

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13

CULINARY FOODS, INC.<sup>1</sup>

Employer

and

UNITED FOOD & COMMERCIAL WORKERS UNION LOCAL 546100A, AFL-CIO AND  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 703, AFL-CIO

Joint Petitioners

and

PRODUCTION AND MAINTENANCE WORKERS UNION, LOCAL 101 (Independent)

Intervenor

Case 13-RC-20637

**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>2</sup> 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.<sup>3</sup>

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>4</sup>

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.<sup>5</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.<sup>6</sup>

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 full-time and regular part-time production and maintenance employees, including working supervisors employed by the Employer at its location currently located at 4201 South Ashland, Chicago, Illinois; but excluding all office clerical workers, guards, quality assurance employees, 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(s) 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(s) 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 United Food & Commercial Workers Union Local 546100A, AFL-CIO and International Brotherhood of Teamsters, Local 703, AFL-CIO, jointly or Production and Maintenance Workers Union, Local 101 (Independent) or neither.

#### LIST OF VOTERS

In order to insure 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 which 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); *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the names and addresses of all of the eligible voters, shall be filed by the Employer with the undersigned Regional Director who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in **Suite 800, 200 West Adams Street, Chicago, Illinois 60606** on or before August 30, 2001. 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, Franklin Court Building, 1099-14th Street, N.W., Washington, D.C. 20570**. This request must be received by the Board in Washington by September 6, 2001.

**DATED** August 23, 2001 at Chicago, Illinois.

/s/ Elizabeth Kinney  
Regional Director, Region 13

\*/ The National Labor Relations Board provides the following rule with respect to the posting of election notices:

(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Director in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objection to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Director at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

1/ The names of the parties appear as amended at the hearing.

2/ The arguments advanced by the parties at the hearing and in their post-hearing briefs have been carefully considered.

3/ The Employer and the Intervenor both argue that the petitioned-for unit employees signed authorization cards for Local 546100A only and not for Local 703 and thus, the showing of interest is insufficient to support a joint petition by Local 546100A and Local 703. They also argue that the Hearing Officer erred in refusing to allow evidence on this issue into the record. It is well-established that the showing of interest is an administrative matter not subject to litigation. *See General Dynamics Corp.*, 175 NLRB 1035 (1969); *Allied Chemical Corp.*, 165 NLRB 235 (1967); *O. D. Jennings & Co.*, 68 NLRB 516 (1946). Accordingly, I find that the Hearing Officer's rulings were proper. Thus, while the Employer is correct when it points out that the Board will remand cases for further hearing where a hearing officer does not provide the employer with a sufficient opportunity to present its evidence, see *North Manchester Foundry, Inc.*, 328 NLRB 372 (1999), such a remand is not necessary where, as here, the hearing officer's rulings were proper.

4/ The Employer is a corporation engaged in the business of processing frozen food specialties.

5/ At hearing, the Employer stipulated that Local 546100A and Production and Maintenance Workers Union, Local 101, are labor organizations within the meaning of Section 2(5) of the Act, but refused to stipulate that joint petitioner, Local 703 was a labor organization under the Act. Section 2(5) of the Act defines a "labor organization" as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." Based on the evidence presented at hearing, I find that Local 703 is a labor organization within the meaning of the Act. First, Local 703 has a membership of over 2,000 employees involving 50 to 60 different companies. Second, the activities in which Local 703 engages, such as its current strike at V&V Supremo, concern the grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work of its employee members and negotiating with employers over such issues. Further, Local 703 is affiliated with the AFL-CIO, the Illinois Federation of Labor, the Chicago Federation of Labor, as well as the International Brotherhood of Teamsters—organizations which exist for the purpose of improving the aforementioned terms and conditions of employment.

The Intervenor is the incumbent representative of the employees in the unit sought by the instant petition, and it intervened in this proceeding based upon its collective-bargaining agreement with the Employer, effective from October 11, 1998, through October 6, 2001.

6/ The Employer raises in its opening statement and its post-hearing brief that the amended petition was untimely filed during the insulated period and that this should preclude Teamsters Local 703 ("Local 703") from joining these proceedings as joint petitioner with UFCW Local 546100A ("Local 546100A"). In a case involving remarkably similar facts, the Board adopted the Regional Director's findings that minor changes in the unit description and the addition of a joint petitioner did not warrant a departure from the usual rule that the date of the original petition governs for the purpose

of determining whether a contract bar applies. *Dobbs International Services*, 323 NLRB 1159 (1997); see *Deluxe Metal Furniture Co.*, 121 NLRB 995, 1000-1001 (1958).

