

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32

(Oakland, California)

MICHAEL L. GREEN, d/b/a  
PRECISION ROOFING COMPANY

Employer<sup>1</sup>

and

Case 32-RC-4791

UNITED UNION OF ROOFERS AND  
WATERPROOFERS, LOCAL 81,  
AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon petitions duly being filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein 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,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>3</sup>

2. The parties stipulated, and I find, that the Employer, a sole proprietorship, is engaged in providing roofing services to the general public and contractors, out of its facility located in Oakland, California. During the past twelve month period, the

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<sup>1</sup> The Employer's and Petitioner's names appear as stipulated at the hearing.

<sup>2</sup> The Employer's brief was considered. The Union did not submit a brief.

<sup>3</sup> At the hearing and in its brief, the Employer indirectly challenged the Petitioner's showing of interest in support of the instant petition. However, it is well established that the showing of interest requirement is an administrative matter adopted by the Board to determine if further proceedings are warranted. Thus, the determination of the extent of interest is a purely administrative matter, wholly within the discretion of the Agency, and is not dispositive of whether a representation question exists. *Sheffield Corp.*, 108 NLRB 349, 350 (1954); See also, *Lotus Suites, Inc.*, 309 NLRB 1313, 1330 (1992); *Riveria Manor Nursing Home, Inc.*, 200 NLRB 333 (1972). In the instant case, Petitioner has presented a sufficient showing of interest to find that a question concerning representation exists. *O.D. Jennings & Co.*, 68 NLRB 516 (1946).

Employer received gross revenues in excess of \$500,000. Pursuant to an agreement by the parties, the Employer submitted a late-filed exhibit wherein it represented that it purchased and received goods valued in excess of \$5,000, which originated outside the State of California. 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. Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner claims to represent certain employees of the Employer, and 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.<sup>4</sup>

5. The Petitioner seeks to represent all full-time and regular part-time roofers employed by the Employer at its Oakland, California facility. The Employer does not dispute that roofers are an appropriate unit if the unit consists of more than one employee. However, it objects to the inclusion of “regular part-time” roofers in the unit description because, according to the Employer, it has never employed any part-time roofers.<sup>5</sup>

The Employer also challenges the Petitioner’s claim that the unit consists of 18 employees. According to the Employer, all of its former 18 roofers quit their employment on July 17, 2000, and it rehired three of its former roofers between July 24 and about August 3, 2000. It asserts that it did not hire any more employees because it has decided to downsize its operations by operating its business with one crew consisting of one supervisory roofer and three or four roofers, and it will subcontract out the balance of its workload.

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<sup>4</sup> At the hearing, the Employer asserted that there can be no question concerning representation since it believes there was no appropriate unit on the date of the filing of the instant petition. It is the Employer’s position that the petitioned-for-unit is inappropriate and should be dismissed because it consisted of only one employee when the petition was filed. The premise of the Employer’s argument is without merit since there is no contention that it ever contemplated *permanently* reducing the unit to one employee. On the contrary, the undisputed evidence is that the Employer at all relevant times employed or attempted to employ more than one employee in the unit and that at the time of the hearing it employed three employees in the unit and one supervisor. Therefore, the unit never permanently consisted of just one employee. It is well established that in deciding whether a bargaining unit consists of only one employee, it is the permanent size of the unit that is controlling. *Patrick H. Dulin d/b/a Copier Care Plus*, 324 NLRB 785 (1997). In these circumstances, it cannot be concluded that the petitioned-for-unit consists of only one employee. Therefore, the Employer’s challenge to the “appropriateness” of the unit and, thus, its challenge to the question concerning representation cannot be sustained.

<sup>5</sup> The Employer does not explain how the inclusion of regular part-time employees will adversely affect it in any way. In fact, including this classification will serve to distinguish “regular part-time” roofers, who are generally included in a unit with full-time employees, from “casual” or “irregular” roofers who are not generally included. This could become an important distinction to the parties since there is a possibility that the Employer may employ part-time roofers in the future since it is currently downsizing its operations and changing its staffing requirements.

