

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

D&R ENTERPRISES,

Employer,

and

**Case 26-RC-8106¹
(Formerly 15-RC-8218)**

**AMERICAN FEDERATION OF
GOVERNMENT EMPLOYEES, AFL-CIO**

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 on August 5, 1999, at Panama City, Florida, 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 proceeding, the undersigned finds:

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.²
3. The labor organization involved claims to represent certain employees of the Employer.³

4. 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 Act⁴:

INCLUDED: All full-time and regular part-time non-supervisory employees, including assistant manager, employed at the Employer's barber shops at the Tyndall Airforce Base in Panama City, Florida.

EXCLUDED: All supervisors, management employees and guards, as defined in the Act, and confidential employees.

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 the 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 the American Federation of Government Employees, AFL-CIO.

LIST OF VOTERS

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 of the date of this Decision. 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 whenever proper objections are filed. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the New Orleans Regional Office (Region 15), 1515 Poydras Street, Room 610, New Orleans, Louisiana 70112-3723, on or before **August 20, 1999**.

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 27, 1999**.

DATED August 13, 1999, at Memphis, TN.

/S/

Gerard P. Fleischut, Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
tel: 901-544-0018

¹ Case 26-RC-8106 (formerly Case 15-RC-8218) has been transferred to Region 26 for the issuance of a Decision by the undersigned. Upon issuance of this Decision, this case will automatically transfer back to Region 15 except that Region 26 will retain jurisdiction with respect to pre-election issues relating to the substance of this Decision.

² The Employer failed to make an appearance at the hearing. The record establishes that the Employer is a business owned and operated by Edwin Negron and Eddie (a/k/a Willie) Negron d/b/a D & R Enterprises a/k/a Metro Enterprises, headquartered in Newport News, Virginia. The Employer provides barbershop services under contract with the Army and Airforce Exchange Service ("AAFES"), an enterprise directly engaged in interstate commerce, at military bases located in Alabama, Arizona, Georgia, Florida, Louisiana, Texas, and Virginia. The record reflects that the Employer has provided services under contract for AAFES in excess of \$50,000 at shops located at Fort Polk, Louisiana, Maxwell/Gunter Airforce Base, Alabama, and Hunter Army Air Field, Georgia. The Board has held that the Employer's operations at Hunter Army Air Field made the entity "an employer engaged in commerce within the meaning of Section 2(2), (6), and 7 of the Act." Edwin Negron d/b/a Metro Barbers, 328 NLRB No. 99 (1999).

In addition, The record establishes that during the past 12-month period (August 1998 - August 1999), the Employer has received gross revenues in excess of \$50,000 for providing services under contract for AAFES at Tyndall Airforce Base, located at or near Panama City, Florida. The record further indicates that the Employer's barbershops at Tyndall Airforce Base gross \$26,000 per month. Based upon the record, the Employer's operations satisfy the Board's statutory jurisdiction. See Carolina Supplies & Cement Co., 122 NLRB 88 (1959).

Moreover, based upon the record, the Employer's operations exert a substantial impact on national defense. The record establishes that the

Employer's shops at Tyndall Airforce Base are located in the base exchange facility, which is operated by AAFES, as well as on the flight line (runway). The record further establishes that the Employer's services are supplied to military personnel at a special rate set by AAFES. Prior Board decisions have established that where an Employer provides barber services exclusively to military personnel at shops located on military installations, its operations are essential to the members of the military stationed at the installation and the Employer exerts a substantial impact on the national defense. Spruce Up Corp., 194 NLRB 841(1972); Gino Morena d/b/a Gino Morena Enterprises, 181 NLRB 808 (1970).

The Board has determined that the policies of the Act are best effectuated when the Board "assert[s] jurisdiction over all enterprises, as to which the Board has statutory jurisdiction, whose operations exert a substantial impact on the national defense, irrespective of whether the enterprise's operations satisfy any of the Board's other jurisdictional standards." Ready Mixed Concrete & Materials, Inc., 122 NLRB 318 (1958). In this case, the Board has statutory jurisdiction. In this case, the Employer exerts a substantial impact on national defense. Thus, irrespective of whether the Employer's operations satisfy any of the Board's other jurisdictional standards, jurisdiction is asserted over the Employer's operations in order to best effectuate the policies of the Act.

³ The record reflects the status of the Petitioner organization as a labor organization, within the meaning of Section 2(5) of the Act. Under the statutory definition set forth in Section 2(5), the Petitioner organization is a labor organization if (1) employees participate, (2) the organization exists, in whole or part, for the purpose of dealing with employers, and (3) the dealings with employers concern statutory subjects. Electromation, Inc., 309 NLRB 990 (1992).

