

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

THE ZOOLOGICAL SOCIETY OF PHILADELPHIA

Employer

and

Case 4-RC-20205

AMERICAN FEDERATION OF
STATE, COUNTY AND MUNICIPAL
EMPLOYEES, DISTRICT COUNCIL 47

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 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.
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 Employer is a non-profit corporation operating a zoological park (herein called the Zoo) in Philadelphia, Pennsylvania. The Petitioner currently represents a unit of

animal keepers, maintenance department employees, admission cashiers, commissary workers and central communications operators employed by the Employer. The Petitioner seeks to represent a unit of “all full-time and regular part-time unrepresented employees employed by the Employer, including seasonal employees, excluding all other employees, student interns, confidential employees, guards and supervisors as defined in the Act.”¹ The parties dispute the inclusion of employees in various classifications who work only during the Zoo’s peak season, which lasts roughly from April through October of each year. The Petitioner takes the position that peak seasonal employees² have a reasonable expectation of reemployment from one year to the next and therefore should be included in the unit. The Employer contends that peak seasonal employees should be excluded on the ground that they do not have a reasonable expectation of reemployment each year and thus do not share a community of interest with the other employees in the stipulated unit.³

The Employer currently employs approximately 310 nonsupervisory employees, including about 92 employees in the represented unit described above. According to its “Flexible Staffing Policy,” the Employer “may supplement its full-time work force as necessary with temporary employees, or other forms of flexible staffing.” The Flexible Staffing Policy categorizes temporary employees as full-time, part-time, or seasonal. Full-time employees work a minimum of 40 hours per week year-round for a specified, limited duration. Part-time employees work throughout the year for less than 40 hours per week and are limited to 1700 hours per year. The policy defines “seasonal employees” as those employees who are hired to

¹ The parties stipulated that the unit should include all full-time and regular part-time administrative services attendants, admissions representatives, sales department assistants, animal records and IT coordinator, administrative secretaries, cash control assistant, Children’s Zoo assistant, conservation coordinator, annual giving coordinator, development associate, grants manager, development assistant, seasonal programs coordinator, Little Zoo-on-Wheels coordinator, housekeeping attendants, housekeeping supervisor, vendor disbursement processor, staff accountant, graphic designer, special events and creative assistant, senior graphic designer, ground zones specialists, grounds attendants, group sales reservationists, membership representatives, promotions coordinator, public relations associate, purchasing assistant, treehouse troupe performers, exhibit co-coordinator, treehouse monitors, cash control auditors, animal care assistants, secretary to the Docent Council, education subs, office services attendants, primate reserve interpreters, travel associate, night flight performers, sponsorship assistant/ed sub, and the unit should exclude confidential employees, professional employees, managerial employees, student interns, junior zoo apprentice program interns, the junior zoo apprentice program coordinator, volunteers, temporary employees, assistant pathologist, financial analyst, payroll manager, boat concession manager, office services supervisor, POS administrator, work shop coordinator, executive assistants and executive office secretary in the executive office, human resources assistant, MIS coordinator, assistant projects manager, exhibit coordinator supervisor, senior veterinarian laboratory technician, veterinary laboratory technician, the nutrition intern and guards and supervisors as defined in the Act.

Based on the unrebutted testimony of the Employer’s Vice-President of Administration, I find that the following employees are excluded from the unit as junior zoo apprentice program interns: Jordan Warren, Elise N. Glenn, Siboney Haley, Mohammid McAdoo, Brian McCarthney, Joel Medina, Blayre Montague, Guillermo A. Valido, Charise Lucas and Nekia Melissa Seaberry.

² Witnesses at the hearing used the term “seasonal employees” to refer to certain employees who work on a year-round basis as well as to employees who are hired specifically to work during the peak season. Only the latter group is at issue, and for purposes of clarity, this Decision refers to these employees as “peak seasonal employees.”

³ The disputed peak seasonal employees fall into the following classifications: admissions representatives, boat ride attendant, assistant boat ride manager, cash control auditor, barnyard monitor, junior barnyard monitor, schoolhouse monitors, presenter, primate reserve interpreter, junior zoo apprentice program mentor, housekeeping attendant, grounds attendant, gardener, membership representative and treehouse monitor.

cover peak workload periods, and the policy limits their job assignments to six continuous months. The Employer may extend this period, and some peak seasonal employees have worked up to nine continuous months. They may work full-time or part-time schedules or on an “on call” basis. In the year 2001, there are about 58 peak seasonal employees at the zoo.⁴ In a typical year, about 25 percent of the peak seasonal employees are high school students and about 20 percent are college students. An unspecified number of other peak seasonal employees have been referred to the Employer through a “welfare to work” program.

