

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

In the Matter of

WACKENHUT SERVICES, INC.

Employer

and

NEWPORT PROFESSIONAL SECURITY
OFFICERS UNION

Petitioner

Case 1-RC-22140

**ORDER GRANTING PETITIONER'S MOTION TO
REOPEN RECORD, DENYING PETITIONER'S MOTION
TO REPLACE HEARING OFFICER, AND NOTICE OF HEARING**

On December 28, 2007, Acting Regional Director Roy M. Schoenfeld ordered that a hearing be conducted before a duly designated hearing officer on January 14, 2008 with respect to challenged ballots cast by Tara D'Angelo, Scott Umsted, and Ron Wassel in a rerun election conducted on December 10, 2007.

On January 4, 2008, by facsimile transmission, Petitioner's Attorney Elizabeth Wiens, pursuant to Sec. 102.66(c) of the Board's Rules and Regulations, made application to the Board for issuance of one duces tecum and three ad testificandum subpoenas in this matter. In error, the Region forwarded to Ms. Wiens subpoenas signed by Robert J. Battista, who no longer had authority to sign or issue subpoenas because his term as Chairman and Board Member had expired on December 16, 2007.

On January 14, 2008, before hearing officer Don C. Firenze, the Employer did not produce any of the documents requested in the subpoena duces tecum, arguing that the voluminous

subpoena was burdensome and the requested items were irrelevant to the challenged ballots determination. Further issues were raised regarding the timing and service of the subpoena. When Ms. Wiens refused to examine the three adverse witnesses who were present, the three challenged by the Union on the basis of supervisory status, without first obtaining the production of the documents and an opportunity to review them, the hearing officer closed the hearing. There is no evidence in the record about the three challenged voters.

On January 22, 2008, Ms. Wiens filed “Petitioner’s Request To Appeal Ruling Of Hearing Officer, Reopen Hearing And Assign An Alternative Hearing Officer,” arguing that Mr. Firenze should have required the Employer to comply with the subpoena duces tecum and that his refusal to do so, and instead closing the hearing after Ms. Wiens refused to proceed without the documents and an opportunity to review them, demonstrated bias against the Petitioner that required me to assign a different hearing officer to any reopened hearing.

I grant Petitioner’s motion that the hearing be reopened. The subpoena duces tecum the Region supplied in this matter, which was not signed by a current Board member, was invalid and ultimately unenforceable, regardless of any other issues with respect to its content, service, or timing of service. As a consequence, any dispute over the hearing officer’s refusal to enforce the subpoena is moot. A determination about the eligibility of the three challenged voters should be based on record evidence to protect the interests of the bargaining unit in this case and the public. Therefore, I accept Petitioner’s motion to reopen the record as an application for issuance of valid subpoenas and, under separate cover, I will forward one subpoena duces tecum and three subpoenas ad testificandum to Petitioner in connection with the reopened hearing. Petitioner is directed to adhere to the requirements of Sections 102.66(c) and (f) of the Board’s Rules and Regulations for any subpoenas it subsequently serves in this matter.

I deny Petitioner’s motion to replace Mr. Firenze as hearing officer inasmuch as his actions under the circumstances in wanting to proceed with examination of witnesses did not exhibit a bias against the Petitioner or otherwise warrant his removal.

NOW, THEREFORE, IT IS HEREBY ORDERED that the hearing in this matter be reopened and conducted on February 12, 2008 (and if necessary, continuing day to day thereafter until completed) at 10 a.m. at the Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Sixth Floor, Boston Massachusetts, at which time and place the parties will have the right to appear in person, or otherwise give testimony with respect to the challenged ballots cast in this matter.

Dated at Boston, Massachusetts this 28th day of January 2008.

/s/ Rosemary Pye
Rosemary Pye, Regional Director
National Labor Relations Board
First Region
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street, Sixth Floor
Boston, Massachusetts 02222-1072

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Petitioner

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DATE OF MAILING
January 28, 2008

AFFIDAVIT OF SERVICE OF copy of Order Granting Petitioner's Motion to Reopen Record, Denying Petitioner's Motion to Replace Hearing Officer, and Notice of Hearing

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid certified/regular mail upon the following persons, addressed to them at the following addresses:

Mr. Trevor Cardone
Wackenhut Security Incorporated
1272 West Main Road
Middletown, RI 02842

Mr. Guy Wegener
Wegener and Associates
2281 Southeast Golden Bear Way
Palm City, FL 34990

Mr. Richard Loud
Mr. Thomas Murphy, Union Representative
Newport Professional Security Officers' Union
65 Killey Avenue
Warwick, RI 02889

Mr. Marc B. Gursky, Esq.
Elizabeth Wiensn Esq
Gursky Law Associates
420 Scrabbletown Road, Suite C
North Kingstown, RI 02852

/s/ Lillian Stern
Lillian Stern

Subscribed and sworn to before me this 28th
day of January, 2008

DESIGNATED AGENT
/s/ Nancy J. Schoenfeld

NATIONAL LABOR RELATIONS BOARD