

Yerges Van Liners, Inc., Employer-Petitioner and Drivers, Salesmen, Warehousemen, Milk Processors, Cannery, Dairy Employees and Helpers Union Local No. 695, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 30-RM-66. January 27, 1967

DECISION ON REVIEW, ORDER, AND DIRECTION
OF SECOND ELECTION

Pursuant to a Decision and Direction of Election issued by the Regional Director for Region 30 on August 18, 1966, an election by secret ballot was conducted on September 19, 1966, under his direction and supervision among the employees in the unit found appropriate. Upon the conclusion of the balloting, the parties were furnished with a tally of ballots which showed that of two eligible voters, one valid ballot was cast, in favor of the Union. There were no challenges or void ballots. Thereafter, the Employer filed timely objections to the conduct of the election.

In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and on October 10, 1966, issued his Supplemental Decision and Certification of Representative in which he overruled the objections. Thereafter, pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review.

On November 29, 1966, the National Labor Relations Board, by telegraphic Order, granted the request for review.

Pursuant to Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Zagoria].

The Board has considered the entire record in this case with respect to the issues under review, including the Employer's position in its request for review, and makes the following findings:

The Employer's objections, *inter alia*, alleged that the fact that one of the two eligible voters was unable to vote rendered the election invalid.

Following issuance of the Decision and Direction of Election, the Employer agreed that the election could be held September 9, 1966. Subsequently, on August 31, the Employer advised the Regional

Director that, for business reasons,¹ the earliest foreseeable date that both employees eligible to vote would be in Fort Atkinson was September 19. On September 7, the Regional Director issued a notice of election, scheduling the election to be conducted at the Employer's warehouse September 19, 1966, between 8 and 8:15 a.m. The Employer, on September 12, acknowledged receipt of the notice and stated that arrangements had been made for the election.

As found by the Regional Director, the Employer on September 10 received a request from a customer who had previously scheduled a move of household goods from Fort Atkinson to Richmond, Virginia, for the period September 8 to 10, to the effect that the move be rescheduled to a later date so that the household goods would arrive in Richmond after September 15. As the Employer already had scheduled a partial load of household goods for delivery to Frostburg, Maryland, it advised the customer that the request would be granted. The Employer, on September 12, dispatched Allen Danielson to pick up the household goods of these customers, and, on September 13, Danielson departed Fort Atkinson with instructions to make the Frostburg delivery first, to make the Richmond delivery after September 16 or 17, and, upon completion of the deliveries, to contact the dispatcher for United Van Lines in North Arlington, New Jersey, for a possible return load to be delivered in Indiana, Ohio, or Pennsylvania.

The Employer, on September 15, notified the Regional Director of the absence of Danielson and that he would not return to Fort Atkinson in time to vote on September 19, and requested that the election be postponed. The Union objected. The Regional Director denied the Employer's request for postponement of the election.

Danielson completed his delivery in Richmond on September 17. Because of an injury to his back, he returned directly to Fort Atkinson and arrived during the evening hours of September 19, too late to vote in the election. The Employer had no contact with Danielson from the time he departed until his return the evening of September 19.

Upon the foregoing facts, the Regional Director concluded that the objections raised no substantial or material issues as to the conduct of the election. We disagree. It is the Board's responsibility to establish the proper procedure for the conduct of its elections, which procedure requires that all eligible employees be given an opportunity to vote.² We find that Danielson had no opportunity to vote

¹ The Employer, whose headquarters are at Fort Atkinson, Wisconsin, is engaged in moving and storage of commercial and home furniture and fixtures, and operates, in part, under a franchise from United Van Lines. Its operations involve both local and long distance moving.

² See *Alterman-Big Apple, Inc.*, 116 NLRB 1078, 1080

through no fault of his own but because at the time of the election he was away from the plant in the normal course of his duties for the Employer. Although the Employer may have been remiss in not advising the Regional Director at an earlier date of the probable need for other election arrangements, consistent with the aforesaid principle we make no attempt to assess the Employer's responsibility for the disenfranchisement of Danielson. As his vote could have affected the election results in this unit of only two eligible voters, we find, in the circumstances, that the election should have been rescheduled.³ Accordingly, we hereby sustain the objections in this regard, and we shall set aside the election and order a new one to be conducted.

[The Board set aside the election conducted on September 19, 1966.]

[Text of Direction of Second Election omitted from publication.]⁴

³ See *Bernard Gold and Jack Wasserman*, 54 NLRB 869, 55 NLRB 591.

⁴ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 30 within 7 days after the date of issuance of the Notice of Second Election by the Regional Director. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.

Cement Transport, Inc.¹ and General Drivers, Warehousemen & Helpers Local Union #89, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 9-RC-6856. January 27, 1967

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 before Hearing Officer Edward C. Verst on September 7, 8, and 9, 1966.² The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Subsequent to the hearing, the

¹ The name of the Employer appears as amended at the hearing.

² The petition, which was filed herein on May 27, 1966, was dismissed by the Regional Director on June 17, 1966. Subsequent thereto, the Petitioner filed a Request for Review of the Regional Director's decision with the Board. On August 2, 1966, the Board held that the appeal raised issues which could best be resolved on the basis of a record. Accordingly, the Regional Director was directed to reinstate the petition and to issue a notice of hearing in this proceeding. A hearing was held and on September 9, 1966, the Regional Director, pursuant to Section 102.67 of the Board's Rules and Regulations, transferred the case to the Board.