

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 19**

RAYTHEON DEMILITARIZATION COMPANY

Employer

and

Case 36-RC-6000

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS, LOCAL 112,  
AFL-CIO

Petitioner

**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<sup>1</sup> 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.

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 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:

All hourly employees, including clerical employees, employed by the Employer at its Umatilla, Oregon, Chemical Agent Disposal Facility; but excluding all warehouse employees, salaried employees, confidential employees, and guards and supervisors as defined by the Act.

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<sup>1</sup> The parties filed briefs, which have been considered.

<sup>2</sup> The Employer filed a written Motion to Dismiss, based on its contention that there is not a substantial and representative complement of employees employed at the present time. The Employer's Motion is hereby denied for the reasons herein.

The Employer is engaged in chemical weapons disposal under a contract with the United States Department of Defense at the Chemical Agent Disposal Facility located in Umatilla, Oregon. The Employer agrees that a unit of all hourly employees, excluding warehouse employees currently represented by the Laborers' Union, is an appropriate unit. However, the Employer contends that it does not yet employ a substantial and representative complement of employees. Further, the Employer contends that the medical secretary, Rachel Trott, is a confidential employee.

### **Expanding Unit Issue.**

The Umatilla facility is currently under construction. At the time of the hearing, it was about 70 percent complete. Construction is expected to be completed in late December 2000, but the facility will not be in full operation until October 2002, when it will operate with four full crews. However, a "surrogate trial burn", which will require full processing rates for five consecutive days, requiring two and one-half crews, is scheduled for February 2002. To meet that requirement, the Employer will need to have the members of the two and one-half crews hired by Fall 2001, in order to train them. This hiring process will start in Spring, 2001. In the meantime, the Employer is occupying those portions of the facility which have been completed.

The Employer is contractually bound to meet the terms of the Chemical Weapons Convention Treaty, which requires that all such munitions in the United States be disposed of by April 2007. When the Umatilla facility is fully operational, chemical munitions will be brought from a nearby Army depot, uncrated, loaded individually onto a conveyor belt into the munitions demilitarization building, where they will be remotely disassembled. Explosives will be removed and incinerated in a deactivation furnace. Chemical agents will be drained and incinerated in another furnace. Bulk metal waste will also be incinerated.

Currently the full expected complement of hourly clerical employees, about 40, has been hired. By agreement of the parties, they are included in the Unit. Additional hourly employees have been hired in three additional major groups: maintenance, operations, and technical support services. Maintenance will include electricians, instrument technicians, mechanical leads, mechanics, pipefitter/welders, carpenters/painters, rubber rangers (charcoal changers), and measurement and test equipment technicians. Operations will include operators who, it appears, will perform the actual dismantling and destruction. Technical support services will include demilitarization protective ensemble support area operators, radio technicians, and toxic maintenance area operators.

At the time of the hearing, the Employer employed approximately 16 hourly employees in 5 job classifications in maintenance; 7 in 1 classification in operations; and 1 in technical support services. The Employer expects to *begin* hiring sometime in Spring 2001, to fill out the requisite two and one-half crews for the surrogate trial burn. It does not appear that there will be any substantial hiring between now and Spring, 2001. It appears that in February 2002, at the time of the surrogate trial burn, there will be approximately 57 employees in 8 job classifications in maintenance, 48 employees in the 1 classification in operations, and 18 employees in 3 classifications in technical support services, plus the 40 clericals.

In October, 2002, when fully operational, the Employer expects to employ approximately 90 employees in 8 classifications in maintenance; 76 employees in 1 classification in operations; and 28 employees in 3 classifications in technical support services, plus the 40 clericals.

The record evidence with respect to the job duties and skills of the current employees, as compared to the job duties and skills of the projected future employees, is brief and vague. The current maintenance employees, which include electricians, mechanics, pipefitters/welders, and a measurement and test equipment technician, are engaged in maintaining the water, electrical, heating, ventilation, and

air conditioning systems that have so far been completed. In the future, they will also maintain the weapons disposal equipment, and at some unspecified time they will receive training on the troubleshooting and repair of such equipment. However, there is no evidence that their future job responsibilities will require the use of any specialized skills beyond those normally required by members of their various crafts. The seven operators are currently engaged in the operation of the systems which have so far been completed, including the boilers and HVAC systems. In the future, operators will be operating additional equipment, apparently the actual dismantling and destruction equipment. The one employee currently in technical support services, a demilitarization support activity operator, is performing some unspecified support activity; in the future, employees in her classification will be dressing other workers for entry into toxic areas.

