

Stevens Van Lines—Oscoda, Inc.; Expressways, Inc.; Vanways, Inc. and Local 486, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind., Petitioner. Case 7-RD-11757

November 16, 1973

DECISION AND DIRECTION TO OPEN AND COUNT CHALLENGED BALLOTS

BY CHAIRMAN MILLER AND MEMBERS FANNING AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties and approved by the Regional Director for Region 7, an election by secret ballot was conducted among the employees in the stipulated appropriate unit. The corrected tally of ballots furnished the parties on June 18, 1973, showed that of approximately 18 eligible voters, 14 cast ballots, of which 5 were for, and 2 were against, the Petitioner and there were 7 challenged ballots.

Inasmuch as the challenged ballots were sufficient in number to affect the results of the election, and as a preliminary investigation established the existence of substantial and material factual issues, including credibility resolutions, the Regional Director for Region 7 of the National Labor Relations Board issued a notice of hearing on June 12, 1973. Thereafter, on July 20, 1973, a hearing was held before Hearing Officer B. Allan Benson for the sole purpose of resolving the issues raised by the challenges. On August 7, 1973, the Hearing Officer issued his Report and Recommendations on Challenges in which he recommended that the challenged ballots of Richard Leroy, Geraldine Casey, Diane Johnson, Leona Hess, and Edward Turner, Jr., be opened; that the challenges to the ballots of Dexter Walker and Jerome Adamchick be sustained; and that a revised tally of ballots be issued. The Employer, thereafter, filed timely exceptions to the Hearing Officer's report and his recommendations therein and the Petitioner filed an answer to the Employer's exceptions.

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

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

¹ The Employer has not excepted to the Hearing Officer's recommendations concerning the disposition of the challenged ballots of Richard Leroy, Dexter Walker, and Edward Turner, Jr. We therefore adopt, *pro forma*, his recommendations as to these three individuals.

² *H P Wasson and Company*, 105 NLRB 373, relied upon by the

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 certain 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 of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All drivers, warehousemen, packers, and helpers employed by Stevens Van Lines—Oscoda, Inc.; Expressways, Inc.; Vanways, Inc., at the Oscoda, Michigan, location; but excluding all sales personnel, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

The Board has considered the Hearing Officer's report in light of the exceptions and briefs, and the entire record herein, and has decided to adopt the Hearing Officer's findings and recommendations as contained in his report,¹ with the exception of his recommendation to sustain the challenge to the ballot of Jerome Adamchick.

Petitioner challenged Adamchick's ballot on the ground that Adamchick, whose job classification is warehouseman, was a supervisor and therefore ineligible to vote. The Hearing Officer found that Adamchick was not a supervisor and no exceptions were taken to this finding. However, he also found that, although Adamchick's job classification was included in the appropriate unit under the terms of the parties' stipulation, the differences between Adamchick's terms and conditions of employment as a warehouseman and those of the other unit employees indicated that his interests and goals were not sufficiently aligned with those of the other employees to warrant including him among the eligible voters. We disagree since it is well-established policy to find that all employees properly included in the appropriate unit are eligible to vote except in the situation where the employee in question joined the unit after the payroll eligibility date had passed.² As the record contains no evidence in derogation of the parties' stipulation, and as Adamchick is a warehouseman within the unit description, we do not adopt the Hearing Officer's

Hearing Officer and the parties, has long since been abandoned and no longer represents Board policy. See, e.g., *Sears Roebuck & Company*, 112 NLRB 559, fn. 28 at 569, and *Post Houses, Inc.*, 161 NLRB 1159, fn. 1 at 1160, 1172.

recommendation to sustain the challenge to the ballot of Jerome Adamchick.

Accordingly, we hereby sustain the challenge to the ballot of Dexter Walker and overrule the challenges to the ballots of Jerome Adamchick, Richard Leroy, Geraldine Casey, Diane Johnson, Leona Hess, and Edward Turner, Jr.

DIRECTION

It is hereby directed that, as part of the investigation to ascertain a representative for the purposes of collective bargaining among certain employees of Stevens Van Lines—Oscoda, Inc.; Expressways,

Inc.; Vanways, Inc., in the unit set forth in section 12 of the Stipulation for Certification Upon Consent Election, the Regional Director for Region 7 shall, pursuant to the Board's Rules and Regulations, within 10 days from the date of this Decision and Direction, open and count the ballots of Geraldine Casey, Diane Johnson, Leona Hess, Edward Turner, Jr., Richard Leroy, and Jerome Adamchick and, thereafter, prepare and cause to be served on the parties a revised tally of ballots, including therein the count of said ballots, upon the basis of which he shall issue the appropriate certification.