

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

STRATUS SERVICES GROUP, INC.^{1/}

Employer

and

CASE 7-RC-21497

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW), AND ITS LOCAL
NO. 155, 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, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter 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,^{2/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.^{3/}
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(s) involved claim(s) 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 Sections 2(6) and (7) of the Act.^{5/}
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:^{6/}

All full-time and regular part-time production and maintenance employees, including forklift drivers, employed by the Employer at the CHEP Automotive facility located at 13000 Oakland, Highland Park, Michigan; but excluding all office clerical employees, professional employees, technical employees, temporary manpower employees, team leaders, confidential employees, managerial employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted under the direction and supervision of the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were 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 service of the United States 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

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AND ITS LOCAL NO. 155, AFL-CIO

LIST OF VOTERS

In order to insure 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); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the **DETROIT REGIONAL OFFICE** on or before March 16, 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 provisions 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, Franklin Court, 1099 14th Street N.W., Washington D.C. 20570**. This request must be received by the Board in Washington by March 23, 1999.

(SEAL) Dated March 9, 1999

at Detroit, Michigan

/s/ William C. Schaub, Jr.
Regional Director, Region Seven

**Section 103.20 of the Board's Rules concerns the posting of election notices.
Your attention is directed to the attached copy of that Section.**

1/ The name of the Employer appears as amended at the hearing.

2/ The Employer filed a brief, which has been carefully considered.

3/ The hearing officer reserved ruling on a petition to revoke subpoena filed by the Employer in response to a subpoena duces tecum served by the Petitioner, neither of which were made part of the instant record. Since the parties stipulated to the supervisor status of team leaders during the course of hearing, which issue appears to have been the basis of the subpoena, the Employer's compliance with the subpoena has been rendered moot.

4/ The Employer is a Delaware corporation engaged in providing work force management and temporary staffing services to various entities throughout the United States.

5/ The Employer contends that no election should be held in the petitioned-for unit for a "significant period of time" and that the instant petition should be dismissed because of the probationary status of the unit employees and the high amount of turnover in the unit since the Employer took over responsibility for the employment of unit employees about January 4, 1999. The Petitioner asserts that the plant operations where the unit employees are employed have been in existence for a considerable length of time and that since the Employer's assumption of a predecessor manpower firm's employment responsibilities, very little has changed regarding the plant's operations or the terms and conditions of employment of unit employees.

The approximately 121 petitioned-for production and maintenance employees work at a plant owned by CHEP Automotive, which began the processing of automobile parts shipping containers at its Highland Park, Michigan, facility (the only facility involved herein), for DaimlerChrysler Corporation about April 1998. Prior to January 4, 1999, production and maintenance employees were employed by a manpower firm known as ASW Logistics. Upon the Employer's assumption of the manpower responsibilities from ASW Logistics, the Employer maintained the same employment level and hired all but 10-15 of the predecessor's employees. Since January, the Employer has terminated about 37 employees and hired about 26 production and maintenance employees to replace those not hired from the predecessor employer or those discharged since the Employer's takeover of operations. The Employer asserts that this high degree of turnover is normal in the manpower industry during the start up of new operations, and turnover tends to decrease in about six months. The Employer has no plans to increase or decrease the size of the workforce at the Highland Park facility.

The Employer asserts that since its assumption of operations, all those unit employees hired from the predecessor, and all new hires, have been subject to a 90-day probationary period during which their performance will be evaluated by supervision. However, for purposes of maintaining pre-existing benefits the Employer states that employees were told that the probationary period would be waived. According to the Employer, the employment of all unit employees remains contingent upon their passing an initial drug test and continued strong job performance. Employees who testified on behalf of the Petitioner, however, assert that they were told nothing about being on probation or that their employment status was temporary. The nature of the employees' work and overall operations at the plant remain the same since the Employer began employing the petitioned-for unit, although the Employer has redeveloped the inventory area at the facility and realigned the processing days in order to increase efficiency and safety.

On occasion, the Board has dismissed a representation petition because of an employer's plan to substantially expand or contract its workforce. See e.g., *M. B. Kahn Construction Co.*, 210 NLRB 1050 (1974); *Endicott Johnson de Puerto Rico*, 172 NLRB 1676 (1968). There is no suggestion in the instant case that the Employer's workforce will be substantially expanding or contracting within the foreseeable future. Instead, the Employer merely contends that the identity of the employees in its current workforce may change during the course of the probationary period. The Employer cites no authority for depriving current employees of the right to select or reject a bargaining representative under such circumstances where an otherwise substantial and representative complement of employees is employed. Furthermore, the Board has consistently treated probationary employees as eligible voters who are not deprived of their right to vote in representation elections merely because of their probationary status. *Data Technology Corp.*, 281 NLRB 1005 (1986); *Gulf States Telephone Co.*, 118 NLRB 1039, 1041 (1957). Consequently, based on the facts herein, I find that ordering an immediate election achieves the desired balance between the objective of insuring the goal of maximum employee participation in the selection of a bargaining agent, while not depriving current employees of immediate representation. See *Toto Industries (Atlanta)*, 323 NLRB 645 (1997).

6/ The parties stipulated to the unit description, and during the course of the hearing agreed that temporary employees supplied to the Employer by Advanced Temporary Services, and team leaders, should be excluded from the unit.

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