About ten years ago, the Employer maintained a complement of about 450 to 500 peak seasonal employees. Thereafter, the Employer reduced the size of this complement by outsourcing its food services, and last year the Employer had only about 150 peak seasonal positions. In 2000, due to extensive employee turnover the Employer hired approximately 270 employees during the course of the season to staff the 150 seasonal positions. Thereafter, the Employer began to outsource its retail operations, parking and security work. About 100 employees worked in retail operations in 2000, and an unspecified number worked in security and parking.⁵ For the 2001 season, the Employer reduced its peak seasonal employee complement to approximately 75 positions, primarily as a result of this outsourcing.⁶ The Employer invited approximately 75 peak seasonal employees from the 2000 season to apply for the 75 positions in 2001, and about 35 of them reapplied and were rehired. In the last one to two years only about three peak seasonal employees converted to full-time status.

The Employer recruits peak seasonal employees from Pennsylvania, New Jersey and Delaware, primarily targeting Philadelphia and the surrounding counties. The Employer uses the Internet, member publications, newspaper advertisements, recruiting letters, and flyers to high schools, colleges and government agencies to reach prospective applicants. The Employer’s recruiting announcements and hiring offer letters generally indicate that the positions are for a limited period. Before laying off peak seasonal employees at the end of the season, the Employer prepares performance appraisals for them. Thereafter, in December the Employer sends letters to peak seasonal employees who received satisfactory performance appraisals encouraging them to reapply for positions in the upcoming season. In the letter, the Employer asks them to express their interest in reemployment by completing a form and returning it by the first week in January. They need not complete formal applications or be interviewed, but if they fail to respond by the deadline, the Employer does not hold positions open for them. While employees who are invited to reapply are not guaranteed positions, they are generally hired if they timely respond to the Employer’s invitation, and they are preferred over new applicants.

Although there is no evidence as to a general practice, the Employer’s supervisors have informed some peak seasonal employees that they would have an opportunity to work for the Employer the following year. Thus, one peak seasonal employee testified that when she was laid off in November 2000 her supervisor said that she would try to call the employee back to work the next year, and in February the employee was called back. Another employee testified that her supervisor informed her that she would be laid off but that she could return the next season if

⁴ This number does not include student interns and other classifications stipulated to be excluded from the unit.

⁵ The Employer has no plans to outsource other operations currently staffed by peak seasonal employees.

⁶ The Employer did not invite any of the 100 peak seasonal retail employees in the 2000 season to reapply for seasonal positions in 2001.

she “qualified.” Two other employees testified that supervisors told them at the time of their layoffs in 2000 that they could return the following year, and both of them returned to work for the Employer.

The Employer contends that peak seasonal employees do not have a reasonable expectation of reemployment, but the Employer does not dispute that peak seasonal employees in the relevant classifications otherwise share a community of interest with employees in the stipulated unit. Indeed, some of the peak seasonal employees, including cash control auditors, primate reserve interpreters, and admissions representatives are in the identical classifications as year-round full-time employees in the stipulated unit. Several other classifications of peak seasonal employees work directly with their counterparts in related classifications in the stipulated unit, perform similar duties, and are commonly supervised. These classifications include housekeeping attendants, grounds attendants, membership representatives, Children’s Zoo presenters, and treehouse monitors.⁷ Moreover, the Employer has an employee handbook covering seasonal and part-time employees. The handbook describes the Employer’s policies with respect to matters such as attendance and scheduling, appearance standards, probationary periods, rules of conduct, disciplinary policies and employee benefits.⁸ The Employer’s policies apply to peak seasonal employees in the same way as to the year-round part-time employees.

Seasonal employees are those employees who work in an industry that operates on a seasonal basis, and the Board has set forth various guidelines as to when such employees should be included in bargaining units. See *L & B Cooling, Inc.*, 267 NLRB 1, 2-3 (1983), *enfd.* 757 F. 2d 236 (10th Cir. 1985); *Maine Apple Growers*, 254 NLRB 501, 502-503 (1984); *Baumer Foods, Inc.*, 190 NLRB 690 (1971); *California Vegetables Concentrates, Inc.*, 120 NLRB 266, 267-268 (1958). In contrast, employees who are laid off due to the cyclical nature of the business, although the business continues in operation throughout the year, are not seasonal employees, and the determination as to whether they should be included in the bargaining unit depends upon their reasonable expectancy of recall in the near future. *Six Flags/White Water & American Adventures*, 333 NLRB No. 78 (2001); *Sol-Jack Co.*, 286 NLRB 1173 (1987); *Musgrave Manufacturing Company*, 124 NLRB 258, 260-261 (1959). In this case, the Employer’s peak seasonal employees are not truly seasonal employees, but employees who are annually laid off due to seasonal fluctuations in the Employer’s business, and the record shows that these employees have a reasonable expectation of recall in the year following their layoffs. Thus, the Employer has demonstrated a clear preference for reemploying laid off peak seasonal employees based on its policy of soliciting them to fill positions for the upcoming season. In this regard, the Employer seeks to rehire peak seasonal employees who receive successful performance evaluations and express interest in recall, so that good employees can expect to be offered reemployment. For the current season, the Employer attempted to staff its entire peak seasonal complement with former peak seasonal employees by inviting 75 employees from the 2000 season to apply for its 75 openings for the 2001 season. Additionally, the Employer does not tell peak seasonal employees their employment is limited to a single season. The Employer

⁷ There is no evidence as to the duties of school house monitors, barnyard monitors, junior barnyard monitors, boat ride attendants, assistant boat ride manager or gardener.

