

R.D. # 0016-99
Newark, NJ

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**LISBON CLEANING, INC. and
LISBON SERVICES, INC.¹**

Employer

and

CASE 22-RC-11785

**LOCAL 262 , UNITED FOOD AND
COMMERCIAL WORKERS,
RWDSU, AFL-CIO²**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding³, the undersigned finds:

¹ The name of the Employer appears as amended at the hearing. Although the precise nature of the relationship between these two corporate entities is not described in the record, they share sufficient common ownership, officers, facilities and other assets to support a conclusion that they constitute a single integrated Employer, in accord with the apparent position of the parties herein.

² The name of the Petitioner appears as amended at the hearing.

³ A brief filed by the Employer has been duly considered. No other briefs were timely filed.

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 herein.⁴
3. The labor organization involved claims to represent certain employees of the Employer.⁵
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 purpose of collective bargaining within the meaning of Section 9(b) of the Act for the reasons described *infra*:

All full-time and regular part-time cleaning and maintenance employees, including cleaners, floor cleaners, carpet cleaners, window cleaners, runners and handy-persons, employed by the Employer at its Newark International Airport, Terminal C, Newark, New Jersey location, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.⁶

The Petitioner and the Employer agree that the unit found appropriate herein should be composed of all full-time and regular part-time cleaning and maintenance employees, including cleaners, floor cleaners, carpet cleaners, window cleaners, runners and handy-persons, excluding office clerical employees, professional employees, guards and supervisors as defined in the Act. They disagree, however, over the scope of the

⁴ The Employer is a New Jersey corporation engaged in the provision of commercial janitorial and cleaning services at various locations within New Jersey, including Newark International Airport, Terminal C.

⁵ The parties stipulated and, I find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

appropriate unit. The petitioned for unit consists of the above described employees employed at the Employer's Newark International Airport, Terminal C, Newark, New Jersey location, herein referred to as the Terminal C site. The Employer contends that the only appropriate unit herein is a multi-location unit consisting of the above described unit classifications employed by the Employer throughout the State of New Jersey. The record does not describe where the other sites comprising this multi-location unit are, beyond consisting of several hundred sites in Bergen, Essex, Hudson and Monmouth counties. The record discloses that there are approximately 368 employees employed at Terminal C and an additional 200 employees employed at the remainder of the Employer's other sites.⁷

The Employer, based in Newark, New Jersey, services various commercial accounts providing cleaning services at its customers' work site locations. In this regard, the Employer provides various cleaning services as part of a comprehensive cleaning package that includes janitorial cleaning, window cleaning, floor maintenance and carpet cleaning. At the Terminal C site, the Employer has contracts with Continental Airlines and other customers (e.g. CA-1 Co. and Westfield Co.) to provide cleaning services including aircraft cleaning.

As noted above, except for the Terminal C site, no evidence was developed in the record regarding the number and/or location of sites where the Employer services accounts, beyond a general description that there are "hundreds" of such accounts located in Bergen, Essex, Hudson and Monmouth counties. As to the proximity of these sites to the Employer's Terminal C location, the record describes a radius of between 45 minutes and an hour driving time from Terminal C to these other sites.

⁶ There are approximately 368 employees employed in this unit.

The record reveals that at Terminal C, the Employer's management staff consists of approximately 20 supervisors reporting to 5 duty managers who in turn report to 2 coordinators. Above them are three site managers, the highest level of facility based management, who have overall responsibility for the operations at Terminal C, which operates on a three shift, seven days per week basis. The parties are in agreement that the management staff are supervisors within the meaning of the Act and, therefore, should be excluded from the unit found appropriate herein. It is undisputed that the management staff based at Terminal C is only responsible for the Employer's operations at that location.⁸ The management and supervisory structure at other Employer work sites is not described in the record. The managers report to Albert Covas, Operations Officer, and to Joe Llano who are not facility based. The record reveals that Covas owns 49% of the Employer's business while Llano owns 51%.

The Employer's administrative offices and warehouse are located at 350 Adams Street, Newark, New Jersey, herein called the Adams Street facility. The record reveals that labor relations for all of the Employer's sites are overseen centrally by Covas and Llano who are based at the Adams Street facility. The centralized functions occurring there include the Employer's personnel, billing and warehousing operations. In this connection, hiring and payroll are centrally handled at the Adams Street facility.

There is a standard training program for new hires conducted at the Adams Street facility consisting of watching videos. A uniform employee handbook is applicable to the employees at all of the Employer's sites. The Employers' personnel policies are

⁷ Employees' job functions are similar regardless of work site.

⁸ There was some limited testimony that Terminal C site managers are also responsible for the supervision of some employees located on the Airport property or in close proximity thereto, but not at Terminal C itself. The nature of this circumstance is not described in the record.

uniformly applicable to its employees. The Employer pays all of its employees on the same payday. All employees are entitled to the same holidays, share the same health benefits and are subject to a uniform sick leave policy. All employees have the same vacation entitlement. All employees are covered by the same safety bonus program, wear similar Employer provided uniforms and identification tags; new hires are subject to a common probationary policy. The Employer asserts that layoffs are centrally determined utilizing the criterion of seniority, regardless of work site, acknowledging that it has to date not needed to lay off any employees. Supplies are centrally purchased, warehoused at the Adams Street facility and distributed to work sites as needed.

