

Kinney System, Incorporated d/b/a Central Parking System of Massachusetts and International Brotherhood of Teamsters, Local 25. Case 01–RC–071163

September 14, 2012

DECISION AND DIRECTION

BY MEMBERS HAYES, GRIFFIN, AND BLOCK

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held February 8, 2012, and the administrative law judge's report recommending disposition of them.¹ The election was conducted pursuant to a Decision and Direction of Election. The tally of ballots shows 159 for and 138 against the Petitioner, with one void ballot and 37 challenged ballots, a sufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the judge's findings² and

¹ In the notice of hearing on challenged ballots, the Regional Director stated that she was holding the parties' objections in abeyance pending the outcome of the hearing on challenged ballots and the Region's investigation of certain unfair labor charges related to the objections. Accordingly, the judge did not consider the parties' objections in this proceeding.

As also stated in the notice of hearing, two of the challenged ballots, those of Yahke Issack and Soukayna Tandofte, were submitted by employees who were terminated during the critical period and whose discharges were the subject of unfair labor practice charges filed by the Union. The Regional Director concluded that the employees' voting eligibility could not be determined in the hearing on challenged ballots and would be determined, if necessary, in a future unfair labor practice proceeding. Therefore, the judge here did not make recommendations as to the challenged ballots of Issack and Tandofte. We take administrative notice that the Union's charges, in Cases 01–CA–073987 (Issack) and 01–CA–073987 (Tandofte), have been unconditionally withdrawn, but note that the challenges to their ballots remain unresolved.

² The judge was sitting as a hearing officer in this representation proceeding. 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 incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have

recommendations as to the challenged ballots at issue in this proceeding, and finds that a majority of the valid votes have been cast for the Petitioner.³

DIRECTION

A majority of the valid ballots have been cast for the International Brotherhood of Teamsters, Local 25, in the unit found appropriate. Therefore, the Regional Director shall proceed to investigate the Employer's pending objections.

carefully examined the record and find no basis for reversing the findings.

³ In this regard, we adopt, for the reasons stated by him, the judge's recommendations that the challenges to the ballots of the 15 employees employed in the supervisor job classification, the 5 accounting specialists, and employee Mekdes Worku be sustained and that their ballots remain unopened and uncounted. In addition, in the absence of exceptions, we adopt pro forma the judge's recommendations that the challenges to the ballots of employees Bechie Assefa, Getachan Bedada, Aboubacar Diakite, Abdi Jama Gurey, Christian Mutshipay, Abelhak Souabny, and Julio Villata be sustained and that their ballots remain unopened and uncounted. Also in the absence of exceptions, we adopt pro forma the judge's recommendations that the challenges to the ballots of employees Andonet Bekele, Duc Duong, Mohamed Farah, Michael Alazibh, Abourahman Jeilani, Hector Gonzalez, and Warsame Abdullahi be overruled. Having done so, we agree with the judge that the challenged ballots of the seven voters found eligible are insufficient to affect the results of the election, which the Union won by 21 votes, and, accordingly, we do not order that these ballots be opened and counted. In addition, we find it unnecessary to pass on the unresolved challenges to the ballots of employees Issack and Tandofte, discussed above, as their additional votes would also not affect the results of the election. Accordingly, we find that a majority of the valid votes have been cast for the Petitioner.

Member Hayes agrees with his colleagues that the challenges to the ballots of the accounting specialists should be sustained. In so finding, however, Member Hayes does not rely on *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB 934 (2011), or the judge's finding that the accounting specialists do not share an overwhelming community of interest with the employees in the petitioned-for unit. Instead, Member Hayes relies on the judge's finding that, under the traditional community-of-interest test, the accounting specialists do not share a sufficient community of interest with the employees in the petitioned-for unit as to require their inclusion in that unit. See *Newton-Wellesley Hospital*, 250 NLRB 409, 411–412 (1980), cited in his dissent in *Specialty Healthcare*, supra.