

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

TASK FORCE SECURITY
& INVESTIGATION, INC.
Employer

And

Case No. 29-RC-9434

ALLIED INTERNATIONAL UNION
Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Haydee Rosario, a Hearing Officer of the National Labor Relations Board, herein called 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 hereby are affirmed.
2. At the outset of the hearing, an issue was raised by Task Force Security & Investigation, Inc., herein Task Force, regarding the potential joint-employer status shared by Task Force with Tri-State Employment Services, herein Tri-State, with respect to the employees in the unit sought. Counsel for Tri-State made a limited appearance at the hearing for the sole purpose of taking the position that Tri State is not the employer of any of Task Force's employees and that its relationship with Task Force

is limited to the preparation of payroll and payroll related matters, e.g., FICA payments, W-2 tax statements and unemployment compensation payments.

Frank Maddalena, the president of Task Force, testified with respect to the operations thereof including personnel matters. Task Force provides 24-hour security services to its various customers. At the Metrotech North Apartments, Brooklyn, New York, which is the subject of the instant petition, Task Force has three shifts staffed by five to six security officers per shift. There is one supervisor per shift. Task Force interviews and directly hires both supervisors and the security guards. Task Force personnel assign and supervise security guards in the performance of their duties. All requests for leave are submitted to Task Force and it alone possesses the authority to lay off, discharge or otherwise discipline unit members. According to Maddalena, Tri-State's role in the operation of Task Force is limited to the preparation of paychecks and related payroll paperwork, and is not involved in any of the labor relations matters discussed above.

In view of the foregoing, I find that Tri-State is not a joint employer of the employees in the petitioned-for unit. Task Force alone is responsible for the hiring and disciplining of unit personnel and exercises exclusive control over their work assignments, requests for time off and all other terms and conditions of employment. Tri-State's role is limited to administrative matters pertaining to payroll and the preparation of paychecks. There is no record evidence that Tri-State, in any way, co-determines the terms and conditions of employment. See, e.g., *LeSaint Logistics, Inc. and Employment Management Services*, 324 NLRB 1051 (1997). Accordingly, based on this record, I find that Task Force is the exclusive employer of the employees in the unit sought herein.

The record reveals that Task Force, herein the Employer, a New York corporation with its principle place of business located at 1530 MacDonald Avenue, Brooklyn, New York, is engaged in the business of providing security services to various customers within the State of New York. During the past year, which period is representative of its annual operations, the Employer provided security services valued in excess of \$50,000 to commercial customers, including the New York City Fire Department, which customers in turn satisfy a direct test for the assertion of jurisdiction by the Board.

Based on the stipulations of the parties, and the record as a whole, I find that 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 Employer would not stipulate that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. Peggy Vanson, the president of the Petitioner, testified that she has served in that capacity for the past seven years and that the Petitioner only admits guards to membership. She further testified that the Petitioner is not affiliated with any other labor organization. The record further establishes that employees participate in the functioning of the Petitioner as a labor organization and that general membership meetings are conducted approximately four times a year.

Vanson also stated that the Petitioner bargains with various employers on behalf of units of employees and that it has been certified by the Board following the conduct of representation elections. The record further reveals that the Petitioner has current collective bargaining agreements with numerous employers including Summit Security, Bridge Security, Mandel Security, Watchdog Patrols and the New York Historical Society.

It is well established that for an entity to qualify as a labor organization, employees must participate in its affairs, and it must exist in whole or in part for the purpose of dealing with employers with respect to wages, hours and other terms and conditions of employment. In view of the record herein, I find that the Petitioner meets these criteria, and that it is a labor organization under Section 2(5) of the Act. *Alto Plastics, Inc.*, 136 NLRB 850 (1962).

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. At the hearing the Employer asserted that its security guards are temporary employees. During his testimony, Maddalena testified that what he meant by the term “temporary” was that most of the Employer’s employees do not remain employed with it for very long. He further testified that when security guards are hired, they are assigned a regular work schedule and they remain so employed until they either resign or are discharged. There is no evidence or any contention by the Employer that guards are hired for a specific assignment encompassing a defined brief period of time. Thus, the facts here do not meet the Board test for the finding of temporary employee status, i.e., an employee who is hired for a definite limited period without reasonable expectation of recall. See *Meier & Frank Company*, 272 NLRB 464 (1984). Rather, as the guards here were hired for a regular ongoing employment relationship, they may constitute an appropriate unit and be eligible to vote in the election directed herein.¹

¹ *Garney Morris, Inc.*, 313 NLRB 101 (1993).

The parties stipulated, and I find, that the following constitutes an appropriate unit for the purpose of collective bargaining:

All full-time and regular part-time security officers including sergeants and lieutenants employed by the Employer who are working at the 1 Metrotech North complex, 1960 First Avenue, Brooklyn, New York, excluding all other 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 be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit 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 that 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 who are employed in the unit may vote if they appear in person or 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 to vote shall vote whether they desire to be represented for collective bargaining purposes by Allied International Union.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the 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, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) 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. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before March 17, 2000. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

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, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by March 24, 2000.

Dated at Brooklyn, New York, March 10, 2000.

/S/ ALVIN BLYER

Alvin P. Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201

177-1650-0100
362-6718