

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

Baraboo, Wisconsin

CARPENTER GLASS, INC.

Employer-Petitioner

and

Case 30-RM-536

**PAINTERS COUNCIL NO. 30
INTERNATIONAL UNION OF
PAINTERS AND ALLIED TRADES, AFL-CIO¹**

Union

DECISION AND DIRECTION OF ELECTION²

This is my determination as to whether the Employer may proceed to an election on a RM petition the Employer filed because it questions the majority status of the Union. The Union claims that the petition should be dismissed because the Employer is signatory to a Section 9(a) collective-bargaining agreement which bars the election.³ I do not find the Union's contention persuasive. I have determined that the petition was timely filed and not subject to contract bar under *Staunton Fuel & Material*, 335 NLRB No. 59, slip op. 3, n. 10 (2001) and *Oklahoma Installation Co.*, 325 NLRB 741, 742 (1998). I am, therefore, directing an election. The following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

¹The name of the Union appears as amended at hearing.

² 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.

³ The Union did not appear at the hearing. The Union stated this position in a letter dated June 24, 2002 to the Board agent handling the case. This letter is part of the record. See Board Exhibit 3(a).

All regular full-time and regular part-time glazing employees employed by the Employer at or out of its Baraboo, Wisconsin facility, excluding office clericals, guards and supervisors, as defined in the Act.⁴

DISCUSSION

The Employer installs windows and glass in commercial buildings, residences, and automobiles at or out of its facility in Baraboo, Wisconsin. The Employer employs a total of 11 employees, eight of whom are glazing employees in the bargaining unit. On January 8, 2002, Roy Carpenter, the Employer's owner, signed the signature page of a collective-bargaining agreement with the Union. Carpenter signed no other document. The effective dates of the contract are May 1, 2000 through April 30, 2003. Carpenter testified that, prior to signing, he never received or read the agreement itself. The Employer maintains that Carpenter understood the agreement to be a project-specific, Section 8(f) labor agreement covering the glazing work the Employer performed at the Menards, Inc. project in Pekin, Illinois. The Union, however, maintains that the contract is a Section 9(a) agreement. On June 21, 2002, the Employer filed the RM petition herein. The Union contends that an election is barred by the contract. Although the parties dispute whether the contract is a Section 9(a) or 8(f) agreement, I do not need to make a determination as to the status of the contract for the following reasons.

There is no question that under *John Deklewa & Sons*, 282 NLRB 1375 (1987), *enfd. sub nom. Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3rd Cir. 1998) *cert. denied* 488 U.S. 889 (1988), if the contract herein is a Section 8(f) agreement, the Employer may file a RM petition at any time during the term of the contract and the contract cannot operate as a bar. With regard to Section 9(a)

⁴ The Employer filed a timely post-hearing brief that was duly considered. Although the Hearing Officer provided counsel for the Union with information on how to contact the court reporter for a hearing transcript and the citations to relevant case law that needed to be addressed, the Union did not submit a post-hearing brief. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. 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. The Union, a labor organization within the meaning of Section 2(5) of the Act, claims to represent certain employees of the Employer. 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.

contracts, the Board has held that if an employer voluntarily recognizes a union by signing a Section 9(a) contract based upon the Union's assertion of majority status, and subsequently discovers that the union did not have majority support, it may challenge the union's 9(a) status at any time within the six-month limitations period after extending recognition pursuant to Section 10(b) of the Act. *Staunton Fuel, supra*, at slip op. 3, n. 10; *Oklahoma Installation, supra*, at 742; and *Casale Industries, Inc.*, 311 NLRB 951 (1993). Herein, the Employer's RM petition was filed within six months after the Employer signed the agreement.⁵ Therefore, even if the contract is a Section 9(a) agreement, the Employer may challenge the Union's majority status within the six-month period following the execution of the contract. Accordingly, I find that the Employer's petition is timely filed and not subject to contract bar under *Staunton* and *Oklahoma Installation*, and I am directing an election.⁶

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among 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 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

⁵ There is no record evidence that the Employer engaged in any conduct which would constitute voluntary recognition prior to signing the contract in January 2002.

⁶In the alternative, I note that it is proper to proceed to an election because the Union has failed to meet its burden of demonstrating that a Section 9(a) relationship exists. In *Deklewa*, the Board adopted "a rebuttable presumption that a bargaining relationship in the construction industry was established under Section 8(f), with the burden of proving that the relationship instead falls under Section 9(a) placed on the party so asserting;" *Staunton, supra*, at 2 citing *Deklewa, supra*, at 1385, fn. 41 (other citations omitted). The Union presented no record evidence rebutting the Section 8(f) presumption.

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 Painters Council No. 30 International Union of Painters and Allied Trades, AFL-CIO.

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 to the election should have access to the 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*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **two** copies of an election eligibility list, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the list available to all parties to the election. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or before July 19, 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 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., Washington, DC 20570. **This request must be received by the Board in Washington by July 26, 2002.**

Signed at Milwaukee, Wisconsin on July 12, 2002.

Joyce Ann Seiser, Acting Regional Director
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