

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 2**

**ENVIPCO PICKUP & PROCESSING SERVICES, Inc.
EMPLOYER**

And

CASE NO: 2-RC-22613

**LABORERS' LOCAL 108, LABORERS' INTERNATIONAL
UNION OF NORTH AMERICA, AFL-CIO**

PETITIONER

DECISION AND DIRECTION OF ELECTION

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before Lana Pfeifer, a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its authority in this proceeding to the Regional Director, Region 2.

Upon the entire record¹ in this proceeding, it is found that:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.
2. The parties stipulated and I find that Envipco Pickup & Processing Services, Inc., (the Employer), is a Delaware corporation, has an office and place of business located at 900 East 138th Street, Bronx, New York, where it is

¹ Briefs were filed by the parties and have been duly considered.

engaged in the operation of recycling and processing cans and bottles. Annually, the Employer, in the course and conduct of its business operations, derives gross revenues in excess of \$50,000 from sales to customers or purchases of services directly by customers located outside the State of New York.

Accordingly, I find that 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 parties stipulated and I find that Laborers' Local 108, Laborers' International Union of North America, AFL-CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

4. The Employer urges that the petition filed by the Petitioner be dismissed because it has been notified that its lease at its Bronx location has been cancelled and it must relocate "as soon as possible". Petitioner categorizes the Employer's contention that it must relocate as "speculative at best" and urges an immediate election to determine whether the unit employees desire representation.

The Employer's Operations

Commencing in November 2001, the Employer commenced its operation at its Bronx location when it purchased the customer list of a recycling company operating out of a facility at Maspeth, New York. The Employer entered into a lease agreement for space and equipment with Waste Management, another recycling company with whom it formed a joint venture. The Employer has thereafter operated out of the Bronx facility for the period from December 1, 2001

through September 1, 2002. The Employer employs approximately 11 drivers who pick up cans and bottles from customers and 25 warehouse employees who perform recycling services at the Bronx facility.

Possible Changes

On August 8, 2002, Waste Management sent a letter to the Employer informing them of the cancellation of the lease effective September 1² and requesting that the Employer relinquish possession of the facility as soon as possible after September 1. Notwithstanding the above-described notice of lease cancellation, the Employer still occupied the Bronx facility as of September 9, the date of the hearing. In early August, about a month prior to the hearing, the Employer told Coca Cola Bottling, one of its customers, that they would be relocating, but that they would still service them either directly or through a subcontract arrangement.

The Employer is in an ongoing search to find suitable replacement space. It appears that the Employer has looked at space in Brooklyn and Queens, but is concentrating its most recent efforts on Nassau and Suffolk Counties. As of the date of hearing, no suitable location had been secured, although the negotiations with a landlord for a facility in Farmingdale were continuing.³ Farmingdale, Long Island is about 40 miles from the Employer's present location in the Bronx and is not be accessible by the New York City subway. It is accessible by means of the Long Island Railroad.

² Apparently the joint venture between the Employer and Waste Management ended with the expiration of the lease.

³ The Employer's General Manager testified at the hearing and expressed hope that the negotiations for space in Farmingdale would be concluded soon.

The Employer's General Manager estimated that the Employer would be out of the Bronx location by the end of September or early October. He also indicated that upon entering into a new lease agreement, all current employees would be offered positions at the new location, unless the Employer decided to sub-contract or alter the operation in some way that would reduce the number of positions. Again, the Employer indicated that its future plans were unsettled.

The Employer operates another recycling facility in Brentwood, New York, which is nonetheless called the Bayshore location. The Employer noted that the two locations may have to be consolidated in the future.

Analysis

Section 9 sets forth the process for the administration of the Board's central responsibility of assuring employees the fullest freedom in exercising the rights guaranteed to them in the Act. As such, the Board will not lightly dismiss a petition unless a major change in the employer's operation is definite and imminent. See *Martin Marietta Aluminum, Inc.* 214 NLRB 646 (1974). The Board also will not dismiss a petition where there may be a mere reduction of the number of employees, see *Douglas Motors Corp.*, 128 NLRB 307 (1960), or a planned expansion of its workforce where the complement of employees is "substantial and representative" of the planned future workforce. See *Yellowstone International Mailing, Inc.*, 332 NLRB No. 35 (2000).

The Employer argues that the petition filed herein is untimely. It states that the time that remains before it carries out its relocation is too short and thus an election would not serve any useful purpose. In support of its position, the

Employer cites *Replogle Globes, Inc.*, 107 NLRB 152 (1953). In that case the Board dismissed the petition because the evidence established that a representative complement of the current employees would not continue their employment after the relocation of the work to another facility eight miles away was completed. For the reasons set forth herein, the facts of *Replogle* are distinguishable from those of the present case.

While the Employer indicated that it plans to relinquish possession of its current location in the Bronx shortly and is actively seeking to secure a new location on Long Island, it appears that the Employer intends to offer employment to the present complement of employees. While the relocation of the facility may cause employees to decline those positions, such matters are at present mere speculation. The Employer adds several other possible scenarios, including the subcontracting of parts of its operation and consolidation with the Bayshore facility. Yet those possible plans are similarly unformed as of this time.

The evidence indicates that the Employer will continue to service its customers regardless of where they may relocate. Further, despite the notice from Waste Management to vacate the premises, as of the date of the hearing, the Employer was still operating out of the Bronx facility. Thus, I cannot agree with the Employer that no useful purpose will be served by conducting an election at this time. It appears that the most appropriate manner to proceed here is to direct an election and prepare for an election within 25 to 30 days of the date of this Decision and Direction of Election. In the event that circumstances change in such a manner as to warrant a different result, the

Employer may move for reconsideration based upon what has transpired since the close of the record. In *Cooper International Inc.*, 205 NLRB 1057 (1973), the Board considered evidence submitted by the Employer in support of its Request for Review in determining whether an election was appropriate in view of the change in location and the likelihood that a representative complement of the current employees would be employed in the new facility. Thus, I conclude in these circumstances that a question concerning representation of certain employees of the Employer within the meaning of Section 9(c) and Section 2(6) and (7) of the Act exists.

The parties agreed that the unit sought by Petitioner is an appropriate unit for the purposes of collective bargaining. Thus, In view of the foregoing, I find that the following constitutes a unit that is appropriate for the purposes of collective bargaining:

INCLUDED: all full-time and regular part-time employees employed by the Employer.

Excluded: all office clerical employees, and guards, professional employees and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time⁴ and place set forth in the notice of election⁵ to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit were 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 who are in the unit 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.⁶ Those eligible shall vote whether or not they

⁴ Pursuant to Section 101.21 (d) of the Board's Statements of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25th and 30th day after the date of this decision.

⁵ The Board has adopted a rule requiring that election notices be posted by an employer "at least 3 full working days prior to 12:01 a.m. of the day of the election." Section 103.20(a) of the Board's Rules. In addition, the Board has held that Section 103.20 (c) of the Board's Rules requires that an employer notify the Regional Office at least five 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 No. 52 (1995).

⁶ 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. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven days of the date of this Decision, three copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the

desire to be represented for collective bargaining purposes by Laborers' Local 108, Laborers' International Union of North America, AFL-CIO⁷

Dated at New York, New York,
September 23, 2002

(s) _____
Celeste J. Mattina
Regional Director, Region 2
National Labor Relations Board
26 Federal Plaza, Room 3614
New York, New York 10278

Code: 347-8020-6000

Regional Director, Region 2, 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 Regional Office at the address below, on or before **September 30, 2002**. No extension of time to file this 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.

⁷ 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, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by no later than **October 7, 2002**.