

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

EUROPEAN IMPORTS, INC.

Employer

and

Case 13-RC-192428

TEAMSTERS LOCAL 703

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (Act), a hearing was held before a hearing officer of the National Labor Relations Board (Board). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated to the undersigned its authority in this proceeding.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings, made at the hearing, are free from prejudicial error and are affirmed.
2. The parties stipulated and I find that European Imports, Inc. (Employer) is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.¹
3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
4. The Petitioner claims to represent the employees in the unit described in the Petition and the Employer declines to recognize the Petitioner.
5. There is no contract bar to this proceeding.
6. The Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

¹ European Imports, Inc., a Delaware corporation with an office and place of business in Arlington Heights, Illinois is engaged in the business of distributing imported food to grocery stores. During the past calendar year, a representative period, the Employer purchased and received goods valued in excess of \$50,000 at its Arlington Heights facility from points located directly outside the State of Illinois.

I. ISSUES

There were no litigable issues presented at the hearing in this case.²

II. DECISION

IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following appropriate bargaining unit:

Included: All full-time and regular part-time forklift drivers, order selectors, checkers, receivers, loaders, inventory control employees and production room employees employed by the Employer at its facility currently located at 600 East Brook Drive, Arlington Heights, Illinois 60005.

Excluded: All maintenance employees, janitorial employees, office clerical employees, warehouse clerks, managerial employees and guards, professional employees and supervisors as defined by the Act.

There are approximately 52 eligible voters in the unit.

III. CONCLUSION

Based on the foregoing and the entire record herein, I find that it is appropriate to conduct an election in the unit set forth above.

A. Election Details

The election will be held on Thursday, February 23, 2017, from 4:30 a.m. – 7:30 a.m. and 4:00 p.m. – 7:30 p.m., in the Operations Training Room at the Employer's facility located at 600 East Brook Drive, Arlington Heights, Illinois.

² Based on the Employer's offer of proof regarding its objections to the Board's Final Rule, which are amendments to its Representation Case Proceedings, I declined to permit litigation of this issue at the hearing because the Board and courts have already considered and rejected such arguments. See, for example, *University of Southern California*, 365 NLRB No. 11 (2016) in which the Board held:

[I]n agreeing with the Regional Director's rejection of the Employer's challenge to the facial validity of the Final Rule, citing *Pulau Corp.*, 363 NLRB No. 8 (2015), we note that in *Chamber of Commerce v. NLRB*, 118 F.Supp.3d 171 (D.D.C. 2015), the district court, granting summary judgment for the Board, found that the Rule did not violate the Act, the First Amendment, or due process under the Fifth Amendment. We further note that in *Associated Builders & Contractors of Texas v. NLRB*, No. 1-15-CV-026 RP, 2015 WL 3609116 (W.D. Tex. June 1, 2015), the district court found that the Rule did not violate the Act and was not arbitrary and capricious under the Administrative Procedures Act. That decision was affirmed by the U.S. Court of Appeals for the Fifth Circuit, 826 F.3d 215 (5th Cir. 2016).

Id. at slip op. 1 fn. 1.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending February 4, 2017 including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees 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 since the designated payroll period; 2) 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 3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **February 21, 2017**.³ The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-April-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once

³ The Petitioner waived its right to a full 10-day review period of the voter list.

the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated Chicago, Illinois this 16th day of February, 2017



Peter Sung Ohr, Regional Director
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