

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

(Richmond, CA)

BOC GASES, a division of The  
BOC GROUP, INC.,

Employer<sup>1</sup>

and

CHARLES BARTON

Petitioner

Case 32-RD-1363

and

OPERATING ENGINEERS, LOCAL  
UNION NO. 3, INTERNATIONAL UNION  
OF OPERATING ENGINEERS, AFL-CIO

Union<sup>2</sup>

DECISION AND DIRECTION OF ELECTION

Upon a petition duly 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 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.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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

<sup>2</sup> The name of the Union appears as set forth in the Certification of Representative which issued on July 24, 1998 in Case 32-RC-4452.

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.<sup>3</sup>

3. The Union claims to represent certain employees of the Employer.<sup>4</sup>

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 voting group appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.<sup>5</sup>

All full-time and regular part-time production and maintenance employees, including helium fillers, plant operators, and mechanics employed at the Employer's Richmond, California

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<sup>3</sup> The record evidence shows that the Employer has primary production operations and/or distribution operations in each state of the United States. Specifically, the Employer has operations in Richmond and City of Commerce, California, Vancouver, Washington, and Green River, Wyoming. To the present in fiscal year 2000, these facilities purchased and received directly goods valued at over \$250,000 from vendors located outside the state where each facility is located. Of this amount, over \$10,000 was shipped directly to the Richmond, California facility from a supplier located outside the State of California. Additionally, based on the parties' stipulation and record evidence, jurisdiction was asserted in Case 32-RC-4452 referenced in footnote 2 above. Accordingly, I find that the Employer is engaged in commerce and that the assertion of jurisdiction in this case is appropriate.

<sup>4</sup> Although duly served with notice of the hearing in this case, the Union did not appear at the hearing. The record establishes that the Union was certified as the collective bargaining agent for the employees in the Unit described in paragraph 5 of this Decision. In about September 1998, the Union and the Employer began a series of negotiating sessions concerning a first collective bargaining agreement to cover the Unit. The Union's bargaining committee consisted of a non-employee Business Agent and employees of the Employer. A number of bargaining sessions were held where proposals concerning wages, hours, and other terms and conditions of employment were presented and discussed. Specifically, the proposals covered, inter alia, wages, pensions, vacations, recognition of the Union, a union security provision, and management rights. The parties have not reached agreement on a contract. Thus, the parties do not have, and have not had, a collective bargaining agreement. The record further shows that since the certification, the Union has represented the unit employees for the purpose of adjusting their grievances with the Employer. Specifically, the Union has represented an employee who was going to be discharged with a resolution of the employee being allowed to voluntarily resign. In the circumstances described above, I find that the Union is a labor organization within the meaning of Section 2(5) of the Act. *Mac Towing, Inc.*, 262 NLRB 1331 (1982).

<sup>5</sup> The unit description is in conformity with the Certification of Representative reference above in footnote 2.

There are approximately 6 employees in the Unit.

facility; **excluding** all other employees, managers, professional and clerical 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 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>6</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 OPERATING ENGINEERS LOCAL UNION NO. 3, INTERNATIONAL UNION OF OPERATING ENGINEERS, 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 Facility*, 315 NLRB 359, 361, fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) 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 NLRB Region 32 Regional Office, Ronal V. Dellums Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before July 18, 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.

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<sup>6</sup> Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

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 July 25, 2000.

Dated at Oakland, California this 11<sup>th</sup> day of July, 2000.

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James S. Scott, Regional Director  
National Labor Relations Board, Region 32  
32-1197

260-3320-7533