UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

DPI – C&G DISTRIBUTORS, INC. D/B/A DPI-MID ATLANTIC DIVISION Employer/Petitioner and TEAMSTERS LOCAL UNION NO. 570 Union and TEAMSTERS LOCAL UNION NO. 639 Union and WAREHOUSE EMPLOYEES LOCAL UNION NO. 730 Union	Case 5-RM-994 DATE OF MAILING March 8, 2002

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before 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, the Regional Director 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.

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. DPI-C&G Distributors, Inc., d/b/a DPI-MidAtlantic Division (the Employer), is a Delaware corporation engaged in the business of shipping, storing, and receiving both food and non-food products at its warehouse located in Upper Marlboro, Maryland. During the past 12 months, a representative period, the company shipped and received food and non-food products valued in excess of $50,000 directly to and from points located outside of the State of Maryland. The parties stipulate, and I find, that the Employer is engaged in commerce within the meaning of the Act.

The parties stipulate, and I find, that Teamsters Local Union No. 570 (Local 570), Teamsters Local Union No. 639 (Local 639), and Warehouse Employees Local Union No. 730 (Local 730) are labor organizations within the meaning of Section 2(5) of the Act. The parties further stipulate that there are no contract bar issues.

In view of the conflicting claims of representation made to the Employer, the instant representation petition was filed on November 1, 2001. The Employer, Local 570, Local 639 and Local 730 stipulated to the following unit description - all full-time and regular part-time warehousemen, drivers, credit room clerks and lead men employed by the Employer at its Upper Marlboro location, excluding office clerical employees, managerial employees, professional employees, guards and supervisors as defined in the Act.

The Employer presented the only witness, chief financial officer Michael Flanagan.

ISSUES

1) Whether either of the existing representatives, Local 570 or Local 639 and Local 730 jointly, sufficiently predominate following the merger of the Employer's operations;
2) Whether a question concerning representation exists.

POSITIONS OF THE PARTIES

The Employer asserted at the hearing that following the merger of its operations, the employees represented by Local 570 were sufficiently predominant in the single appropriate unit that existed subsequent to the merger, and therefore a question concerning representation does not exist. In the alternative, the Employer contended that if the Board does not find that these employees sufficiently predominate, a question concerning representation exists and an election must be held to determine which Union is the collective-bargaining representative.

Local 639 and Local 730 asserted at the hearing that any further processing of the instant petition should be suspended to allow the International Brotherhood of Teamster's jurisdictional dispute resolution procedures to resolve the dispute.[1]

Local 570 contended at the hearing that if a question concerning representation exists, an election should be ordered.

Based on the record as a whole and careful consideration of the arguments of the parties at the hearing and in brief, I find that the employees represented by Local 570 do not sufficiently predominate and a question concerning representation does exist. In keeping with the Board's policy of providing employees with free choice of whether to be represented at all, and if so, by whom, I find that an election should be conducted in the unit agreed to by the parties.

FACTS

Prior to July 2001, DPI-C&G Distributors, Inc., operated out of a facility in Laurel, Maryland, and DPI-Halperin Distributors operated out of a facility in Lanham, Maryland. Local 570 represented the employees of DPI-C&G Distributors; Local 639 and Local 730 jointly represented the employees of DPI-Halperin. Beginning in July 2001, the Laurel, Maryland facility began moving its operations to the Employer's new location in Upper Marlboro, Maryland. The Employer began operations from its current facility in early October 2001. The DPI-Halperin facility moved to the Upper Marlboro location in late October 2001, and began operations from the Employer's current facility at that time. Since that time, DPI-C&G and DPI-Halperin have been operating in one location. The employees of DPI-Halperin were given applications to complete and are now employed by DPI-C&G Distributors.

Local 570 was certified as the collective bargaining representative of the DPI-C&G unit employees on February 17, 1998. Thereafter, the Employer and Local 570 negotiated their first collective bargaining agreement with effective dates of July 1, 1998 to June 20, 2001. The parties then entered into a successor agreement effective July 1, 2001 through June 30, 2005. The Employer and Locals 639 and 730 have had a bargaining relationship for the DPI-Halperin unit employees in the Washington, D.C. area for approximately 16 years.

The record reveals that as of November 1, 2001, the Employer employed 84 employees in the bargaining unit represented by Local 570 and 45 employees in the unit jointly represented by Locals 639 and 730. Thus, Local 570 represented 65.1 percent of the Employer's employees, and 34.9 percent of the employees were jointly represented

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[1] Following the hearing, these proceedings were suspended to provide the International Brotherhood of Teamsters an opportunity to resolve the jurisdictional dispute between Local 570 and Locals 639 and 730, pursuant to the International's Constitution. It is undisputed that by letter dated December 14, 2001, the International Brotherhood of Teamsters notified Local 570, 639 and 730 that jurisdiction over the Employer's facility in Upper Marlboro, Maryland was awarded to Locals 639 and 730, jointly. Thereafter, by letter dated December 20, 2001, Local 570 disclaimed interest in representing the Employer's employees.

by Locals 639 and 730. Based on these figures, an issue arises whether the percentage of employees represented by Local 570 was "sufficiently predominant" to remove a question concerning representation.

