

Ard Drilling Company and Local 826, International Union of Operating Engineers, AFL-CIO, Petitioner. Case 16-RC-4778

January 8, 1969

DECISION ON REVIEW AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND BROWN

On May 24, 1968, the Regional Director for Region 16 issued a Supplemental Decision and Order in the above-entitled proceeding in which he sustained one and overruled five of the six challenges to ballots cast in the election theretofore conducted¹ and ordered the ballots of the five voters involved to be opened and counted. Thereafter, in accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of such Supplemental Decision on the grounds that the Regional Director made substantial errors in his findings of fact and application of policy and that compelling reasons existed for reconsideration of policy. By telegraphic order dated July 15, 1968, the National Labor Relations Board denied the request for review in all respects except the overruling of the challenge to the ballot of L.D. May, as to which action the Board reserved ruling pending issuance of a revised tally of ballots.

On July 23, the Regional Director issued a revised tally which showed that 18 valid ballots were cast for, and 17 against, the Petitioner. The one remaining challenge to May's ballot thus became determinative of the results. The Board thereupon considered the Employer's request for review as to the overruling of May's challenge and on September 3, 1968, by telegraphic order, granted review. The Board was advised administratively that the Petitioner notified the Regional Director on September 4, and the Employer on September 6, by letter, that it adopted the Employer's position with respect to the eligibility of May. Thereafter, the Employer filed a motion for reconsideration of the Board's earlier denial of its request for review as to matters other than the eligibility of May.²

Pursuant to the provisions of 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.

The Board has considered the Regional Director's Supplemental Decision, the request for review, and the entire record as to May's eligibility, and makes

the following findings:

May was challenged by the Employer on the ground that at the time of the election he was ineligible for rehire and therefore had no expectancy of continued employment. As found by the Regional Director, May commenced working for the Employer on December 1, 1967, and stopped on January 14, 1968, when the well on which he was working was completed. According to the Employer's practice, a copy of May's employment application was sent to the Industrial Foundation, a nonprofit organization created to check employment applications for accuracy, with particular reference to claims on public record for personal injuries, and to report thereon. Sometime in late January or early February 1968, the Employer, in checking reports received from the Industrial Foundation, noted that May had some seven injuries that were a matter of public record (indicating that a claim had been made) while he had stated on his application that he was over 50 years of age and had listed only one injury. At this time, the Employer decided that May was accident prone and ineligible for reemployment.

The *Hondo*³ eligibility formula applied herein limits eligibility to those roughnecks who have been employed by the Employer for a minimum of 10 working days during the 90 calendar-day period preceding the issuance of the Decision and Direction of Election, "and who have not been terminated for cause or quit voluntarily prior to completion of the last job for which they were employed. . . ." The Regional Director concluded that May met this eligibility formula, despite the fact that he was ineligible for rehire.

In its request for review, the Employer asserts that under its standard practice of checking employment applications for accuracy with respect to injuries which are a matter of public record, if a man falsifies his prior injuries, he is terminated, or if he is not presently working, the supervisors are notified not to rehire the man. The Employer argues that, in the circumstances, as May will never again be employed by it, he should not be found eligible to vote. The Petitioner, as above indicated, has stated that it agrees with the Employer's position.

In the circumstances, we conclude that the action taken by the Employer upon learning the facts concerning May's accident record, occurring as it did prior to the election, was tantamount to a removal of his name from the Employer's list of roughnecks available for reemployment. We find, therefore, that May was ineligible to vote in the election, and the challenge to his ballot is hereby sustained.

Accordingly, as the revised tally shows that the Petitioner has received a majority of the valid ballots cast in the election, we shall certify the Petitioner as the exclusive representative of the employees in the appropriate unit.

¹The tally of ballots for the election showed that of approximately 75 eligible voters, 37 cast ballots, of which 14 were for, and 17 against, the Petitioner, and 6 were challenged. The Employer filed objections to the conduct of the election which it subsequently was permitted to withdraw.

²By telegraphic order dated November 20, 1968, the Board denied the motion for reconsideration as raising nothing not previously considered.

³*Hondo Drilling Company, N.S.L.*, 164 NLRB No. 67.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that Local 826, International Union of Operating Engineers, AFL-CIO, has been designated and selected by a majority of the employees of the Employer in the unit hereinbefore found appropriate, as their representative for the

purposes of collective bargaining, and that, pursuant to Section 9(a) of the Act, as amended, the said labor organization is the exclusive representative of all employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.