

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

FOUR SEASONS SOLAR PRODUCTS, L.L.C.
Employer

and

LOCAL 621, UNITED WORKERS OF AMERICA
Petitioner

Case No. 29-RC-10223

and

LOCAL 707, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, AFL-CIO, CLC
Intervenor¹

DECISION AND DIRECTION OF ELECTION

The Employer, Four Seasons Solar Products, LLC, is engaged in manufacturing sun rooms and sun room components. The Petitioner, Local 621, United Workers of America, filed a petition under Section 9(c) of the National Labor Relations Act on June 8, 2004, seeking to represent certain employees of the Employer. The Intervenor, Local 707, International Brotherhood of Teamsters, AFL-CIO, CLC, has been the recognized collective bargaining representative of the petitioned-for employees. Although no copy of the collective bargaining agreement between the Employer and Intervenor was introduced into evidence, there is no dispute that the instant petition was filed within the

¹ Local 707, International Brotherhood of Teamsters' motion to intervene in this proceeding was granted based on its status as the recognized collective bargaining representative of the petitioned-for employees, and based on its collective bargaining agreement covering those employees. The Intervenor's name appears as corrected at the hearing.

relevant “open” period, between 90 and 60 days before the agreement’s expiration.² However, the Intervenor declined to stipulate to the Petitioner’s status as a labor organization as defined in Section 2(5) of the Act. A hearing was held on that issue before Kevin Kitchen, a hearing officer of the National Labor Relations Board.

As discussed in more detail below, I find that the Petitioner is a labor organization as defined in Section 2(5).

The Petitioner’s president, Stephen Sombrotto, testified that the Petitioner represents employees in collective bargaining with their employers. The record indicates that the Petitioner has been certified by this Region to represent employees for purposes of collective bargaining. *See* Board Exhibit 2, certification in Case Nos. 29-RC-9940 and 29-RM-909, involving Cooper Tank and Welding Corporation in Brooklyn, New York (“Cooper Tank”). Sombrotto testified that the Petitioner has collective bargaining agreements with employers, including Cooper Tank, covering grievance procedures and other conditions of employment. Sombrotto further testified that the Petitioner has processed grievances on behalf of employees, including those of Cooper Tank. Finally, Sombrotto testified that employees participate in the Petitioner’s organization, for example, by attending union meetings, serving on committees, and participating the processes of organization and negotiation.

In short, Sombrotto’s testimony establishes that the Petitioner exists for the purpose of dealing with employers concerning grievances and other terms and conditions of employment. Employees participate in the Petitioner’s organization, for example, by attending meeting and serving on committees. Thus, the Petitioner clearly meets the

² Leonard Wholesale Meats, 136 NLRB 1000 (1962).

broad definition of labor organization in Section 2(5) of the Act. *See also* Alto Plastics Mfg. Corp., 136 NLRB 850 (1962).

During the hearing, the Intervenor repeatedly attempted to show a connection between the Petitioner and an entity called the “Four Seasons Employees Union,” which filed a representation petition in a previous case involving this same Employer (Case No. 29-RC-10226) but which later withdrew its petition. The Hearing Officer correctly ruled that such questions were irrelevant. Whether there is any connection between the Petitioner and the other entity has no bearing whatsoever on whether the Petitioner is a labor organization.

In its post-hearing brief, the Intervenor asserts that “there is no evidence in the record” to establish that the Petitioner is a labor organization. This assertion is simply incorrect. As summarized above, the record contains evidence, both in the form of Sombrotto’s testimony and the certification in Case Nos. 29-RC-9940 and 29-RM-909, that the Petitioner exists for the purpose of dealing with employers concerning employees’ terms of employment. Although Sombrotto refused to answer many questions (including the identity of other employers with whom Petitioner has bargained, the date when he signed the Cooper Tank contract, the identity of Petitioner’s other officers and employees, and whether the Petitioner has a constitution), such questions are essentially irrelevant.³ There is simply no support in the language of Section 2(5) or in case law to support the Intervenor’s apparent belief that a union must be an established union, with a constitution and multiple signed contracts, in order to qualify as a labor organization under the Act.

Section 2(5) provides that “*any* organization of *any* kind ... in which employees participate and which exists for the purpose ... of dealing with employers” is a labor organization (emphasis added). While Sombrotto’s testimony was certainly grudging and minimal, it nevertheless managed to provide a basis for meeting Section 2(5)’s extremely broad definition.

Accordingly, I find that the Petitioner is a labor organization within the meaning of Section 2(5).

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, including the parties’ stipulations and in accordance with the discussion above, I conclude and find as follows:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.
2. The parties stipulated that the Employer is a domestic limited liability company with its principal office and place of business located at 5005 Veterans Memorial Highway, Holbrook, New York, where it is engaged in manufacturing sun rooms and sun room components. During the past year, which period represents its annual operations generally, the Employer purchased and received at its New York facility, goods and supplies valued in excess of \$50,000 directly from points outside the State of New York. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner and the Intervenor, both labor organizations, claim to represent certain employees of the Employer.

³ In its post-hearing brief, the Intervenor also moves to strike all of Sombrotto’s testimony because

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 parties stipulated that the existing bargaining unit, which is described in the recent collective bargaining agreement between the Employer and Intervenor, is appropriate for purposes of collective bargaining. The parties further stipulated that lead persons are included in the unit, although they are not explicitly included in the contract. Based on the parties' stipulations, I hereby find that the following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by the Employer at its Holbrook, New York facility, including employees and lead persons who are employed in the Tooling and Maintenance department, the Shipping and Receiving department, the Wood, Windows and Doors department, the Fabricating Straight Bars and Frames department, the Frames Bent department, the Skylight department, the Aluminum Curve Packing department, the Aluminum Window department, the Aluminum Packing Straight department, the Aluminum Doors department, the Patio Room department, the Promotional Display department, the Bent Glass department, the Custom Glass department, the Glass Packing department, the Quality Control department, the Shades department, the Hardware department, the Fisher Factory Services department, the Frames department, the Insulating department, the Chaffing department, the Shipping and Receiving Night department, the Aluminum Curve Packing Night department, the Aluminum Doors Night department, the Patio Room Night department, the Promotional Displays Night department, the Hardware Packing Night department, and the Factory Services Night department, but excluding all other employees in other departments, officers, directors, clerical employees, office employees, sales employees, guards and supervisors as defined in the Act.

of Sombrotto's refusal to answer many questions. The motion to strike is hereby denied.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether they wish to be represented for purposes of collective bargaining by Local 621, United Workers of America, or by Local 707, International Brotherhood of Teamsters, AFL-CIO, CLC, or by neither labor organization. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

Voting Eligibility

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 any economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike which commenced less than 12 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.

Employer to Submit List of Eligible Voters

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 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 within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **July 8, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (718) 330-7579. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in

which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 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 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

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, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **July 15, 2004**. The request may **not** be filed by facsimile.

Dated: July 1, 2004.

/S/ ALVIN BLYER

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