

Allentown, PA

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

MBI HVAC, INC.

Employer

and

Case 04-RC-089309

SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
LOCAL 19

Petitioner

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

The National Labor Relations Board has considered challenged ballots in an election held November 16, 2012, and the Hearing Officer's report recommending disposition of them. The election was conducted pursuant to a Decision and Direction of Election. The tally of ballots shows 3 ballots cast for and 3 ballots cast against the Petitioner, with 2 challenged ballots, a sufficient number to affect the results.

No exceptions have been filed to the Hearing Officer's report within the time provided. Accordingly, the Board adopts the Hearing Officer's findings and recommendations.¹

IT IS ORDERED that the election conducted on November 16, 2012, be set aside and that a new election be conducted.

¹ The Hearing Officer sustained the challenged ballot of Spencer Romano. The parties stipulated that Harold Blose, the subject of the other challenged ballot, was ineligible to vote in the election. Additionally, the Hearing Officer sustained Petitioner's objections 1, 2, 4-8, and 11-13. She overruled objections 3 and 9. Objection 10 was withdrawn.

DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be conducted 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 that 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 be rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before 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 Sheet Metal Workers International Association, Local 19.

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 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., March 5, 2013.

By direction of the Board:

Farah Z. Qureshi

Associate Executive Secretary