

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

HYATT PLACE O'HARE, LLC

Employer

and

Case 13-RC-258090

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL UNION 727**

Petitioner

DECISION AND DIRECTION OF ELECTION

Petitioner seeks to represent a unit of shuttle drivers, and the parties stipulated the shuttle drivers are an appropriate unit for the purposes of collective bargaining. However, the Employer contends all shuttle drivers are currently laid off, thus the petitioned-for unit does not currently exist. A hearing officer of the Board held a hearing in this matter, but the Employer failed to timely serve on the Petitioner its statement of position raising its contention and was thus precluded from presenting evidence at the hearing. However, a stipulation was received on the substantive issue regarding the layoffs.¹

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The Petitioner is a labor organization within the meaning of the Act.
- d. The Petitioner seeks to represent certain employees of the Employer in the unit described in the petition it filed herein, but the Employer declines to recognize the Petitioner as the collective-bargaining representative of those employees.
- e. There is no collective-bargaining agreement covering any of the employees in the voting group sought in this petition and the parties do not contend that there is any contract bar to this proceeding.
- f. 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.

I. DECISION

As explained below, based on the record and relevant Board law, I find the stipulated unit is appropriate for collective bargaining and a question of representation exists under Section 9(c) of the Act. Accordingly, I am directing an election in this matter in the following unit:

Included: All full-time and regular part-time Shuttle Drivers employed by the Employer at its facility currently located at 6810 Mannheim Road, Rosemont, Illinois.

Excluded: All other employees, clerical employees, confidential employees, professional employees, managerial employees, guards and supervisors as defined by the Act.

There are approximately nine employees in the unit.

II. STATEMENT OF FACTS

The Employer operates a hotel near O'Hare International Airport. As part of its services, the Employer offers a shuttle service between the hotel and the airport.² The parties submitted one joint exhibit, a letter of layoff,³ which reads in relevant part:

... Unfortunately, due to the current crisis with Covid-19 and extreme loss of business our hotel has endured, we are no longer able to sustain our previous services including airport shuttles.

...

We are keeping in touch with all employees as the situation is fluid and things are being updated daily. ...

And, the parties stipulated to the following relevant facts:

Five of the employees in the petitioned-for bargaining unit were laid off by the Employer effective March 18, 2020. The remaining four employees in the petitioned-for bargaining unit were laid off effective April 2, 2020. The employees have a possibility/may be recalled but the date of any recall cannot be determined because of the COVID-19 pandemic and stay-at-home orders.

² Section 102.66(d) of the Board's Rules and Regulations precludes a party from raising any issue, presenting any evidence relating to any issue, cross-examining any witness concerning any issue, and presenting argument concerning any issue where the party fails to raise the issue in a timely statement of position. However, Section 102.66(b) provides the rules on timely submission of statements of position shall not limit the regional director's receipt of evidence concerning any issue on which the regional director determines record evidence is necessary. Based on the Employer's untimely submission of its statement of position, I instructed hearing officer to refuse to take evidence or allow argument from the Employer as to the purported cessation of its shuttle operations but allowed the parties to submit stipulations of fact and joint exhibits on the issue.

³ The letter is undated and was issued to the employee on his request. It is the only layoff letter issued by the Employer.

III. BOARD LAW

The Board will dismiss a petition where an employer's cessation of operations is imminent and certain, such as when an employer completely ceases to operate, sells its operations, or fundamentally changes the nature of its business. *Retro Environmental, Inc.*, 364 NLRB No. 70, slip op. at 4 (2016); *Hughes Aircraft Co.*, 308 NLRB 82, 83 (1992); *Martin Marietta Aluminum, Inc.*, 214 NLRB 646, 646-647 (1974). A petition will not be dismissed based on conjecture or uncertainty concerning future operations. See *Canterbury of Puerto Rico, Inc.*, 225 NLRB 309 (1976). Compare *Larson Plywood Co.*, 223 NLRB 1161 (1976) (finding imminent cessation based on resolution to liquidate business within 90 days and no evidence of inconsistent action). Similarly, a petition will be processed where the evidence shows that an employer's initial anticipated date for completing its operations is inaccurate. *Gibson Electric, Inc.*, 226 NLRB 1063 (1976). The party asserting a cessation of operations bears the burden of showing, through concrete evidence, that it is both imminent and definite. *Retro Environmental*, above, slip op. at 4; *Hughes Aircraft*, above at 83; *Martin Marietta*, above at 646-647.

