

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES  
NEW YORK BRANCH OFFICE**

**BRIAR CONSTRUCTION CORP.**

**Employer**

**and**

**Case No. 29-RC-11226**

**THE SHEET ASPHALT WORKERS LOCAL  
UNION 1018 OF THE DISTRICT COUNCIL  
OF PAVERS AND ROAD BUILDERS OF THE  
LABORERS' INTERNATIONAL UNION  
OF NORTH AMERICA ("LIUNA")**

**Petitioner**

**UNITED PLANT AND PRODUCTION  
WORKERS, LOCAL 175, INTERNATIONAL  
UNION OF JOURNEYMEN AND  
ALLIED TRADES ("IUJAT")**

**Intervenor**

*Barbara S. Mehlsack, Esq. (Gorlick, Kravitz & Listhaus, P.C.),  
Counsel for the Petitioner  
Eric Bryon Chaikin, Esq. (Chaikin & Chaikin),  
Counsel for the Intervenor  
Tracy Belfiore, Esq., Counsel for the Regional Director*

**DECISION ON OBJECTIONS AND CHALLENGES**

RAYMOND P. GREEN, Administrative Law Judge. I heard this case on September 28, 2007. <sup>1</sup> The petition in 29-RC-11226 was filed by Local 1018 on August 8, 2005 seeking an election of certain employees of Briar Construction Corp. Local 175 intervened based on a showing of interest. Pursuant to a Decision and Direction of Election issued on October 19, 2006 and election was conducted on January 18, 2007 in the following unit:

All full-time and regular part-time workers who primarily perform asphalt paving, including foremen, rakers, screenmen, micro-pavers, AC paintmen, liquid tar workers, landscape planting and maintenance/fence installers, play

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<sup>1</sup> At the hearing, the Regional Director's Representative, told me that the Employer's Counsel had called her on September 27, 2007 to advise that he no longer was representing the Employer. Also, the Employer advised the Region, by letter dated September 27, 2007 that it no longer intended to be in business due to the illness of the owner. As there was no independent means available on such short notice to verify this claim and as the Petitioner and the Intervenor expressed their desire to complete this hearing, I went forward. Obviously, if it turns out that the Employer, any successor or alter ego, is no longer engaged in business, then any forthcoming certification would be moot.

5 equipment/safety surface installers, slurry/seal coaters, shovelers, line striping  
installers, and small equipment operators employed by the Employer who work  
primarily in the five boroughs of New York City, but excluding gall employees  
who primarily perform the laying of concrete, concrete curb setting work, or  
10 block work, and/or who are currently represented by the Highway, Road and  
Street Construction Laborers Local Union 1010 of the District council of Pavers  
and Road Builders, Laborers International Union of North America, or by  
Highway, Road and Street Construction Laborers, a Division of Amalgamated  
Local Union 450A and excluding clerical employees, guards and supervisors as  
15 defined in Section 2(11) of the Act.

A corrected Tally of Ballots showed that of about four eligible voters, one cast a ballot for  
Local 175, zero cast votes for either Local 1018 or no representation. Three votes were  
challenged.

15 The votes of Nestor Aguirre, Nicholas Cacace and Glenn Patrick were challenged by the  
Board agent conducting the election.

20 Local 1018 filed Objections to the election on January 24, 2007. And Local 175 filed  
Objections on January 25.

25 At the hearing, the Petitioner and the Intervenor stipulated that from their examination of  
payroll records, they were satisfied that Nestor Aguirre was eligible to vote. Therefore, his  
challenged ballot should be opened and counted.

The Petitioner and the Intervenor also stipulated that from their review of records,  
Nicholas Cacace and Glenn Patrick did not have sufficient hours of employment with the  
Employer to be eligible voters. Therefore, their ballots should remain unopened and uncounted.

30 Also at the hearing, United Plant and Production Workers, Local 175, International Union  
of Journeymen and Allied Trades withdrew its Objections to the Election and I approved that  
Motion.<sup>2</sup>

35 Accordingly, based on the above, I hereby make the following

**Conclusions of Law**

Nestor Aguirre was an eligible voter and his ballot should be opened and counted.

40 Nicholas Cacace and Glenn Patrick were not eligible voters and their ballots should  
remain unopened and uncounted.

45 Based on how Nestor Aguirre votes, an appropriate Certification should be issued.

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50 <sup>2</sup> Objections filed by The Sheet Asphalt Workers Local 1018 were overruled by the Regional Director  
in his Supplemental Decision dated August 2, 2007.

**ORDER**

The representation case should be remanded to the Regional Director of Region 29 for the purpose of issuing the appropriate Certification.<sup>3</sup>

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Dated, Washington, D.C., October 10, 2007.

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Raymond P. Green  
Administrative Law Judge

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<sup>3</sup> Under the provisions of Sec. 102.69 of the Board's Rules and Regulations, Exceptions to this Report may be filed with the Board in Washington, DC within 14 days from the date of issuance of this Report and recommendations. Exceptions must be received by the Board in Washington by October 24, 2007.