UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 24

CBM CAPITAL BUILDING MAINTENANCE, INC. Employer[1] and FEDERACION CENTRAL DE TRABAJADORES, LOCAL 481, UFCW, AFL-CIO Petitioner	24-RC-8530

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on August 1, 2006, before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board, to determine an appropriate unit for collective bargaining.[2]

I. PROCEDURAL BACKGROUND

Federación Central de Trabajadores, Local 481, UFCW, AFL-CIO, hereinafter the Petitioner, seeks to represent a unit of all janitorial employees employed by the Employer at the Federal Courthouse building in Old San Juan, but excluding all other employees, guards and supervisors as defined by the Act.

On July 14, 2006, CBM Capital Building Maintenance, Inc., hereinafter the Employer, was served by United States Postal Service mail with a copy of the Petition filed in Case 24-RC-8530 with a Notice of Hearing that indicated that a joint conference

[1]The name of the Employer appears as stated in the "Award/Contract" entered into between the General Services Administration (GSA) and the Employer.

[2]Upon the entire record in this proceeding, the undersigned finds:

a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of Act to assert jurisdiction herein.
c. The labor organization involved claims to represent certain employees of the Employer.
d. A question affecting commerce exist 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.

was scheduled for July 21, 2006, and a hearing on the Petition would be conducted on July 27, 2006. As the Employer failed to show up to the joint conference and the requested commerce information was not submitted[3], on July 24, 2006, the Region served the Employer with a subpoena Duces Tecum, pursuant to the Board's Decision in Tropicana Products, Inc., 122 NLRB 121 (1959), and containing a return date of August 1, 2006.[4]

Upon the request of the Petitioner, the hearing was postponed and rescheduled to August 1, 2006. The record reflects that the Employer was notified telephonically and by service of an Order Rescheduling Hearing by regular mail of the rescheduling of the hearing to August 1, 2006. Despite this, no Employer representative appeared at the hearing.

II. ISSUES:

In view of the Employer's failure to appear at the hearing, the same was conducted and evidence was received regarding the effect of the Employer's business upon interstate commerce; the status of the Petitioner as a labor organization; and the appropriateness of the petitioned for unit of employees.

III. JURISDICTION

The record reflects that the Employer is engaged in the business of providing commercial maintenance and cleaning services. On June 21, 2006, the Employer was awarded a contract by the General Services Administration (Caribbean Services Center), hereinafter (GSA), a federal government agency, to provide cleaning services at the U.S. Postal and Federal Courthouse Building[5] located at 300 Recinto Sur Street & Tanca Street, Old San Juan.[6] The term of the contract is for 12 months after the issuance of the award and the government has the unilateral option of extending the term of the contract for up to four (4) consecutive additional periods of twelve (12) months each.[7] Under the contract, the Employer is responsible for providing all management, supervision, labor, materials, equipment and supplies necessary to perform janitorial services including landscaping, grounds and maintenance, insects and rodent control, trash/solid waste disposal, and management of a recycling program. The total contract amount is $415,130.98.[8]

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[3]In addition to the Notice of Hearing, the Region also sent the Employer a document entitled "Scheduling of Joint Conference and Notice of Representation Hearing", which provides the parties an opportunity to meet and reach an agreement to conduct an election without a formal hearing. Together with this document, the Region sent a "Questionnaire on Commerce Information," Form NLRB-5081, and requested that the Employer complete the same in order to determine whether the Board had jurisdiction over the Employer.
[4]Board Exhibit Number 5.
[5]Jose V. Toledo Federal Building
[6]The Hearing Officer took official notice of the contract executed between the Employer and GSA.
[7]The total duration of the contract, including the exercise of any options, is not to exceed five (5) years.
[8]Board Exhibit Number 4.

Under the Board's Tropicana rule, the Board will assert jurisdiction over an employer who has refused to provide information to enable the Board to determine whether the employer meets the Board's jurisdictional standards, if the record at a hearing establishes that the Board has statutory jurisdiction, Tropicana Products, 122 NLRB 121 (1958). This rule was fashioned to advance the policies underlying the Act and promote the prompt resolution of cases. The Act extends jurisdiction to all cases involving enterprises whose operations affect interstate commerce. The Board's jurisdiction has been construed to extend to all such conduct as might constitutionally be regulated under the commerce clause, subject only to the rule of *de minimis*. NLRB v. Fainblatt, 306 U.S. 601, 606 (1939). This rule provides that the Board will assert jurisdiction over an employer whose impact upon interstate commerce is more than *de minimus*. The Board has held that revenues as little as $1,500 derived from interstate commerce are a sufficient basis for the Board's assertion of statutory jurisdiction, Marty Levitt, 171 NLRB 739 (1968); Pet Inn's Grooming Shoppe, 220 NLRB 828 (1975).

As the Employer did not provide information regarding commerce or submit evidence to conclude that the Board had jurisdiction over its operations, it was necessary for the Region to issue a subpoena to require the Employer to provide the documentation needed to determine whether the Board had jurisdiction. Therefore, a hearing was necessary to assess the impact of the Employer' operations upon interstate commerce. The Employer was provided sufficient notice of the date of the hearing to enable it to attend, and prior to the hearing, the Employer even acknowledged its receipt of this notice and of the subpoena. At no time has the Employer asserted that its attendance at hearing was precluded by circumstances beyond its control. As in Tropicana, the Employer here failed to appear at the hearing and failed to provide information necessary to determine whether its operations satisfy the Board's jurisdictional standards.