The term "employee" is defined in Section 2(3) of the Act to include any employee and is not limited to the employees of a particular employer. The term "employee" has been interpreted to be taken in its ordinary meaning, as any person who works for another for hire. Allied Chemical and Alkali Workers of America, Local No. 1 v. Pittsburgh Plate Glass Co., Chemical Div., 404 U.S. 157, 78 L.R.R.M. 2974 (1971). A national representative for the Petitioner testified that employees participate in the organization's activities and serve as local officers. The record reflects that at least 30% of the Employer's employees have signed membership applications for the Petitioner organization, indicating that the Employer's employees will participate in union organizational activities should the Petitioner be certified to represent them. Thus, in consideration of these factors, the record establishes that the requirement of employee participation has been met.

The national representative for the Petitioner testified that the organization exists, in whole or part, for the purpose of dealing with employers, and that the dealings with employers concern conditions of work or other statutory subjects such as grievances, labor disputes, wages, rates of pay or hours of employment. Thus, Petitioner has met all the statutory requirements of a labor organization.

Based upon the record herein, the Petitioner organization is a labor organization under Section 2(5) of the Act.

⁴ The Employer employs a Manager, an Assistant Manager, six full-time barbers and two part-time barbers at its Tyndall Airforce Base shops. All employees, Manager and Assistant Manager are licensed barbers. The record establishes that approximately 90% of the manager's time and approximately 98% of the assistant manager's time is spent cutting hair. AAFES has set the price of haircuts at \$5. The manager receives 63% commission, the assistant manager receives 54% commission and the barbers receive 50% commission on each haircut. In the event an employee does not average enough haircuts to earn the equivalent of minimum wage, the employee receives minimum wage for the hours worked.

The record reflects that the Manager, Mona McDaniels', additional duties include the hiring, firing, disciplining and scheduling of employees, bank deposits, bookkeeping, and buying of supplies. The record also reflects that the manager calls the shops 2-3 times per day on scheduled days off to check on the employees and direct the assistant manager. All employees report directly to the manager. There is uncontroverted testimony that the manager runs the shops in the manner she deems fit, using her independent judgment regarding supervisory functions. Section 2(11) enumerates the functions of a supervisor and "expressly insists that a supervisor (1) have authority (2) to use independent judgment (3) in performing such supervisory functions (4) in the interest of management." NLRB v. Security Guard Serv., 384 F.2d 143, 147 (5th Cir. 1967). Based upon the record herein and the applicable case law, it is determined that the position of Manager is a supervisory position within the meaning of Section 2(11) of the Act, and therefore I shall exclude that position from the unit.

The record reflects that the status of Al Garcia as a supervisor within the meaning of Section 2(11) of the Act is at issue. The record establishes that although Garcia holds the title of Assistant Manager, he spends approximately 98% of his time cutting hair and his additional duties as Assistant Manager are performed only on the Manager's days off. "The status of a supervisor under the Act is determined by an individual's duties, not by his title or job classification." T.K. Harvin & Sons, 316 NLRB 510, 530 (1995). The record establishes that in his capacity as Assistant Manager, Garcia does not have the authority to use independent judgment in performing any of the statutorily enumerated supervisory functions, including hiring, transferring, suspending, laying off, recalling, promoting, discharging, assigning, rewarding, or disciplining other employees. Nor, in his capacity as Assistant Manager, does Garcia responsibly direct employees, adjust employee grievances or effectively recommend such action.

The record establishes that Garcia's duties as an Assistant Manager are to cut hair and get change for the shop. On the Manager's days off, the Assistant Manager's duties include completing time sheets, figuring bank deposits and giving status reports to the Manager when she calls. The Manager has also given

the Assistant Manager the authority to send employees home early when business is slow and to allow employees to leave early if they so request.

While the authority to allow employees to leave work early could be considered supervisory in nature, it is done in a sporadic manner since employees typically call the Manager to request to leave early, rather than asking the Assistant Manager. “The exercise of some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner does not elevate the employee into the supervisory ranks.” Id. Based upon the record herein and the applicable case law, it is determined that the position of Assistant Manager is not a supervisory position within the meaning of Section 2(11) of the Act, and therefore I shall include that position in the unit.

There are approximately 9 employees in the unit found appropriate herein.

177-8560-1500
177-8560-5000
177-8580-8900
177-3925
240-1733-5000
260-6736-5000