It is the Board's policy that current employees not be deprived of the right to select or reject a bargaining representative simply because the employer plans an expansion in the future. However, the Board does not wish to impose a bargaining representative on employees to be hired in the immediate future, based upon the vote of a few current employees. Where an employee complement is "substantial and representative," the Board finds that an immediate election is warranted. *Toto Industries*, 323 NLRB 645 (1997). Among the factors which the Board considers in this regard are: the size of the current work force and the current job classifications; the size of the expected ultimate work force and the projected job classifications; the time which will elapse before a full work force is attained; the timing and size of projected interim hiring increases; and the certainty of expansion.

It is uncontroverted here that the Employer's work force will expand from the current approximately 64 employees to about 163 in Fall 2001, and about 234 in October 2002. Further, at the time of the hearing, there were about 22 employees in the maintenance, operations, and technical support areas, while the Employer plans to have about 123 employees in those three areas in Fall 2001. Thus, the Employer urges that no substantial and representative complement of employees will be attained until sometime in Fall 2001.

However, as has been said above, the Board's policy on expanding units gives consideration to the right of current employees to select or reject a bargaining representative. In *Bekaert Steel Wire Corp.*, 189 NLRB 561 (1971), the Board found a date one year from the date the petition was filed was too remote to form the basis for denying current employees the immediate opportunity to select a bargaining representative.

Here, the Employer does not plan to even *begin* additional hiring until Spring 2001, nearly a full year in the future, and a substantial and representative segment of the ultimate employee complement may not be employed until Fall 2001, approximately a year and a half from now. The record does not establish that the additional employees will have any significantly different job skills from those of the current employees, only that, except for clerical employees, both the current employees and future employees will receive additional training. There are 5 additional classifications to be hired, by Fall, 2001.

The evidence herein supports a conclusion that there will be no meaningful change in the size or duties of the current work force for a year to a year and one-half after the date the petition was filed. That is, hiring of the two and one-half crews needed for the surrogate trial has a deadline of Fall, 2001. Right now, there are employees working in 8 of 13 classifications, and 64 of 234 employees have been hired. The choices are to leave all unrepresented until Fall, 2001, or have an election now. (No one has proposed an alternative). In these circumstances, the record herein fails to establish a reasonable basis for

postponing for such a long period of time the opportunity for current employees to select or reject a collective bargaining representative.<sup>3</sup>

I therefore reject the Employer's contention that the petition is premature.

### **Confidential Employee Issue.**

The Employer contends that medical secretary Rachel Trott is a confidential employee. Trott is employed in the on-site medical clinic. She has access to employee medical records, including records involving drug testing and psychological evaluations. It appears that she reports to Steven Smith. The record does not reveal Smith's job title or duties.

The Board has long held that confidential employees are those "who assist and act in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations." *B.F. Goodrich Company*, 115 NLRB 722 (1956). The party asserting confidential status has the burden of providing evidence to support its assertion. *Crest Mark Packing Co.*, 283 NLRB 999 (1987).

Here, the Employer has failed to meet its burden, inasmuch as it offered no evidence that Trott acts in a confidential capacity to any person who formulates, determines, and effectuates management policy in labor relations. The mere fact that Trott has access to "confidential" information does not establish confidential status. *Bakersfield Californian*, 316 NLRB 1211 (1995).

I conclude, therefore, that on this record Trott has not been shown to be a confidential employee, and is included in the Unit.

There are approximately 64 employees in the 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. Eligible to vote are those 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 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 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 112, AFL-CIO.

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<sup>3</sup> I believe I lack authority to direct an election now, with only a short-term certification; or to avoid a contract bar in Fall 2001, by limiting the duration of any contract that might ensue, or by mandating a filing window for a short period around Fall, 2001.

## NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## 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 their 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*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge for Subregion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the **new** Subregional Office, 601 SW Second Avenue, Suite 1910, Portland, Oregon 97204, on or before June 9, 2000. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted. To speed preliminary checking and the voting process itself, the names must be alphabetized.

## 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 the Board in Washington by June 16, 2000.

**DATED** at Seattle, Washington, this 2<sup>nd</sup> day of June, 2000.

/s/ PAUL EGGERT

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Paul Eggert, Regional Director  
National Labor Relations Board, Region 19  
2948 Jackson Federal Building  
915 Second Avenue  
Seattle, Washington 98174

316-6701-8300  
347-8020-4000  
460-5033-5050  
460-5033-5050-5060