IV. APPLICATION OF BOARD LAW TO THE FACTS OF THIS CASE

The record in the instant case does not contain evidence of a definite cessation of operations or fundamental change in the Employer's operations.⁴ The evidence shows the Employer laid off its shuttle drivers following the filing of the instant petition due to circumstances related to the novel coronavirus disease (COVID-19) pandemic, including stay-at-home orders issued by the governor of Illinois and municipalities surrounding O'Hare International Airport.

In *Hughes Aircraft*, above, the Board dismissed a petition where the employer had signed agreements subcontracting the petitioned-for work to outside companies and notified petitioned-for employees their functions were being subcontracted. However, here, unlike *Hughes Aircraft*, there is no evidence the Employer has subcontracted the petitioned-for positions to another company. Nothing in the single notice of layoff, which was issued to only one individual, indicates the employees' layoff is more than temporary.

Similarly, the evidence shows the Employer intends to continue operating once stay-at-home orders are lifted or expire and not remain closed or sell its operations. There are no notices of closure or permanent layoff or sale; rather, the record shows the Employer is actively monitoring the current situation and communicating with laid off employees.

Only the Employer's attorney referenced employees not being recalled by the Employer when he opined about the unpredictability of travel and, therefore, hotel guests, following the lifting of the stay-at-home orders. However, mere speculation as to the uncertainty of future operations is not sufficient warrant for dismissing the petition and withholding from employees their statutory right to choose or reject union representation. *Canterbury of Puerto Rico*, above.

⁴ The only reference to fundamental change came from the Employer's attorney who postulated public opinion about travel after the stay-at-home orders are no longer in effect "may have fundamentally changed how people conduct business." However, he did not say it would fundamentally change the Employer's business.

The Employer cites *Cal-Neva Lodge*, 235 NLRB 1167 (1978), in support of its cessation argument; however, the instant circumstances are a corollary of that case. In *Cal-Neva Lodge*, the Board dismissed the petition, subject to reinstatement, when the employer had ceased its current operations and the only evidence of future operations was from a manager who did not have authority to commit the Employer to future projects. Here, the record indicates the Employer will resume operations following the end COVID-19 pandemic and related stay-at-home orders and lacks any evidence the attorney has the authority to direct the Employer's operations.

As the record is devoid of any evidence the Employer intends to sell, subcontract, or permanently close its operations, specifically its shuttle services, the Employer has failed to meet its burden to show the cessation of shuttle operations are definite. Any temporary cessation is related to the COVID-19 pandemic and does not establish the layoff as more than a temporary shutdown.

V. CONCLUSION

As the Employer has not met its burden to show the cessation of its shuttle operations is definite rather than speculative or temporary, I direct an election in the unit set forth above.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Teamsters Local Union 727.

A. Election Details

The parties stipulated and I have determined a mail ballot election will be held.

The ballots will be mailed to employees employed in the appropriate collective-bargaining unit. At 5:00 p.m. on Tuesday, May 5, 2020, ballots will be mailed to voters from the National Labor Relations Board, Region 13, 219 South Dearborn Street, Suite 808, Chicago, Illinois. Voters must sign the outside of the envelope in which the ballot is returned. Any ballot received in an envelope that is not signed will be automatically void.

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by Monday, May 11, 2020, should communicate immediately with the National Labor Relations Board by either calling the Region 13 Office at (312) 353-7570 or our national toll-free line at 1-866-667-NLRB (1-866-667-6572).

Ballots will be due on Tuesday, May 26, 2020. All ballots will be commingled and counted on Tuesday, June 2, 2020 at 3:00 p.m. In order to be valid and counted, the returned ballots must be received in 219 South Dearborn Street, Suite 808, Chicago, Illinois, prior to the counting of the ballots.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **April 18, 2020**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an 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 that 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.

C. Voter List

As required by Section 102.67(1) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by **April 30, 2020**. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or .docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

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Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated at Chicago, Illinois this 28th day of April 2020.

/s/Peter Sung Ohr

Peter Sung Ohr, Regional Director
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