In the instant case, the original petition identified the employer involved, and there is no dispute that it was filed during the window period. The amended petition differs from the original petition by adding Local 703 as a joint petitioner and “maintenance” to the description of the unit involved. First, the record clearly indicates that the Intervenor currently represents both production and maintenance employees at the Employer’s facility and that the Petitioners are seeking to represent the same bargaining unit. Therefore, by adding “maintenance” to the description of the unit involved in the amended petition, the Petitioners were not expanding the unit, but merely clarifying the unit sought. Second, the addition of Local 703 as a joint petitioner in these circumstances affects none of the policies served by the Board’s contract bar rules. See *Dobbs International Services*, 323 NLRB at 1161. As discussed more fully below, I find nothing in the record to suggest that that Local 703 and Local 546100A do not intend to jointly represent the unit if they are certified as the collective bargaining representatives. Based on these factors, I find that the date of the original petition, and not the amended petition, is controlling in this case.

The Employer also argues that the hearing officer irreversibly tainted this proceeding by wrongfully excluding testimony pertaining to the intent of the joint petitioners regarding the representation of the petitioned-for employees. As discussed above, the Hearing Officer in the instant case properly excluded testimony being elicited on the issue of the showing of interest. The Employer and Intervenor were allowed to ask the Petitioners’ witnesses questions going to the Petitioners’ intentions with respect to joint representation and these witnesses answered the questions to the extent of their knowledge. As discussed in this decision, sufficient evidence was presented at hearing to determine that the Petitioners, if certified, intend to jointly represent the petitioned-for employees.

The Employer points to the lack of specific information that the Petitioners’ witnesses were able to provide at hearing on various issues, including what types of benefit plans would be offered to employees or how negotiations would be conducted and by whom, and question the Petitioners’ intent to jointly represent the Employer’s employees. The Employer suggests that the witnesses’ inability to explain in detail how they plan to approach the bargaining table implies that joint representation was not sincerely contemplated by Local 703 and Local 546100A. I am unpersuaded by this argument. In this case, both witnesses for the Petitioners testified that their intent was to jointly represent the employees. There is no reason for Joint Petitioners to reveal what economic package they will propose during contract negotiations with the Employer. That Petitioners refuse to disclose to the Employer at hearing what proposals they will offer at negotiation sessions or which representatives from each union will be present during those sessions do not support a finding that they never intended joint representation. Likewise, their purported failure to have worked out the details of their joint representation in advance of being certified as the collective-bargaining

representative does not indicate that they intend to divide up the unit should they succeed in obtaining certification.

Accordingly, I find nothing in the record to support the Employer's concern that the joint petitioners, once certified, may divide up a bargaining unit for purposes of bargaining, contract administration, and representation. There is also nothing in the record to suggest that this approach is the Petitioners' intent with respect to the employees at Culinary Foods. Accordingly, the cases the Employer cites to support the proposition that the Act does not permit several unions to divide up a bargaining unit are inapposite.

Finally, I am not persuaded by the Employer's argument that the Act does not allow Petitioners to jointly represent the employees of Culinary Foods and find no support for its position in *Human Dev. Ass'n. v. NLRB*, 937 F.3d 657 (D.C. Cir. 1991). Two or more labor organizations are permitted to act jointly as bargaining representative for a single group of employees; see, *S.D. Warren Co.*, 150 NLRB 288 (1965); *Vanadium Corp. of America*, 117 NLRB 1390 (1957). In *Human Dev. Ass'n.*, the employer recognized a minority union without a Board-conducted representation election. *Id.* at 660. In the instant case, the Employer has voluntarily recognized neither petitioning unions, nor has either petitioner demanded recognition from the Employer. The Employer argues that certifying two unions, with each conceivably having only minority support, as the exclusive bargaining representative would be impermissible. If this Region were to certify the joint petitioners as the bargaining representative of the Employer's employees, it would do so only after a representation election, where the employees would be given the opportunity to decide whether or not they want to be jointly represented by Local 703 and Local 546100A. If the joint petitioners are successful in the election, they will be certified jointly and the Employer may insist on joint bargaining. See *Florida Tile Ind.*, 130 NLRB 897 (1961).

After considering the record in its entirety, I find no reason that the joint petitioners cannot proceed to an election in the petitioned-for unit. There are approximately 700 production and maintenance employees in the petitioned-for unit.