The Employer has been in operation since 1975 as a licensed roofing contractor, headquartered in Oakland, California. Prior to July 17, 2000, it employed 18 or 19 roofers. There is no contention that the Employer has ever had a collective bargaining relationship with any labor organization.

In March 2000, the Employer's employees engaged in a four day work stoppage during a five day period (they returned to work one day during this period). The work stoppage, which was characterized as a "strike" by the Employer, was conducted in an effort to secure certain work benefits for the roofers. In addition, to the work stoppage, the roofers picketed the Employer's facility with union Petitioner's signs. At that time, the Petitioner presented the Employer with a copy of a "union contract" to review.<sup>6</sup> After the employees returned to work, they received a raise and the Employer began paying certain benefits. During the work stoppage, the employees did not turn in their work keys or the Employer's trucks, and they did not remove their personal tools from the workplace.

On July 17, 2000, all of the Employer's roofers went to owner Michael Green's office to discuss additional benefits that they desired. Specifically, they requested a dental plan, paid sick leave, and the possibility of a retirement plan. They stated that they believed it was taking the Employer too long to get those benefits for them. Green informed them that he was not prepared to discuss or to grant them any additional benefits. The roofers responded by stating that they were not going to work for him anymore and they refused Green's request that they remain until they completed the work they "were in the middle of." They turned in the Employer's radios, keys, and trucks, and they collected all of their personal tools. The employees then left the premises and did not return. In addition, they did not engage in any activity outside the premises, in contrast to the picketing activity they had engaged in during the March 2000 work stoppage.<sup>7</sup>

At no time during the July 17<sup>th</sup> discussion with Green, did any of the roofers ever indicate to the Employer that they were merely engaging in a temporary work stoppage. On the contrary, they stated that they were not going to work for Green anymore and they left the premises with their personal tools. Thereafter, all of the roofers applied for employment with other roofing employers and only four have ever returned to the Employer's facility to ask to be "rehired".<sup>8</sup> Based on the foregoing, and the record as a whole, it is clearly established that that the roofing employees, through their conduct on July 17 and thereafter, resigned their employment with the Employer. See, *Orange Blossom Manor, Inc.*, 324 NLRB 846 (1997).

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<sup>6</sup> The record does not disclose if the Petitioner asked the Employer to execute the contract. However, it is clear that the Employer did not execute any agreement with the Petitioner prior to the instant hearing.

<sup>7</sup> Jose Manuel Carbajal, a foreman, remained on the job. However, the parties stipulated that he is a statutory supervisor within the meaning of the Act and that he exercises supervisory responsibilities within the meaning of Section 2(11) of the Act. Based on the foregoing, and the record as a whole, I conclude that Jose Manuel Carbajal is a statutory supervisor.

<sup>8</sup> The Employer hired the first three roofers who asked to be rehired and rejected the fourth roofer due to its decision to downsize its operation to one crew.

Having concluded that the Employer's former roofer-employees resigned their employment on July 17, I conclude that they are ineligible to vote in the election herein directed, unless they have been rehired by the Employer during the eligibility period described below.

The following employees of the Employer constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time roofers employed by the Employer  
At its Oakland, California facility. Excluding all other employees,  
office clerical employees, guards, and supervisors as defined in the Act.

There are approximately 3 employees in the bargaining unit.

#### 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.<sup>9</sup> Eligible to vote are those in the unit who are 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 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 to vote shall vote whether or not they desire to be represented by, UNITED UNION OF ROOFERS AND WATERPROOFERS, LOCAL 81, AFL-CIO.

#### 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); North Macon Health Care 359 Facility, 315 NLRB 359, 361 fn. 17 (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

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<sup>9</sup> Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

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 NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before, **August 31, 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 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 14<sup>th</sup> Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **September 7, 2000**.

Dated at Oakland, California this 24<sup>th</sup> day of August, 2000

/s/ Veronica I. Clements  
Veronica I. Clements  
Acting Regional Director  
National Labor Relations Board  
Region 32  
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