

**Exhibitors Film Delivery & Service, Inc. and Local  
Delivery Drivers Union, Petitioner. Case 17-  
RC-8736**

January 14, 1981

**DECISION AND DIRECTION**

**BY CHAIRMAN FANNING AND MEMBERS  
PENELLO AND TRUESDALE**

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered an objection to and determinative challenges in an election held on August 21, 1980,<sup>1</sup> and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions<sup>2</sup> and briefs and hereby adopts the Hearing Officer's findings and recommendations.<sup>3</sup>

<sup>1</sup> The election was conducted pursuant to a Decision on Review dated January 22, 1980, in which the Board, Member Penello dissenting, directed an election. 247 NLRB No. 66 (1980). The tally was three votes for, and one against, the Petitioner. There were six challenged ballots, a sufficient number to affect the results.

<sup>2</sup> In the absence of exceptions thereto, we adopt, *pro forma*, the recommendation of the Hearing Officer to sustain the challenges to the ballots of Lori Farmer and Richard Hedges and to overrule the challenge to the ballot of Jim Cantrell.

In the Employer's "Answering Brief on Challenges to Persons and Withdrawal of Objection to Conduct of Election" dated October 10, 1980, the Employer stated that, "The Employer hereby withdraws its objection to the conduct of the election filed with the Regional Director for Region 17, on August 28, 1980." We will treat this statement as a motion to withdraw the objection, and grant the motion.

<sup>3</sup> We have considered the Petitioner's contention that the Hearing Officer has evidenced a bias against the Petitioner's position. We have considered the entire record and reject these charges.

**DIRECTION**

It is hereby directed that, as part of the investigation to ascertain a representative for the purposes of collective bargaining with the Employer, the Regional Director for Region 17 shall, pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, within 10 days from the date of this Decision and Direction, open and count the ballots of Jim Cantrell, Jim Lundin, and Don Roberts and thereafter prepare and cause to be served on the parties a revised tally of ballots, including therein the count of these three ballots. Thereafter, the Regional Director shall issue the appropriate certification.

**MEMBER PENELLO, dissenting:**

I dissented from my colleagues' finding, in directing the election herein, that the owner-operator drivers in the petitioned-for bargaining unit are employees within the meaning of Section 2(3) of the Act, *Exhibitors Film Delivery & Service, Inc.*, 247 NLRB No. 66 (1980). For the reasons stated in my dissenting opinion, I would have found that these drivers are independent contractors and, therefore, I would have dismissed the petition. Inasmuch as I would not have directed the election, I will not consider the merits of exceptions to the Hearing Officer's report on objections. Accordingly, I dissent from my colleagues' findings herein.