

Video Tape Enterprises, Inc. and International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, Petitioner. Case 31-RC-2688

November 19, 1974

DECISION ON REVIEW

BY MEMBERS FANNING, KENNEDY, AND PENELLO

On June 28, 1974, the Regional Director for Region 31 issued a Supplemental Decision and Order in the above-entitled case in which he overruled the challenges to the ballots of three employees and directed that these ballots be opened and counted.¹ Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, as amended, the Employer and Intervenor filed timely requests for review of the Regional Director's Supplemental Decision on the grounds, *inter alia*, that he made findings of fact which are clearly erroneous.

On July 30, 1974, the National Labor Relations Board by telegraphic order denied the Intervenor's request for review, but granted the Employer's request for review as it raised substantial issues warranting review.

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.

The Board has reviewed the entire record in this proceeding with respect to the issues under review,² and makes the following findings:

The Employer is engaged in the business of video tape film production at various locations throughout California. The Employer has approximately nine regular full-time unit employees who perform the following functions: equipment maintenance, combination equipment maintenance-camera operation, video control, combination video control and slow motion operation, and combination technical direction-video control. These employees are paid a fixed weekly salary ranging from \$250 to \$400, re-

gardless of the number of hours worked in any given week.

The Employer contends in its request for review that, as the unit found appropriate by the Regional Director in his Decision and Direction of Election was limited to the Employer's full-time staff employees, he erred in including the three challenged voters in the unit as regular part-time employees. We find merit in this contention.

At the hearing, the Intervenor moved to include in the unit 17 additional employees known as "free lancers," contending that they were employed on a frequent or regular basis by the Employer and could be classified as regular part-time employees. The Employer contended that at most the "free lancers" were casual employees who should not be included in the unit agreed upon by the Employer and the Petitioner. The Hearing Officer denied the Intervenor's motion because no evidence was presented to show that the freelance employees performed unit work on a regular basis or that they had a continuing interest in the wages, hours, and working conditions of unit employees. The Regional Director sustained the Hearing Officer's denial of the Intervenor's motion, and stated that "There are approximately ten employees in the unit found appropriate."

In his Supplemental Decision, the Regional Director included the three challenged voters in the unit, concluding, on the basis of evidence as to their employment history with the Employer, that they are regular part-time employees. He sought to reconcile his inclusion of them in the unit with his earlier denial of the Intervenor's motion to include "free lancers" in the unit by asserting that the record contained no description of the duties performed by "free lancers" and that the Intervenor made no offer of proof concerning the nature of their work.

Contrary to the Regional Director, we conclude that the unit found appropriate by him in his Decision and Direction of Election was limited to the Employer's full-time staff employees. In our opinion, in making his unit determination therein, including his disposition of the Intervenor's motion to include in the unit 17 free lancers,³ the Regional Director clearly confined the unit to full-time staff employees, in accord with the positions of the Petitioner and the Employer. Review was not requested of the Regional Director's unit determination. In the circumstances, there is no basis for including in the unit the three part-time employees who were permitted to cast challenged ballots in the election herein.

Accordingly, we hereby sustain the challenges and,

³ The Employer, in its request for review, states that the term "free lancer" is commonly used in the motion picture industry to refer to part-time employees. However, we find it unnecessary to determine herein the status of any of the "free lancers" utilized by the Employer in its operations.

¹ Pursuant to a Decision and Direction of Election issued by him on April 9, 1974, an election was conducted on April 25, 1974. The tally of ballots showed that although there were approximately 9 eligible voters, 11 cast ballots, of which 4 were for the Petitioner, 1 was for the Intervenor, National Association of Broadcast Employees & Technicians, AFL-CIO-CLC, 3 were against the participating labor organizations, and 3 were challenged. The challenged ballots were sufficient in number to affect the results of the election.

² The Employer's motion for rehearing and to reopen the record, filed October 25, 1974, is hereby denied as lacking in merit.

as the tally of ballots indicates that none of the three choices has received a majority of the ballots cast in the election, we shall remand the case to the Region-

al Director in order that he may conduct a runoff election in accordance with the Board's Rules and Regulations.