⁸ The record does not include a handbook for full-time year-round employees or indicate whether the Employer has different policies for them.

contends that peak seasonal employees do not have a reasonable expectation of recall because only 75 of the 270 peak seasonal employees who worked in 2000 were offered work this year, a relatively low percentage. However, of the 270 employees, more than 100 of them worked in classifications that have been outsourced and no longer exist, so the percentage of employees returning to the remaining classifications is far higher.⁹ The record further demonstrates that during the time that the Employer employs peak seasonal employees they share a community of interest with employees in the stipulated unit. Accordingly, I shall include them in the unit found appropriate below. *Six Flags/White Water & American Adventures*, supra; *F.A. Bartlett Tree Expert Co.*, 137 NLRB 501, 502 (1962).

In its brief, the Employer belatedly took the position that peak seasonal employees who are high school or college students should be excluded from the unit. The Employer did not raise this issue at any time during the hearing.¹⁰ In any case, I find no merit to the Employer's contention, because the record does not indicate that the Employer treats student peak season employees differently than non-student peak season employees or that they do not have the same expectation of reemployment in later years. Cf. *Hygeia Coca-Cola Bottling Co.*, 192 NLRB 1127 (1971).

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.¹¹

All full-time and regular part-time administrative services attendants, admissions representatives, sales department assistants, animal records and IT coordinator, administrative secretaries, cash control assistant, Children's Zoo assistant, conservation coordinator, annual giving coordinator, development associate, grants manager, development assistant, seasonal programs coordinator, Little Zoo-on-Wheels coordinator, housekeeping attendants, housekeeping supervisor, vendor disbursement processor, staff accountant, graphic designer, special events and creative assistant, senior graphic designer, ground zones specialists, grounds attendants, group sales reservationists, membership representatives, promotions coordinator, public relations associate, purchasing assistant, treehouse troupe performers, exhibit co-coordinator, treehouse monitors, cash control auditors, animal care assistants, secretary to the Docent Council, education subs, office services attendants, primate reserve interpreters, travel associate, night flight performers, sponsorship assistant/ed sub, presenters, schoolhouse monitors, barnyard monitors, junior barnyard monitors, gardener, boat ride attendants and

⁹ There is no evidence as to the circumstances of the other 2001 peak seasonal employees' separation from employment from the Employer, such as whether they resigned or were discharged.

¹⁰ While the parties stipulated to the exclusion of student interns, there was no discussion of the eligibility of other student employees, and the record contains no material evidence with respect to student employees other than the percentage of the peak seasonal complement that is comprised of high school and college students.

¹¹ The Employer contends that the Junior Zoo Apprentice Program Mentor should be excluded from the unit as a student intern, while the Petitioner contends that he is not an intern and should be included in the unit as a peak seasonal employee. As there is no record evidence as to his status or duties, I shall permit this individual to vote subject to challenge.

assistant boat ride manager, excluding confidential employees, professional employees, managerial employees, student interns, junior zoo apprentice program interns, the junior zoo apprentice program coordinator, volunteers, temporary employees, assistant pathologist, financial analyst, payroll manager, boat concession manager, office services supervisor, POS administrator, work shop coordinator, executive assistants and executive office secretary in the executive office, human resources assistant, MIS coordinator, assistant projects manager, exhibit coordinator supervisor, senior veterinarian laboratory technician, veterinary laboratory technician, the nutrition intern and guards and supervisors as defined in the Act.

DIRECTION OF ELECTION¹²

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,¹³ 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

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LIST OF VOTERS

¹² The eligibility date for the election shall be the payroll period ending immediately preceding the date on which the Notice of Election is issued.

¹³ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

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 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). 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 Regional Director for Region Four 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. I 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 Regional Office, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106, on or before **June 25, 2001**. 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 requirement 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. Since the list is to be made available to all parties to the election, please furnish a total of **3 copies**, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall, or by department, etc.). If you have any questions, please contact the Regional Office.

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, 1099 14th Street, N.W., Room 11613, Washington, D.C. 20570. This request must be received by the Board in Washington by **July 2, 2001**.

Signed: June 18, 2001

at Philadelphia, Pennsylvania

/s/

DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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