

NOT TO BE INCLUDED
IN BOUND VOLUMES

PHJ
Jamaica, NY

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ATLAS ROLL-OFF CORP.

Employer

and

Case 29-RC-114120

LOCAL 175, UNITED PLANT &
PRODUCTION WORKERS,
INTERNATIONAL UNION OF
JOURNEYMEN AND ALLIED TRADES

Petitioner

DECISION AND DIRECTION OF SECOND ELECTION

The National Labor Relations Board, by a three-member panel, has considered an objection to an election held November 20, 2013, and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 13 for and 15 against the Union, with 3 challenged ballots.¹

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings² and recommendations,³ and finds that the election must be set aside and a new election held.⁴

¹ The Regional Director recommended sustaining two of the challenged ballots, and made no recommendation as to the remaining challenged ballot, as it was no longer determinative. No party excepted to these recommendations.

² The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the first election and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). Those in the military services 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 payroll period, 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 employees engaged in an economic strike that began more than 12 months before

incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). A careful examination of the record reveals no basis for reversing the findings.

³ For the reasons stated in her report, we adopt the hearing officer's recommendation to set aside the election based on the conduct of the Employer's agent, Rolquide Peralta, in telling employees to take a picture of their ballot and show it to the Employer or they would be fired. Member Johnson finds it unnecessary to rely on Daniel Mazarina's ambiguous testimony regarding Peralta's statement, but agrees that the hearing officer effectively made a credibility determination regarding the testimony of the other witnesses regarding that statement. In the absence of exceptions, we adopt pro forma the hearing officer's recommendations to overrule (a) the Union's Objection 1 and (b) the portion of Objection 2 alleging that the Employer's owner, Tom Polsinelli, instructed employees to photograph their ballots and threatened them with loss of employment if they voted for the Union and the Union won the election.

⁴ The Employer has requested oral argument. The request is denied as the record, exceptions, and brief adequately present the issues and the positions of the parties. The Employer's request for a new hearing and/or to reopen the record is also denied.

the date of the first election and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by Local 175, United Plant & Production Workers, International Union of Journeyman and Allied Trades.

To ensure that all eligible voters 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 directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C., August 6, 2014.

Mark Gaston Pearce, Chairman

Kent Y. Hirozawa, Member

Harry I. Johnson, III, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD