

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 8**

L'OREAL USA PRODUCTS, INC.

Employer

and

Case No. 8-RC-16653

**INTERNATIONAL UNION, UNITED
AUTOMOBILE AND AGRICULTURAL
WORKERS OF AMERICA-UAW**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (the Act), a hearing was held before a hearing officer of the National Labor Relations Board (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.¹ I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time production and maintenance employees, including all inspector/quality assurance employees, raw material samplers and production assistants employed by the Employer at the 30701 Carter Street, Solon, Ohio facility but excluding all office clerical employees, leadmen, professional employees, guard and supervisors as defined in the Act.

The unit description is based on a stipulation between the parties. Since there is no record evidence to the contrary, I accept the stipulation and find the unit to be appropriate. Approximately 220 employees are employed in the unit.

¹ 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 matter; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning representation of these employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Procedural Issues

I affirm all of the hearing officer's rulings at the hearing, except for his grant of a two-week period, until September 8, 2004, for the filing of a brief in this matter. The only issue to be decided in this case is the date and time of the election. I do not need any brief at all to decide this issue, and thus do not agree with the hearing officer's ruling regarding the date for a submission of a brief. Accordingly, I reverse the hearing officer's ruling on this issue.²

I have delayed the issuance of this decision until today not because I waited for a brief that I did not need, but because I felt it was prudent to allow the investigations in two unfair labor practice charges filed by the Employer to proceed to the point of determining whether the charges would appropriately block an election.

On August 20, 2004 the Employer filed a charge in Case 8-CB-10178 alleging, inter alia, that, "UAW representatives or their agents have been harassing employees viewed as siding with management. This harassment has taken the form of unlawful intimidation, implied threats, and disclosure of previous unlawful surveillance."

On August 24, 2004 the Employer filed a charge in Case 8-CB-10181 alleging that the Union violated Section 8(b)(1)(A) by forging authorization cards. On September 8, 2004 I approved a withdrawal of the charge in Case 8-CA-10181.

With respect to 8-CB-10178, I am issuing a dismissal letter today.

Having resolved the unfair labor practice charges it is now appropriate to direct an election in this matter.

Date and Time of the Election

The Employer's position is that the election be held on Friday, October 8, 2004 from 5:30 a.m. to 7:30 a.m. and 1:30 p.m. to 3:30 p.m. and on Saturday, October 9, 2004 from 5:30 a.m. to 6:30 a.m.

The Union proposes that the election be held on Monday, September 20, 2004 from 5:00 a.m. to 7:00 a.m. and from 1:30 p.m. to 3:30 p.m.

The testimony of Louis Boyd, the Employer's production manager, establishes that the Employer operates on a three-shift basis. The first shift works from 6:00 a.m. to 2:30 p.m. and the second shift works from 2:00 p.m. to 10:30 p.m. Monday through Friday. The Employer's third shift works from 10:00 p.m. to 6:30 a.m., Sunday through Thursday. Approximately 75 employees work the first and second shifts and approximately 60 work the third.

² I note that the Employer failed to file a brief by the due date. While the Region received a brief from the Employer on September 9, 2004, the certificate of service indicates the brief was mailed on September 8, 2004. Since the brief was mailed on the due date and not received until after the due date it is untimely and has not been considered. **Section 102.111, NLRB Rules and Regulations.**

The Employer also employs employees on weekend shifts. Approximately 10 employees work the following weekend night shift schedule: Friday, Saturday and Sunday from 6:00 p.m. to 6:00 a.m. the following day. Another 10 employees work the following weekend day shift schedule: Saturday and Sunday from 6:00 a.m. to 6:00 p.m. and on Monday from 6:00 a.m. to 2:30 p.m.

After considering the foregoing, I direct the election be held on **Monday, October 4, 2004 from 6:00 a.m. to 8:00 a.m. and from 1:30 p.m. to 3:30 p.m.**

The date conforms to the Board's policy in conducting directed elections 25-30 days after a Regional Director's direction of an election. **NLRB Casehandling Manual, Part Two, Representation Proceedings, Section 11302.1**. The times of the election on that date will allow all of the Employer's employees an adequate opportunity to vote and appropriately and effectively utilize the Board's resources. The employees who work the weekend schedule can vote at the 6:00 a.m. to 8:00 a.m. session. Therefore, I see no necessity for conducting the election over a two-day period including a Saturday.

I accept the parties' stipulation that the election shall be held in the Building Two Training Center.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the 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. 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. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **INTERNATIONAL UNION, UNITED AUTOMOBILE, AND AGRICULTURAL WORKERS OF AMERICA-UAW**.

LIST OF VOTERS

In order to ensure 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.

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 September 23, 2004.

Dated at Cleveland, Ohio, this 9th day of September 2004.

“/s/ [Frederick J. Calatrello].”

Frederick J. Calatrello
Regional Director
National Labor Relations Board
Region 8