



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 19

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May 23, 2005

Joseph L. Davis, Attorney
Davis Grimm Payne and Marra
701 - 5th Ave., Suite 4040
Seattle, WA 98104

Re: Barron Heating & Air Conditioning, Inc.
Case 19-RM-2227

Dear Mr. Davis:

The above-captioned case, petitioning for an investigation and determination of representative under Section 9(c)(1)(B) of the National Labor Relations Act, has been carefully investigated and considered.

The Sheet Metal Workers, Local 66, affiliated with Sheet Metal Workers International Association, AFL-CIO, filed a petition in Case 19-RC-14429, seeking to represent certain employees of the Employer in the instant case, Barron Heating & Air Conditioning, Inc. Pursuant to a Decision on Review and Order issued by the National Labor Relations Board in 19-RC-14429 on October 29, 2004, a second election¹ was conducted on December 10, 2004, among the following unit of employees: All employees employed by the Employer out of its Bellingham, Washington facility, performing sheet metal work in the commercial/building trades, residential, and service departments (including journeymen and apprentice fabricators, journeymen and apprentice field mechanics, commercial service technicians, residential shop fabricators, residential field installers, and service department technicians); excluding gas pipe installers, spa department employees, hydronics department employees, fireplace department employees, Burlington showroom employees, salespeople, dispatchers, clerical employees, managers, guards and supervisors as defined in the Act.

¹ The original election in Case 19-RC-14429 was conducted on February 11, 2004, in two separate units of employees (Unit A consisting of Commercial Department employees and Unit B consisting of Residential Department employees). The ballots cast in the original election were impounded after the conclusion of the election and subsequently never counted. A second election was conducted after the Board concluded that a single overall unit of employees was appropriate.

The Sheet Metal Workers did not prevail in the election conducted on December 10, and subsequently filed objections. A post-election hearing on objections was held, and on February 8, 2005², the hearing officer issued her report recommending that certain of the objections be sustained and the election set aside. Subsequently, both parties filed exceptions to the hearing officer's report, and on April 6, the undersigned issued a Supplemental Decision, Order and Direction of Third Election in which the hearing officer's findings were affirmed and a new election directed. No party filed exceptions to that report.

On April 14, the instant RM petition was filed by the Employer, seeking an election in the above-described unit of employees who were involved in the December 10 election. On April 21, the Sheet Metal Workers submitted a request to withdraw its petition in Case 19-RC-14429. Section 11116.4 of the Casehandling Manual on Representation Cases provides that a withdrawal request submitted after an election has been set aside on the basis of the petitioner's objections should, absent extraordinary circumstances, be approved by the Regional Director without prejudice. In the Sheet Metal Workers' withdrawal letter to the Region, the Union also agreed that it would not file a petition seeking to represent the Employer's sheet metal employees during the one year period beginning December 10, 2004 and ending December 10 of the current year.

Since the Petitioner has requested to withdraw its petition after the election results were invalidated, I find there is no question concerning representation in the unit in which the election was conducted. I am, therefore, dismissing this petition and will simultaneously approve the withdrawal of Case 19-RC-14429.

Pursuant to the National Labor Relations Board's Rules and Regulations, any party may obtain a review of this action by filing a request therefor with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street NW, Washington, D.C. 20570. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned. This request for review must contain a complete statement setting forth the facts and reasons on which it is based. The request for review (eight copies) must be received by the Executive Secretary of the Board by close of business on June 6, 2005. Upon good cause shown, however, the Board may grant special permission for a longer period within which to file. A request for extension of time should be submitted to the Executive Secretary in Washington, and a copy of any such request for extension of time should be submitted to this Office and to each of the other parties to this proceeding.

The request for review and any request for extension of time must include a statement that a copy has been served on this Office and on each of the other parties to this

² All dates hereinafter are in 2005 unless otherwise indicated.

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proceeding in the same or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

Richard L. Ahearn
Regional Director

Enclosures

cc: National Labor Relations Board
Attention: Executive Secretary
1099 - 14th Street N.W.
Washington, D.C. 20570

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