

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 27**

WERNLI, INC.,

Employer

and

Case 27-RD-1071

DIETER THURNWALD,

Petitioner

and

UNITED ASSOCIATION OF JOURNEYMEN
AND APPRENTICES OF THE PLUMBING
AND PIPE FITTING INDUSTRY OF THE
UNITED STATES AND CANADA,
UTAH PIPE TRADES UNIONS, LOCAL NO. 19,
LOCAL NO. 57 AND LOCAL NO. 348,

Union.

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 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.
3. The labor organization involved claims 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 the 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:

INCLUDED: All employees performing heating, refrigeration, service, maintenance, and construction work within the jurisdiction of the Union.

EXCLUDED: All other employees, office clerical employees, guards and supervisors as defined in the Act.1/

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 were employed during the payroll period ending immediately preceding the date of the 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

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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 in 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); and *North Macon Health Care Facility*, 315 NLRB 359 (1994). 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, 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 National Labor Relations Board, Region 27 Regional Office, 600 - 17th Street, Suite 700 North, Denver, CO 80202-5433, on or before **July 19, 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.

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**. This request must be received by the Board in Washington by **July 26, 2000**. In accordance with Section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.

DATED at Denver, Colorado this 12th day of July, 2000.

B. Allan Benson, Regional Director
National Labor Relations Board
700 North Tower, Dominion Plaza
600 Seventeenth Street
Denver, Colorado 80202-5433
Telephone: (303) 844-3551

1/ The Petitioner filed the instant decertification petition on March 7, 2000. Thereafter, the Union filed a blocking charge in Case 27-CA-16829. That charge was dismissed by letter dated May 10, 2000. An appeal was filed by the Union, which was denied by the National Labor Relations Board Office of Appeals on dated June 15, 2000. By service of a Notice of Representation Hearing, dated and served June 28, 2000, the Employer, Petitioner, and Union were informed that a hearing in this matter was being scheduled for July 5, 2000. Counsel for the Union informed the Regional Office by telephone on June 30, 2000, that the Union would not enter into a stipulated election agreement or appear at the hearing. The Employer and Petitioner entered appearances at the hearing, but the Union did not appear.

The Employer, Wernli, Inc., a Utah corporation, operates a facility in Salt Lake City, Utah at which it is engaged in business of sales, service and installation of heating and refrigeration equipment. Employer witness S. David Wernli, secretary/treasurer for the Employer testified that the Employer annually receives goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Utah. Accordingly, I find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The Employer and Petitioner stipulated at the hearing that the appropriate unit in which the Petitioner is seeking an election is the unit set forth in the Agreement for Voluntary Recognition dated October 9, 1991 and entered into by Kirk W. Smith, organizer for the Union, and John H. Wernli, director for the Employer at that time and the father of S. David Wernli. The record evidence

and testimony reflects that the Union in this matter is the labor organization recognized by the Employer since October 9, 1991, as the Section 9(a) representative of the employees in the unit described in the Agreement For Voluntary Recognition as: “all employees performing all heating, refrigeration, service, maintenance, and construction work within the jurisdiction of the Union on all present and future job sites.” The record testimony also indicates that the Union and the Employer in this matter have had a collective bargaining relationship since the late-1960s, embodied in various successive contracts and that the Union deals with this and other employers concerning conditions of work and representation of employees, thus establishing that the Union is a labor organization within the meaning of Section 2(5) of the Act.

The record further discloses that the most recent collective bargaining agreement between the Employer and Union covering the terms and conditions of employment for employees in the appropriate unit would have expired by agreement of the parties on December 31, 1999. That contract term was extended by agreement of the parties to January 31, 2000, to allow additional time for negotiation of a successor contract. No agreement was reached, and the parties did not agree to additional extensions.

Based on the Excelsior list submitted by the Employer at the hearing, there are 14 employees in the unit that is the subject of the instant petition.

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401 7550

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