

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

SUPERCHARGED ELECTRIC, INC.
Employer

and

LOCAL UNION NO. 3 INTERNATIONAL
BROTHERHOOD OF ELECTRICAL WORKERS
AFL-CIO

Petitioner

Case No. 29-RC-9647

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 Paul Richman, 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. The parties stipulated that Supercharged Electric, Inc., herein called the Employer, with its sole office and place of business located at 2 Dubois Avenue, Staten Island, New York, herein called the Staten Island facility, is engaged in providing electrical contracting services to various enterprises, including Methodist Hospital located in Brooklyn, New York. During the past calendar year, a period which represents the Employer's operations generally, the Employer provided services valued in excess of

\$50,000 directly to enterprises located within the State of New York, which enterprises satisfy a Board test for the assertion of jurisdiction, exclusive of indirect inflow or outflow.

Based on the stipulation of the parties and the record herein, I find that the Employer is engaged in commerce within the meaning of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved herein 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 parties have stipulated that the unit sought by the Petitioner, i.e., all full-time and regular part-time electricians, junior electricians and helpers employed by the Employer at its facility located at 2 Dubois Avenue, Staten Island, New York, and assigned to work at various sites to which the Employer provides electrical contracting services, and excluding all office clerical employees, temporary employees, and guards and supervisors as defined in the Act, is an appropriate bargaining unit.

During the course of hearing conducted herein, issues arose with respect to the alleged supervisory status of two individuals, Gene Abbazio and David Johanssen. The Employer took the position that Abbazio is a statutory supervisor, and that while Johanssen may have held a supervisory position in the past, at the present he does not. At the close of the hearing, it appears that the Petitioner agreed that Abbazio is a supervisor within the meaning of Section 2(11) of the Act. This agreement is supported by record

testimony. Such unrebutted testimony reveals that Abbazio makes meaningful recommendations regarding the necessity to hire new personnel for Manhattan, New York, based jobs, determines the qualifications needed for such positions, interviews applicants and decides who to hire. The record also establishes that Abbazio can transfer workers among the various jobs located in Manhattan based entirely on his assessment of where these workers would best be deployed. Possession of these indicia of supervisory authority supports the parties apparent agreement that Abbazio is a statutory supervisor and I so find.

With respect to Johanssen, the record reveals that up until several months prior to the filing of the instant petition, he possessed the same authority as Abbazio. There is no evidence that Johanssen currently possesses or exercises such authority. To the contrary, the record reveals that Johanssen is presently employed as an electrician and is working on job sites at Methodist Hospital located in Brooklyn, New York. The Petitioner argues that the Employer is looking for additional business and if it is acquired, there is a strong possibility Johanssen will be reinstated to his supervisory position. Such an assertion is speculative and is irrelevant to the determination of Johanssen's status at the present time. Determination of unit placement is predicated on an employee's current duties and responsibilities and not upon conjecture of what may occur in the future. Certainly the Board would not find an admitted supervisor to be an eligible voter based upon an employer's claim that in the future it might strip said employee of any supervisory authority. Accordingly, I find that Johanssen is not a supervisor and is eligible to vote in the election directed herein.

As noted above, I find that the following unit is appropriate for the purposes of collective bargaining:

All full-time and regular part-time electricians, junior electricians and helpers employed by the Employer at its facility located at Dubois Avenue, Staten Island, New York, and assigned to work at various sites to which the Employer provides electrical contracting services, and excluding all office clerical employees, temporary employees, and 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. 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 Local Union No. 3, Interational Brotherhood of Electrical Workers, AFL-CIO, or no labor organization.

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 No. 50 (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 May 4, 2001. 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 No. 52 (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 May 11, 2001.

Dated at Brooklyn, New York, April 27, 2001.

/S/ Alvin Blyer

Alvin Blyer
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