL-CIO (ITPEU Local 4873) as the representative of the bargaining unit. However, ITPEU Local 4873 did not move to intervene in this proceeding and did not appear at the hearing of this matter. ^{2/} DECO, Inc. and ITPEU Local 4873 were parties to a collective-bargaining agreement with effective dates of April 1, 2012 to March 31, 2015. Significantly, however, Article 29, Section 2 of the agreement states that it:

“Shall immediately terminate upon any termination by the client of its relationship with the Employer [DECO, Inc.] to provide security services . . . In such event, the parties’ relationship shall also terminate, as shall any further duty to bargain.”

The record testimony establishes that DECO, Inc.’s contract with the U.S. Government (client) did, in fact, terminate when the Employer took over the contract on February 1, 2014. Thus the collective-bargaining agreement between DECO and ITPEU Local 4873 has terminated and there is no contract bar which would block the instant petition.

After considering the record evidence as a whole as well as the arguments made at hearing, I find that the petitioned for bargaining unit; all security guards employed by the Employer performing services under contract in the Columbus, Ohio operating area, constitutes an appropriate unit for purposes of collective bargaining.

III. CONCLUSIONS AND FINDINGS

Based upon the foregoing and the entire record in this matter, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are 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/}
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner claims to represent certain employees of the Employer.
5. 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.
6. 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:

^{2/} Although the transcript reflects that the hearing officer inquired whether anyone was present on behalf of “the intervenor,” there is no intervenor in this case.

^{3/} In this regard, I take administrative notice of *Paragon Systems, Inc.*, 360 NLRB No. 50 (February 21, 2014), wherein the Board asserted jurisdiction over the Employer.

All security guards performing services under the contract in the Columbus, Ohio operating area, excluding all office clerical employees, professional employees, managers, non-security personnel, temporarily assigned, substituted, and casual employees, sergeants, lieutenants, captains, assistant project managers, project managers, applicants, trainees, offerees, candidates and supervisors as defined by 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. The employees will vote on whether they wish to be represented for purposes of collective bargaining by Columbus Protective Security Officers Union. 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.

V. VOTING ELIGIBILITY

Eligible to vote in the election 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. 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.

VI. 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 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 (overall or by department, etc.). 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.

To be timely filed, the list must be received in the Regional Office on or before **May 22, 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. The list may be submitted to the Regional Office by electronic filing through the Agency's website, www.nlr.gov,^{4/} by mail, or by facsimile transmission at (513) 684-3946. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

VII. NOTICE OF 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 at least 3 working days prior to 12:01 a.m. of the day 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.

VIII. 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, D.C. 20570-0001. This request must be received by the Board in Washington by **May 29, 2014**. *The request may be filed electronically through the Agency's website, www.nlr.gov,^{5/} but may not be filed by facsimile.*

Dated at Cincinnati, Ohio this 15th day of May 2014.


Gary W. Muffley, Regional Director
Region 9, National Labor Relations Board
3003 John Weld Peck Federal Building
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^{4/} 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

^{5/} To file the request for review electronically, go to www.nlr.gov, select **File Case Documents**, enter NLRB Case Number, and follow the detailed instructions.