The Employer, in addition to reliance on the above described factors demonstrating a degree of centralization, asserts that there is a high degree of interchange among its employees. In this regard, the Employer contends that over the past four year period there have been approximately 260 transfers of employees.⁹ Although the testimony on this point is confusing and contradictory, it appears that the Employer is referring to permanent transfers of employees from one work site to another. There was no documentary evidence submitted to support this assertion nor is there evidence as to either the circumstances of these transfers or which work sites were involved. There was no evidence introduced as to any transfers of employees to Terminal C from other work sites.¹⁰

Regarding temporary transfers, despite the Employer's assertion that this is a daily occurrence, the only evidence of employees being temporarily assigned to a work

⁹ Neither the number of employees involved or the dates that such transfers occurred were described in the record.

¹⁰ As to permanent transfers, the Employer acknowledged that such transfers occur only at the request of employees and are not initiated by management. In any event, the frequency of such transfers is not described in the record.

site away from Terminal C involved the assignment of approximately 8 to 10 Terminal C based employees to a Rutgers-Newark building for a one day, one shift assignment occurring on the day of the instant hearing. No other probative evidence was proffered to support the assertion of daily interchange. Further, the Employer asserts that supervisors are moved among sites as needed. However, there was no evidence proffered as to the frequency or circumstances of such assignments.

The record reveals that the petitioned for employees are permanently assigned to Terminal C and report to work at that site. Local site managers, in addition to being responsible for the day-to-day cleaning operations that constitute the services supplied by the Employer to its customers, have the authority to discipline employees, including the suspension of employees for misconduct such as insubordination or stealing. The Employer asserts that termination recommendations are reviewed by the personnel department at the Adams Street facility. Site managers at Terminal C have the authority to resolve employees' grievances, schedule vacations, breaks, lunch periods and overtime work, the latter subject to oversight by Operations Officer Covas. The record is silent as to what role site managers have regarding evaluating employees' performance, wage increases or other pay issues affecting employees and the hiring and termination of employees.

The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *J&L Plate*, 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988). The presumption in favor of a single location unit can only be overcome "by a showing of functional integration so substantial as to negate the separate identity of a single-facility unit." *Id.* The factors that the Board examines in making this determination are centralized control over daily operations and labor relations, skills and

functions of employees, general working conditions, bargaining history, employee interchange, and geographical location of the facilities in relation to each other. *Id. at 42*, citing *Sol's*, 272 NLRB 621 (1984). The burden is on the party opposing a petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, *supra* at 429.

Here I find that the Employer has failed to present evidence sufficient to overcome the presumption in favor of a single-facility unit at the Terminal C location sought by Petitioner. In this connection, I have determined that the lack of probative evidence regarding employee interchange or functional integration between the Employer's Terminal C location and its other unspecified work sites in New Jersey, the significant level of management autonomy existing at Terminal C and the geographic separateness of the Terminal C site, all militate against a finding of a multi-location unit. Despite the ostensible central control of much of the Employer's labor relations, more is required to rebut the presumption of the appropriateness of a single location unit.

Purnell's Pride, Inc., 252 NLRB 110 (1980).¹¹ In this regard, I have determined that although the Employer's operations reflect centralized administration in areas of payroll, benefits and pay rates, substantial day-to-day authority which directly affect employees rests with the local site supervisors and managers. They discipline employees, schedule

¹¹ The Employer's reliance on *Queen City Distributing Co., Inc.*, 272 NLRB 621 (1984) is misplaced as there, unlike here, the Board found evidence of substantial employee interchange among the employees of the various facilities. As described *infra*, there is a notable lack of evidence in this matter that would support the Employer's mere assertion that there is substantial interchange among employees. In this regard, the only evidence submitted concerned the one day assignment of 8 to 10 Terminal C employees to a Rutgers/Newark building on the very day of the hearing in this matter. Significantly, there was no evidence that this Rutgers/Newark site was anything other than a one day assignment rather than a presence that the Employer maintained on an ongoing basis.

hours, overtime, lunch and breaks, and oversee their daily work activities. I find that such a degree of local autonomy is significant and not negated by centralized payroll and personnel functions in a manner not unique to modern, multi-facility enterprises. *Kapok Tree Inn, Inc.*, 232 NLRB 702 (1977); *Purnell's Pride, Inc.*, supra. In addition to geographic separateness, local autonomy and the lack of interchange as described above, I note that there is a lack of bargaining history on a broader basis, *Transcontinental Bus System*, 178 NLRB 712 (1969), and that no labor organization is seeking to represent a more comprehensive unit, *Welsh Co.*, 146 NLRB 713 (1964). Based on the above and the record as a whole, I find that the unit sought at the Terminal C location is appropriate for collective bargaining and I will direct an election therein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, 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 which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government 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 designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an

economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Local 262, United Food and Commercial Workers, RWDSU, AFL-CIO.**

LIST OF VOTERS

In order 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 seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the voting groups found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the offices of NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before August 24, 1999. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by August 31, 1999.

Signed at Newark, New Jersey this 17th day of August 1999.

/s/Gary T. Kendellen

Gary T. Kendellen, Regional Director
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