

Plymouth Towing Company, Inc. and Inland Boatmen's Union of the Seafarers International Union of North America, Atlantic, Gulf, Lakes and Inland Waters District, AFL-CIO, Petitioner.
Case 11-RC-2886

September 25, 1969

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND ZAGORIA

Pursuant to a stipulation for certification upon consent election executed on March 27, 1969, an election by secret ballot was conducted by mailed ballots under the direction and supervision of the Regional Director for Region 11 among the employees in the appropriate unit. On May 1, 1969, the parties were furnished with a tally of ballots which showed that of approximately seven eligible voters, seven ballots were cast of which three were for, and two against, the Petitioner. Two ballots were challenged. The challenged ballots are sufficient in number to affect the results of the election. The Employer and the Petitioner filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation of the challenged ballots and the Employer's objections and, on July 10, 1969, issued and duly served upon the parties his Report on Challenges and Objections, in which he recommended that the Employer's objections be overruled; that both of the challenges be sustained; and that appropriate certification be issued. In view of his disposition of the challenges, the Regional Director did not pass upon the Petitioner's objections. The Employer and the Petitioner filed timely exceptions to the Regional Director's Report, and briefs in support thereof.

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

Upon the entire record in this case, the Board finds:

1. 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.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the

meaning of Section 9(b) of the Act:

All crew personnel employed by the Employer on its vessels operating out of its Plymouth, North Carolina, operations, excluding captains, the chief engineer, guards and supervisors as defined in the Act.

5. The Board has considered the Regional Director's Report and the exceptions and briefs of the parties, and hereby finds that the Employer's exceptions to the Regional Director's recommendation that the Employer's objections be overruled raise no issues of fact or law which require reversal of the Regional Director's recommendation.¹

The Regional Director, citing *Ely and Walker*, 151 NLRB 636, recommended that the challenge to the ballot of employee Emmett Rice, Jr., be sustained on the ground that Rice was discharged before the ballots were counted. The Union excepted to this recommendation. The Board has held that employees employed on the eligibility date and on the date of election are eligible to vote despite any intention to quit immediately after the election.² Because Rice was employed on the eligibility date and also on the day he cast his ballot,³ while the election was in progress, we find that he met the Board's eligibility requirements. Therefore, the challenge to his ballot is overruled.

As we have overruled the Employer's objections and the challenge to the ballot of employee Emmett Rice, Jr., we shall direct that the Regional Director open and count that ballot and issue a revised tally of ballots. In the event the revised tally shows that a majority of the valid votes were for the Petitioner, the Regional Director shall issue a Certification of Representative. However, if no union majority is established by the revised tally of ballots, we shall further direct that the Regional Director issue a Supplemental Report on Objections making recommendations with regard to the Petitioner's objections.

ORDER

It is hereby ordered that the challenge to the ballot of Dennis Swain be, and it hereby is, sustained, that the challenge to the ballot of Emmett Rice, Jr., be, and it hereby is, overruled, and that Employer's objections be, and they hereby are, overruled.

IT IS FURTHER ORDERED that as part of the investigation to ascertain representatives for the purposes of collective bargaining among the employees of Plymouth Towing Company, Inc., on its vessels operating out of its Plymouth, North

¹In the absence of exceptions thereto, we adopt, *pro forma*, the Regional Director's recommendation that the challenge to the ballot of employee Dennis Swain be sustained.

²*Personal Products Corporation*, 114 NLRB 959, 961, *Whiting Corporation*, 99 NLRB 117, 122-123.

³See *Oregon Washington Telephone Company*, 123 NLRB 339.

Carolina, operations, in an appropriate and stipulated unit, the Regional Director for Region 11 shall, pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, within 10 days from the date of this Order, open and count the ballot of Emmitt Rice, Jr., and thereafter, prepare and cause to be served upon the parties a revised tally of ballots, including therein the count of said challenged ballots.

IT IS FURTHER ORDERED that in the event that the

revised tally of ballots shows the Petitioner to have received a majority of the valid ballots cast, the Regional Director shall issue a certification of representative to the Petitioner.

IT IS FURTHER ORDERED that should the revised tally of ballots show that the Petitioner has not received a majority of the valid ballots cast the Regional Director shall issue a Supplemental Report on Objections making recommendations with regard to Petitioner's objections.