

**United States of America
Before the National Labor Relations Board
Region 8**

Spaulding Construction, Inc.

Employer

and

Operative Plasterers, and Cement Masons, International
Association, Local Union No. 404

Petitioner

Case No. 8-RC-16333

and

Bricklayers and Allied Craftworkers Local No. 16

Intervenor

**ORDER SETTING ASIDE ELECTION
AND DIRECTION OF SECOND ELECTION**

Pursuant to a Decision and Direction of Election issued by the Regional Director on July 30, 2004, an election was conducted on August 27, 2004 among employees in the following unit:

All full-time and regular part-time employees of the Employer engaged in cement mason work, including journeyworkers and apprentices who were employed during the payroll period ending Thursday, September 10, 2004, but excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act, and all other employees.

The Tally of Ballots issued after the election shows that of approximately 25 eligible voters, 4 cast ballots of which 4 were cast for the Petitioner and 0 were cast for the Intervenor. There were no challenged ballots.

On September 2, 2004, the Intervenor filed timely Objections to Conduct affecting the results of the election, a copy of which was duly served on the parties. A copy of Intervenor's Objections is attached.

Pursuant to the provisions of Section 102.69 of the Board's Rules and Regulations, a preliminary investigation of the objections was conducted.

Thereafter, the parties executed a Stipulation in which they, inter alia, waived their rights to a Regional Director's Report or Decision, to file exceptions to the Regional Director's Report, or to file a Request for Review of such Decision to a hearing in this matter, and to a Board Decision. The parties further agreed that an appropriate Order setting aside the election and directing a second election be issued.

I have approved the Stipulation of the parties. In view of the foregoing,

IT IS HEREBY ORDERED that the election conducted on August 27, 2004 in this matter be, and hereby is, set aside and that a second election be conducted pursuant to the agreement of the parties in the Stipulation, as set forth in the Notices of Second Election to be issued subsequently.

DIRECTION OF SECOND ELECTION

A second election by secret ballot will be conducted under the supervision of the Regional Director among the employees in the unit found appropriate at the time, date and place set forth in the Parties' Stipulation and in the Notice of Second 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 Friday, September 10, 2004, 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. 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, 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.¹ Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Operative Plasterers and Cement Masons, International Association, Local Union No. 404** or **Bricklayers and Allied Craftworkers Local No. 16**.

¹ The Employer has provided an excelsior list pursuant to the requirements of Excelsior Underwear, Inc., 156 NLRB 1236, and said list was served upon the parties on September 17, 2004.

Dated at Cleveland, Ohio this 23rd day of September 2004.

“/s/ [John Kollar].”

John Kollar
Acting Regional Director
National Labor Relations Board
Region 8

Attachment