

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22**

**10 HURON CONDOMINIUM ASSOCIATION, INC.;
201 ST. PAULS CONDOMINIUM ASSOCIATION, INC.;
225 ST. PAULS CONDOMINIUM ASSOCIATION, INC.**

Joint-Employer¹

and

CASE 22-RC-12288

**LOCAL 971, INTERNATIONAL SHIELD OF
LABOR ALLIANCES (ISLA)**

Petitioner

DECISION AND DIRECTION OF ELECTION

The Petitioner filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent an appropriate unit of the Joint-Employer's employees. As I find that there were no issues raised which would preclude an election in this matter, I will direct an election in an appropriate unit. I further find, for the reasons described below, that the Petitioner is a labor organization within the meaning of the Act.

Under Section 3(b) of the Act, I have the authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,² I find:

1. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

¹ The names of the Employers appear as amended at the hearing.

² A brief filed by Merchandise Drivers, Local 641, International Brotherhood of Teamsters, herein called the Intervenor, was fully considered. No other briefs were filed.

2. The Employers are engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.³

3. The labor organizations involved claim to represent certain employees of the Joint-Employer.⁴

4. A question affecting commerce exists concerning the representation of certain employees of the Joint-Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.⁵

5. The following employees of the Joint-Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the act:

All full-time and regular part-time porters, doormen and utilitymen employed by the Joint-Employer at its 10 Huron Avenue, 201 St. Pauls Avenue and 225 St. Pauls Avenue, Jersey City, New Jersey locations, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.⁶

LABOR ORGANIZATION STATUS OF THE PETITIONER

The Joint-Employer and the Intervenor declined to stipulate to the labor organization status of the Petitioner, asserting that the current officers of the Petitioner present a situation where the Petitioner, as an entity, is a continuation of a prior criminal enterprise.

³ The parties stipulated, and I find, that each of the three Employers is a New Jersey corporation involved in the business of condominium sales engaged in commerce within the meaning of the Act. Further, the parties stipulated that the three Employers collectively determine various terms and conditions of employment for the employees included in the bargaining unit and, accordingly, are joint employers of the unit employees within the meaning of the Act. The three Employers in this matter are hereinafter collectively referred to as the Joint-Employer.

⁴ The Intervenor was permitted to intervene based on its collective bargaining agreement covering the unit of employees involved in this matter. The parties stipulated, and I find, that the Intervenor is a labor organization within the meaning of Section 2(5) of the Act. The status of the Petitioner as a labor organization is discussed *infra*.

⁵ There are no bars asserted to an election in this matter.

⁶ The unit description is in accord with the agreement of the parties, which I find to be appropriate for purposes of collective bargaining. There are approximately 21 employees employed in the unit.

With regard to the labor organization status of the Petitioner, there are essentially only two requirements for a party to meet to achieve the status of a labor organization as defined by Section 2(5) of the Act: first, it must be an organization in which employees participate and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours and other terms and conditions of employment. *Alto Plastics Manufacturing Corp.*, 136 NLRB 850 (1962).

The record reveals that employees participate in the Petitioner by attending meetings, becoming members and engaging in collective action. Petitioner currently has approximately 200 members. The evidence further discloses that the Petitioner deals with employers concerning wages, hours and other terms and conditions of employment. At the time of the instant hearing, the Petitioner was party to at least two collective bargaining agreements with two employers and was certified by the Board to represent the employees of several other employers and was engaged in ongoing collective bargaining with those employers. In these circumstances, I find that the Petitioner meets the statutory definition of a labor organization under Section 2(5) of the Act. *Ana Colon, Inc.*, 266 NLRB (1983); *Alto Plastics Manufacturing Corp.*, above.

The Intervenor's contention⁷ that the Petitioner is a continuation of a previous criminal enterprise was not supported by probative evidence. In this regard, contending that the current Secretary/Treasurer of the Petitioner was convicted in 1984 of criminal activities in his capacity as a union officer, does not, absent additional evidence, warrant a finding that the Petitioner is currently a criminal enterprise and not a labor organization within the meaning of the Act.

This case is similar to *Alto Plastics Manufacturing Corp.*, above, in which the Board was faced with rival claims by petitioning and intervening unions. The Board held there that if an entity meets the statutory definition of a labor organization, "the fact that...certain of its officers and representatives may have criminal records, that there are betrayals of the trust and confidence of the membership, or that its funds are

⁷ The Joint Employer joined in this contention.

stolen and misused, cannot affect the [Board's] conclusion...that the organization is a labor organization within the meaning of the Act.” Above at 851-852. See also *Mohawk Flush Doors*, 281 NLRB 410(1986) (union was a labor organization despite evidence of extensive influence by organized crime). This reasoning is likewise applicable in the instant matter.

The Intervenor's reliance in its brief on *Harrah's Marina Hotel*, 267 NLRB 1007(1983) is misplaced. There, unlike here, the Board determined, based on evidence, that the convicted union officers were operating the union “as their personal business and for their personal profit.” Above at 1011. Here, by contrast, the Intervenor failed to make a sufficient threshold showing that the Petitioner was a corrupt entity which would be operated “for purposes abhorrent to the Act.” Above at 1007; *Coinmach Laundry Corp.*, 337 NLRB No. 193 (2001).

In these circumstances, I find insufficient evidence to disqualify the Petitioner as a labor organization under the Act.⁸

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned Regional Director among the employees in the unit found appropriate at the time and place set forth in the notices of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12

⁸ The Intervenor's reliance on *Jayar Metal Corp.*, 297 NLRB 603(1990) is likewise misplaced as any discussion therein regarding a different local of ISLA is not in the context of whether ISLA is a labor organization under the Act.

months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **Local 971, International Shield of Labor Alliances (ISLA); Merchandise Drivers, Local 641, International Brotherhood of Teamsters; or Neither.**

LIST OF VOTERS

In order to ensure 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 in 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); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, three (3) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned Regional Director, who shall make the lists available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, 5th Floor, Newark, New Jersey 07102 on or before **December 13, 2002**. 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 provision 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, DC 20570-0001. The Board in Washington must receive this request by December 20, 2002.

Signed at Newark, New Jersey this 6th day of December, 2002.

Gary T. Kendellen, Regional Director
NLRB Region 22
Veterans Administration Building
20 Washington Place, 5th Floor
Newark, New Jersey 07102

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347-4030
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