Versail Manufacturing, Inc., Subsidiary of Philips Industries, Inc. *and* Local Union No. 1049, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 25–RC–5512

July 29, 1974

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties, and approved by the Regional Director for Region 25 of the National Labor Relations Board on November 16, 1973, an election by secret ballot was conducted on December 7, 1973, among the employees in the stipulated appropriate unit. Following the election the parties were furnished with a tally of ballots which showed that of approximately 176 eligible voters, 160 cast ballots, of which 75 were for, and 71 against, the Petitioner, 4 were ruled void, and 10 were challenged. The challenged ballots were sufficient in number to effect the results of the election. Thereafter the Employer 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 Acting Regional Director for Region 25 conducted an investigation, and, on April 4, 1974, issued and duly served on the parties his Report on Challenged Ballots, Objections to Conduct Affecting Results of Election and Recommendations to the Board. In his report, the Acting Regional Director recommended that the Board sustain the challenges to the ballots of 8 of the 10 challenged voters, thus making the remaining 2 challenged ballots determinative,[1] that the Employer's objections be overruled in their entirety, and that the Petitioner be certified as the exclusive collective-bargaining representative of the employees in the appropriate unit. The Employer filed timely exceptions to the Acting Regional Director's report, and a supporting brief.

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 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 employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. As stipulated by the parties, the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and maintenance employees of the Employer, including all truck drivers at its Elkhart, Indiana plant; but excluding all office clerical employees, all professional employees and all guards and supervisors as defined in the Act.

5. The Board has considered the Acting Regional Director's report, the Employer's exceptions and brief, and the entire record in the case, and hereby adopts the Acting Regional Director's findings and conclusions,[2] as modified herein, and his recommendations.

In treating Employer's Objection 3, the Acting Regional Director concluded that the inability of employee James Clifford to reach the election place in time to vote was not cause to set the election aside. We agree with this conclusion for the reasons given below.

Clifford was an over-the-road driver. The election was in Elkhart, Indiana, on December 7, 1973. Clifford left Elkhart on December 4 with a delivery to Pine Grove, Pennsylvania. Normal time for this run is 2 to 3 days, including the trip back. After arriving at Pine Grove on December 5 and picking up an empty trailer for the trip back, Clifford visited some friends about 80 miles from Pine Grove. He stayed with them overnight on December 5 and 6, then returned to where he had left the empty trailer, figuring to be back in Elkhart in time for the election the following day. The trailer was missing, and it took an extra day for Clifford to enlist the aid of the state police to attempt to locate it, and, failing in this, to return to Elkhart, too late for the election.

In *Yerges Van Liners, Inc.,* 162 NLRB 1259, the Board restated its long-held policy of accepting responsibility for establishing a procedure for the conduct of its elections which gives all eligible employees an opportunity to vote.[3] Following its earlier practice,

[1] Inasmuch as the ballots of Charles King and Paul Sailor alone are insufficient to affect the results of the election, the Acting Regional Director found it unnecessary to resolve their eligibility

[2] The Regional Director's conclusions with regard to Employer's Objection 2, raising a *Savair Manufacturing Company* issue, is in accord with the Board's recent decision in *Irwindale Division, Lau Industries, a Division of Phillips Industries, Inc*, 210 NLRB 182(1974).

[3] See *Alterman-Big Apple, Inc*, 116 NLRB 1078, *Star Baking Company*, 119

the Board set aside the election where, a few days before the election, the Employer notified the Regional Director that one of the two employees in the unit had been sent out of town on a delivery. The Employer requested that the election be postponed because the employee would not return in time to vote, but the Regional Director refused the request. The Board reasoned as follows:

> We find that [the employee] had no opportunity to vote 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 aforestated principle [that the Board takes responsibility for the opportunity to vote] we make no attempt to assess the Employer's responsibility for the disenfranchisement of [the employee]. 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.

Using *Yerges Van Liners* as a starting point, the Acting Regional Director found that Clifford's absence from the polls was attributable to his choosing to spend an extra day on a "personal frolic outside his normal course of duties" and his further conduct of leaving his trailer unattended. He concluded, therefore, that because it cannot be said that Clifford's disenfranchisement occurred through no fault of his own or was caused by the normal performance of his duties, *Yerges Van Liners* did not apply. Because the Acting Regional Director's discussion of this issue convinces us that *Yerges Van Liners* is susceptible to an unintended interpretation, we want to make it clear that to the extent the eligible voter's "fault" is involved, it is not "fault" in a pejorative sense. In our opinion, the fact that required the *Yerges* election to be set aside was that the employee was caused to miss the election by the Employer, a party to the proceeding. The same protective policy would be applicable if the petitioning union, or the Board itself,[4] prevented an eligible employee from voting. It would be inapplicable, of course, if the crucial employee was prevented from voting by reason of sickness or some other unplanned occurrence beyond the control of the parties, the Board, or the employee.

Obvious practical considerations dictate this limitation on the policy expressed in *Yerges Van Liners,* and the limitation is not inconsistent with the policy. Elections are scheduled at times and places, including whatever special provisions appear to be appropriate, that will best insure maximum participation in light of what is known at the time the procedures are set up. Occasionally, unusual circumstances or newly discovered facts may warrant the rescheduling of an election, perhaps even for reasons insufficient to justify setting aside an election already held, where they are brought to the attention of the Regional Office in time. But once the election has been held there is no more reason to negate the results at the behest of the dissatisfied party, because of personal matters affecting the opportunity of individual employees to vote, than there would be in the case of a political election.[5] There must be some degree of finality to the results of an election, and there are strong policy considerations favoring prompt completion of representation proceedings. Neither of these interests would be served by permitting litigation regarding the personal reasons a dissatisfied party may seek to assign for individual employees' failure to vote. We will not permit it, and, as Clifford was not prevented from voting by the conduct of a party, or by any unfairness in the scheduling or mechanics of the election, we agree that Objection 3 be overruled.

Having decided that Clifford's inability to vote does not constitute a valid objection, and that the Acting Regional Director's resolution of the challenged ballots is correct,[6] the ballot of employee Victor Ballenberger is not determinative and we do not pass upon the merits of Objection 3 insofar as it relies on Ballenberger's inability to vote.

Accordingly, as we have overruled the Employer's objections, and as the Petitioner has secured a majority of the valid votes cast, we shall certify the Petitioner as the exclusive bargaining representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Local Union No. 1049, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is

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[4] See *McCormick Lumber Co, Inc*, 206 NLRB 314(1973).

[5] In exceptional circumstances, such as the failure of one of two employees in the unit to vote, the Board has undertaken to conduct a second election. *Kit Manufacturing Company,* 198 NLRB No 131(1972)

[6] We agree that the challenge to the ballot of Larson Sailor was properly sustained, as Sailor was not employed in the unit on the eligibility date. *The Dayton Tire & Rubber Company, a Division of the Firestone Tire and Rubber Company,* 206 NLRB 614, 620(1973).

the exclusive representative of all the employees in the unit found appropriate herein for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

MEMBER KENNEDY, concurring:

I concur in the result.