ANALYSIS AND CONCLUSION

In cases in which an employer has consolidated two previously separate units of employees represented by different unions, the Board will direct an election in order to determine the representational desires of the employees. However, the Board has noted that it will not do so if one of the unions represents such an overwhelming majority of the employees or is "sufficiently predominant" to remove any real question as to the overall choice of a representative. *Pergament United Sales*, 296 NLRB 333, 345 (1989).

In *National Carloading Corp.,* 167 NLRB 801 (1967), the Board addressed a situation where the employer consolidated its operations and the clerical employees were transferred to one location. The employer had 34 clerical employees represented by one union and 20 employees represented by another union. The Board held that the larger unit of employees, comprising 63 percent of the combined unit, was not sufficiently predominant to remove a question concerning representation. In *Martin Marietta Co.,* 270 NLRB 821 (1984), the employer merged its north and south plants composed of two separate units of production and maintenance employees represented by two different unions. In this regard, one unit consisted of 63 percent of the combined groups of employees, while the other unit consisted of 37 percent of the employees. The Board found that the larger unit of the two units was not sufficiently predominant to remove the question concerning overall representation.[2]

However, where a union represented a unit which consisted of approximately 70 percent of the employees in the post-merger combined unit, the Board found that it was "sufficiently predominant," and, therefore, that no question concerning representation existed. In *Boston Gas Co.*, 235 NLRB 1354 (1978), the employer merged all of its customer-related activities and consolidated its employees at one location. The employees were represented by two unions, with one union representing 69.7 percent of the employees in the combined unit and the other union representing 30.3 percent of the employees. The Board found that there was no reason to question the majority status of the clearly predominant union, and determined that there was no question concerning representation.

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[2] *Metropolitan Teletronics,* 279 NLRB 957 (1986), is distinguishable. Although in that case the Board found that the union representing 63 percent of the new combined workforce was sufficiently predominant to remove the question concerning representation arising from the employer's merger of its operations, the second union involved in the case represented only 5 percent of the combined work force. Compare also *Special Machine and Engineering*, 282 NLRB 1410 (1987), and *Central Soya Co.,* 281 NLRB 1308 (1986), which involved mergers of a represented group and an unrepresented group. In these cases, the "sufficiently predominate" test does not apply; rather, whether a question concerning representation exists or an accretion is found depends on traditional community of interest matters and whether the represented group constitutes a simple majority of the combined unit.

In the instant case, Local 570 represents 65.1 percent of the employees in the combined unit, while Local 639 and 730 jointly represent 34.9 percent of the employees. The percentage of employees represented by Local 570 is marginally greater than in the cases cited above where the Board found a group of 63 percent was not sufficiently predominant, but is significantly less than the 69.7 percent where the Board found the larger group predominant. In these circumstances, I find that a question concerning representation exists and shall direct an election in the agreed-upon unit.[3]

In light of the foregoing, I find that an election shall be conducted among the following employees of the Employer:

> All full-time and regular part-time warehousemen, drivers, credit room clerks and lead men employed by the Employer at its Upper Marlboro, Maryland location, excluding office clerical employees, managerial employees, professional employees, 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 voting group 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 voting group 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 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, 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 employees engaged in an economic strike that began 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 jointly by the **TEAMSTERS LOCAL UNION NO. 639 AND WAREHOUSE EMPLOYEES LOCAL UNION NO. 730.**

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[3] As noted above, by letter dated December 20, 2001, Local 570 disclaimed all interest in the bargaining unit. Accordingly, Local 570 will not be on the ballot in the election directed herein, notwithstanding the parties' pre-disclaimer stipulation at the hearing that employees would vote whether to be represented by Local 570 or by Locals 639 and 730 jointly, and that a "No" choice would not be provided. In view of Local 570's disclaimer, and my finding that a question concerning representation existed following the merger of the two previously separate units, I reject the parties' stipulation not to provide employees with a "No" option as contrary to the policies of the Act.

LIST OF VOTERS

To insure that all eligible voters 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. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.,* 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility,* 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

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.

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, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **MARCH 22, 2002.**

Dated March 8, 2002

at Baltimore, Maryland /s/ WAYNE R. GOLD
Regional Director, Region 5

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