

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

AIRWAY CLEANERS, LLC

Employer

and

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 32BJ

Case 04-RC-145814

Petitioner

and

LOCAL 621, UNITED CONSTRUCTION
TRADES INDUSTRIAL EMPLOYEES
INTERNATIONAL UNION

Intervenor

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

I. INTRODUCTION

Section 9(b)(3) of the Act precludes the Board from either including guards and non-guards in the same unit, or certifying a union which represents non-guards as the bargaining agent for a unit of guards. Petitioner Service Employees International Union, Local 32BJ represents a unit of security guards working for Scotlandyard Security Services at the Philadelphia International Airport. It seeks in this case to represent a group of non-guard janitorial employees who also work at the Airport, but for Airway Cleaners, LLC (the Employer), an employer unrelated to Scotlandyard Security. The janitorial employees are currently represented by Local 621, United Construction Trades Industrial Employees International Union (Intervenor). While conceding that neither of the prohibitions set out in Section 9(b)(3) applies here, Intervenor seeks to rely on that provision to argue that Petitioner should be disqualified from serving as the representative for the janitorial unit as a result of its representation of the Scotlandyard guards. Section 9(b)(3), however, does not preclude the Board from certifying a unit solely composed of non-guards. There is, therefore, no basis on which to find a bar to Petitioner's representation of the non-guard employees at issue in this case. I shall order an election in the unit sought by Petitioner.

II. FACTS

Intervenor currently represents a unit of all full-time and regular part-time aircraft cleaners and building janitorial employees employed by the Employer in this case, Aircraft Cleaners, LLC, at the Philadelphia International Airport. This is the unit Petitioner seeks to represent, and the parties stipulated that it is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act. Employees in the unit are currently covered by a collective-bargaining agreement between Intervenor and the Employer effective from May 1, 2012, through April 30, 2015.¹ According to the petition, there are about 100 employees in the unit.

Petitioner currently represents a unit of security guards employed by Scotlandyard Security Services at the Philadelphia Airport. There is nothing in the record suggesting any relationship between Scotlandyard Security and the Employer. The guards in the Scotlandyard unit are covered by a collective-bargaining agreement effective from September 1, 2012, through December 31, 2015.

In addition to its agreement with Scotlandyard, Petitioner has contracts with other security contractors which do not currently provide security services at the Philadelphia Airport. However, those collective-bargaining agreements would cover guards at the Philadelphia Airport in the event the contractors which are parties to the agreements were to secure contracts to provide security services at the Airport.

III. ANALYSIS

Intervenor has agreed that the unit sought by Petitioner is appropriate for purposes of collective bargaining. It also concedes that nothing in the express language of Section 9(b)(3) would preclude Petitioner's certification as the representative for employees in this unit. Indeed, there is no contention by any party that any of the employees in the petitioned-for unit are guards, and the Intervenor admits in its brief that the unit employees are "non-guards." Accordingly, none of Section 9(b)(3)'s prohibitions concerning units that include guards are implicated in this case. Conceding as much, the Intervenor argues that allowing certification of this non-guard unit would be contrary to the spirit of Section 9(b)(3). Correctly noting that the prohibitions contained in Section 9(b)(3) were added to the Act due to concerns over possible conflicts of interest between guards and other employees, it contends that the same potential conflicts are present in cases such as this, where guards and other employees employed by different employers work at the same facility and are represented by the same Union. Based on the possibility of divided loyalties presented by this situation, Intervenor maintains that Petitioner should be barred from certification as the representative for the unit of non-guards at issue in this case.

¹ The petition in this case was filed on February 6, 2015, during the 60 to 90 day window period for filing where a unit is covered by an existing contract. *Leonard Wholesale Meats*, 136 NLRB 1000 (1962). The parties stipulated that there is no contract bar to the petition.

This is not, as the Intervenor asserts, a matter of first impression; the Board has already rejected this argument. In *Pinkerton's National Detective Agency*, 90 NLRB 532, 533 (1950), it decided that nothing in the Act precluded the certification of a labor organization which represents guards as the representative for employees other than guards. And, this holding was applied in *Dynair Services, Inc.*, 314 NLRB 161 (1994), where the guards and non-guards both worked at the same location, the Port of Seattle. Based on *Pinkerton* and *Dynair*, I find that Petitioner's representation of the Scotlandyard security guards does not preclude its certification as the representative for the non-guard employees in the unit involved in this case, even though the Scotlandyard guards and petitioned-for employees are employed at the same location. I shall order an election in the unit sought by Petitioner.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby 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. Petitioner is a labor organization that claims to represent certain employees of the Employer.
4. 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.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time aircraft cleaners and building janitorial employees employed by Airway Cleaners, LLC at the Philadelphia International Airport; **excluding** all other employees, including clerical, managerial, confidential, professional, guards, watchmen and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they

wish to be represented for the purposes of collective bargaining by **SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 32BJ**, by **LOCAL 621, UNITED CONSTRUCTION TRADES INDUSTRIAL EMPLOYEES INTERNATIONAL** or by **NEITHER**. 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.

A. Eligible Voters

The eligible voters shall be unit employees 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 were 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, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees who are 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 after the designated payroll period for eligibility; (2) employees engaged in a strike 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 engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

B. 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). The 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.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Suite 710, Philadelphia, Pennsylvania 19106 on or before **Thursday, March 5, 2015**. No extension of time to file this list shall 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 by mail, facsimile transmission at (215) 597-7658, or by electronic filing through the Agency's website at www.nlr.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow

the detailed instructions. 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 3 copies, unless the list is submitted by facsimile or electronic filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. 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 a minimum of 3 working days prior to 12:01 a.m. of the date 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 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 non-posting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Pursuant to the provisions of Section 102.67 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, a request for review of this Decision may be filed with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, DC 20570-0001.

Pursuant to the Board's Rules and Regulations, Sections 102.111 – 102.114, concerning the Service and Filing of Papers, the request for review must be received by the Executive Secretary of the Board in Washington, DC by the close of business on **Thursday, March 12, 2015, at 5:00 p.m. (ET)**, unless filed electronically. **Consistent with the Agency's E-Government initiative, parties are encouraged to file a request for review electronically.** If the request for review is filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is **accomplished by no later than 11:59 p.m. Eastern Time** on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of a request for review by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file.² 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, in accordance with the requirements of the Board's Rules and Regulations.

² A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Filing a request for review electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

DATED: February 26, 2015



DENNIS P. WALSH

Regional Director, Region Four
National Labor Relations Board
615 Chestnut Street, Suite 710
Philadelphia, PA 19106