

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

FANTASIA FRESH JUICE COMPANY¹

Employer

and

MANUFACTURING, PRODUCTION & SERVICE WORKERS UNION LOCAL NO. 24, AFL-CIO

Petitioner

Case 13-RC-20319

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, 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, 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(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 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:³

All full time and regular part time production employees employed by the Employer at its facility currently located at 5617 North Pearl Street, Rosemont, Illinois; but excluding route drivers, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

DIRECTION OF ELECTION*

An election by secret ballot shall be conducted by 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 services 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 Manufacturing, Production & Service Workers Union Local No. 24, 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, fn. 17 (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 names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election.⁴ In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before May 30, 2000. 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. At the hearing, the parties waived their right to request review of the decision herein.

DATED May 23, 2000 at Chicago, Illinois.

Regional Director, Region 13

393-6081-6075-5000

- */ The National Labor Relations Board provides the following rule with respect to the posting of election notices:
- (a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.
 - (b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.
 - (c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.
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1/ The names of the parties appear as amended at the hearing.

2/ The Employer is a corporation engaged in juice production and distribution.

3/ The parties agree, and I find, that the unit of employees described below constitutes a unit appropriate for the purposes of collective bargaining.

4/ The Employer has filed a Motion for Regional Director to Waive *Excelsior* Requirements for New Hires. The Employer contends that because of alleged “threats and acts of coercion” committed by the Petitioner, that the requirement of providing the names and addresses of replacement employees hired after the Petitioner began picketing the Employer, should be waived. The Employer has filed unfair labor practice charges concerning these alleged threats and actions. Accordingly, a ruling on the motion would require determining the merits of the unfair labor practice charges that are the factual predicate of the Employer’s motion. The Board has long ruled that litigation of unfair labor practices is not appropriate in the context of a representation proceeding. See, e.g., *Times Square Stores Corp.*, 79 NLRB 361 (1948). Thus there is no evidence upon which to base a ruling on the Employer’s motion.

The Employer also relies on *Chicago Tribune Company v. NLRB*, 965 F2d 244 (7th Cir. 1992), denying enforcement to 303 NLRB 682 (1991), in support of its position. I find that the Employer’s reliance is misplaced. In that case, the Court held that an employer did not violate the Act by refusing to provide a list of replacement employees to the exclusive collective-bargaining representative of a unit of its employees where there was a history of strike-related violence against those replacement employees. However, the decision of the Court of Appeals is contrary to the Board’s standard on this issue, and it is the Board’s standard that is binding on the undersigned. Moreover, aside from the evidentiary issue discussed above, *Chicago Tribune* is distinguishable from the instant situation, since it involves a union’s right to information as the exclusive collective-bargaining representative of a group of employees, and not the employees’ rights to receive communications from a union to make an informed choice in an representation election.

Since there are no facts in evidence upon which to base a ruling, and there is no case precedent for waiving the *Excelsior* list requirement under these circumstances, I deny the Employer’s motion.