In the absence of the Employer, testimonial evidence from Petitioner's Secretary/Treasurer and official notice of the contract executed between the Employer and GSA was received in evidence at the hearing herein regarding the jurisdictional issue. That evidence indicates that the Employer has more than a *de minimus* impact upon interstate commerce such that the Board is warranted in asserting jurisdiction over its enterprise. The record reflects that the Employer in conducting its business operation will receive on a projected basis at least $415,130.98 on an annual basis, for the 12-month period commencing in July 2006, from the U.S. Government. Said amount constitutes more than a *de minimis* impact on interstate commerce. In any event, the Board may assert jurisdiction over an enterprise that derives substantial amount of revenues from federal funds even in the absence of evidence of interstate inflow or outflow. Mon Valley United Health Services, 227 NLRB 728 (1977); Community Services Planning Council, 243 NLRB 798 (1979) Electrical Workers Local 48, 332 NLRB 1492 (2000). Thus, clearly the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction over the Employer. East Oakland Health Alliance, 218 NLRB 1270 (1975).

III. LABOR ORGANIZATION STATUS

The Petitioner is an organization with an office and place of business in San Juan, Puerto Rico and is affiliated with the United Food and Commercial Workers International Union. It negotiates collective bargaining agreements with employers in Puerto Rico as well as with agencies of the federal and state government. The record reflects that the Petitioner has about 37-40 collective bargaining agreements in Puerto Rico covering about 6,500 employees. These collective bargaining agreements address employee wages, benefits, working conditions, and hours of employment, among other subjects. Petitioner's work is directed by a Board of Directors and is ruled by Regulations which were approved by its members. Accordingly, as the Petitioner is an organization in which employees participate and exists for the purpose of dealing with employers concerning wages, rates of pay, hours of employment or conditions of work of its employees, I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. Alto Plastics Mfg., Corp. 136 NLRB 850 (1962). In this regard, I take official notice of the Board's Decision and Order in Hospital General Menonita, 340 NLRB 133 (2003) in which the Petitioner was found by the Board to be a labor organization within the meaning of the Act.

IV. THE APPROPRIATE UNIT

The bargaining unit, as petitioned for and as set forth herein, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The record revealed that Petitioner was certified by the Board in Case 24-RC- 8256 to represent the same unit of employees employed by the Employer's contract predecessor Mangual Office Services, hereinafter Mangual, with whom the Petitioner negotiated a Collective Bargaining Agreement (CBA), and which unit it seeks to continue to represent.

In this regard, the contract signed between the Employer and GSA, in section I. 35 (which is entitled "CBA TEXT"), specifically advised and notified the Employer that the employees performing under the prior contract are represented by a Union (Federacion Central de Trabajadores) and have an expired collective bargaining agreement. The CBA between the contract's predecessor (Mangual) and Petitioner expired on March 31, 2006, and a copy was attached to the Award/Contract with the Employer.[9] The Employer retained and/or hired four (4) of the six (6) employees who were working for the contract's predecessor (Mangual). These four (4) employees are currently performing the same duties and have similar responsibilities than those performed under the predecessor contract. The petitioned for unit consist of seven (7) employees.

[9]In section 1.35 the Employer was further advised in that it will be responsible for notifying the current employees in writing, in the event they will be hired, the contractors labor rates and policies, and that it will also be its responsibility to comply will all labor regulations and seek guidance from the US Department of Labor Wage Hours Division and/or National labor Relations Board if needed.

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

Included: All janitorial employees employed by the Employer at the Federal Courthouse building in Old San Juan.

Excluded: All other employees, guards and supervisors as defined by the Act.

There are approximately seven (7) employees in the unit found appropriate herein.

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.[10] 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 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 Federación Central de Trabajadores, Local 481, UFCW, AFL-CIO.

LIST OF VOTERS

In order to insure 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); North Macon Health Care Facility, 315 NLRB 359 (1994); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of

[10]As provided for in Section 103.20 of the Board's Rules and Regulations, the Employer is required to post copies of the Board's Official Notice of Election in conspicuous places at least 3 full working days (excluding the day of the election, Saturdays, Sundays, and holidays) prior to the date of the election; said notices are to remain posted until the end of the election. Failure to post the election notices as required by the Board's Rules and Regulations shall be grounds for setting aside the election whenever proper and timely objections are filed. An employer shall be conclusively deemed to have received copies of the election notices unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of said notices.

the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters in the unit found appropriate herein, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, La Torre de Plaza Suite 1002, 525 F.D. Roosevelt Ave., San Juan, Puerto Rico 00918-1002, on **August 24, 2006**. The list may be submitted by facsimile transmission. No extension of time to file the 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, 1099 14th Street, NW, Washington, D.C. 20570. This request must be received by the Board in Washington by **August 31, 2006**.[11]

Dated August 17, 2006.

/s/

Marta M. Figueroa
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[11]In accordance with section 102.67 of the Board's Rules and Regulations, as amended, all parties are specifically advised that the Regional Director will conduct the election when scheduled, even if a request for review is filed, unless the Board expressly directs otherwise.