

Stevens Trucking, Inc., Employer-Petitioner and Building Material and Dump Truck Drivers Local No. 36, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and International Union of Operating Engineers, Local No. 12, AFL-CIO.¹ Case 21-RM-1724

October 29, 1976

DECISION, ORDER, AND DIRECTION OF
NEW EXPEDITED ELECTIONS

BY CHAIRMAN MURPHY AND MEMBERS FANNING
AND JENKINS

On August 27, 1975, pursuant to Sections 8(b)(7)(C) and 9(c) of the National Labor Relations Act, as amended, and Section 102.77 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Acting Regional Director for Region 21 on the basis of an administrative investigation directed an expedited election in a unit of all drivers, loader operators, and mechanics employed by the Employer, placing both picketing Unions on the ballot. Thereafter, pursuant to Section 102.80(c) of the National Labor Relations Board Rules and Regulations, the Unions filed separate requests on August 29 and September 2, 1975, for special permission to appeal from the Acting Regional Director's action, contending, in essence, that he erred in concluding that the Unions were acting as joint representatives and that their picketing encompassed an overall unit of the Employer's employees, and requesting that the election be stayed pending decision on appeal. The National Labor Relations Board denied the requests. Pursuant to the Acting Regional Director's direction, an election was conducted on September 5, 1975, in which the employees voted against representation.² Thereafter, each Union filed similar objections.

After an investigation, the Regional Director, on September 26, 1975, issued a Decision and Certification of Results of Election in which he overruled the objections filed by the Unions. Thereafter, Operating Engineers requested review of the Regional Director's decision, alleging prejudicial error in the denial of a hearing on the issues of the joinder of the unions, without their consent, and the appropriateness of the unit, and urged that the election be set aside and a hearing conducted.

¹ Sometimes referred to herein as Teamsters and Operating Engineers

² The tally showed that, of approximately eight eligibles, seven voted, one for, and five against, the unions, and one cast a challenged ballot.

By telegraphic order dated November 19, 1975, the Board granted the request for review. The Board concluded that substantial issues had been raised with regard to the propriety of placing the Unions on the ballot as joint representatives and with regard to the appropriateness of the overall unit; remanded the case to the Regional Director for the purpose of conducting a hearing with respect to such issues; directed that the record made at the hearing be transferred to the Board for decision; and stayed the certification issued by the Regional Director pending the Board's decision.

Pursuant thereto, a hearing was held before Hearing Officer Theodore Horn on December 9 and 10, 1975. All parties appeared and participated at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. Thereafter, all parties filed briefs with the Board.

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 Hearing Officer's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the entire record in this case, including the briefs of the parties, and makes the following findings:

The Employer is a California corporation engaged in the sand and gravel business in San Diego County where it has two locations, one in the San Pasqual Valley and the other at Lake Hodges, approximately 4 to 5 miles from the San Pasqual location. The Employer's operations consist largely of screening sand, filling its trucks, and delivering its products to customers. The record reveals that in performing its operations the Employer employs approximately 10 employees and utilizes loaders; i.e., heavy equipment to load the trucks or hoppers, and seven trucks, among other equipment needed.

The record shows that in early July 1975 Teamsters Local 36 business agent, Galvas, met with the Employer's president and owner, Stevens, at the latter's office. At that meeting, according to Galvas, he told Stevens that it was his responsibility to speak to him in regard to a short-form agreement. Galvas, whose testimony varied somewhat, stated that Stevens said "it was not feasible, due to economics, to sign an agreement." Galvas admitted he did not present Stevens an agreement at that time but assumed he had been given one some time earlier by another Teamsters official. Stevens confirmed the meeting with Galvas and knew that he represented Local 36 and that the Local represented truckdrivers.

The record also shows that, later in July, Galvas and Ramsey, who had known Stevens for a number of years, states that he asked Stevens about "upgrading" his agreement, referring to his sand, rock, and gravel agreement.³ Stevens then talked about "economics"; i.e., how much he was making and what it cost him to process his material. Ramsey believed that Galvas separately asked Stevens in that meeting to sign an agreement. Stevens confirms that a meeting with Ramsey and Galvas occurred; he denied that at the time of that meeting he was aware of the Operating Engineers Exhibit 1 agreement; and he testified that Galvas did not specifically refer to a "Teamsters agreement" but just said "agreement." Upon the foregoing and the entire record in this case, we are unable to conclude that the Unions at any time manifested an intention to represent all of the Employer's employees on a joint basis.

On August 4 picketing of the Employer's premises commenced and was conducted by each of the two unions whose pickets carried signs bearing the following legends.

The Teamsters picket sign reads as follows:

Stevens Trucking
does not have a labor contract
with Teamsters Local 36 for
the drivers of this truck.

Sanctioned by the San Diego Bldg. Trades

The sign used by the Operating Engineers bears the legend:

Operating Engineers
#12

Stevens Trucking
No Contract

Sanctioned by S. D. Building Trades Council
AFL-CIO

The picketing continued on a daily basis, apparently through September 5, 1976.

There is also record evidence regarding area bargaining which demonstrates that both the Teamsters and the Operating Engineers are signatories to a master agreement with the Rock Producers Association of San Diego County and are signatories to

short-form agreements with a number of sand and gravel producers who are not members of that multiemployer group. The agreements in evidence disclose that the units represented by the Teamsters encompass various types of drivers as well as truck mechanics whereas the units represented by the Operating Engineers include employees classified, *inter alia*, as "screenman," or "skiploader," "heavy duty repairman," among others, but does not include truckdrivers or truck mechanics. Thus, the units covered by these agreements, viewed in conjunction with other record evidence, likewise tend to support the Unions' unit contentions.⁴

Considering the record as a whole, we conclude that it was error to place the two Unions on the ballot as joint representatives seeking to represent an overall unit. Accordingly, we shall vacate the results of the election previously conducted herein and set aside the election, and we shall direct new expedited elections in the following units which we find to be appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

UNIT A: All full-time and regular part-time truck drivers and truck mechanic employed by the Employer, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.

UNIT B: All full-time and regular part-time loader-operators, screenmen or conveyormen, heavy duty repairmen, excluding all other employees, office clerical employees, guards and supervisors as defined in the Act.⁵

⁴ Although the Employer contends that truckdrivers also work as loader operators, the record evidence discloses that these employees are predominantly engaged in truckdriving duties and properly belong in a separate unit. Further, we conclude from the record as a whole that the Teamsters picketing was aimed not only at the drivers but also at the truck mechanic. This conclusion is supported, in part, by the Teamsters agreement in evidence which covers truckdrivers as well as truck mechanics, classifications of employees traditionally represented by that Union. Moreover, while Galvas did not spell out the classifications of employees for whom it sought recognition from Stevens, we view his request for a "short form" agreement as encompassing such employees. Inasmuch as the Employer's mechanic, Frank Mell, works on the Employer's trucks as well as other equipment and when not engaged in such duties performs truckdriving functions, he is included in Unit A found appropriate herein. The remaining employees of the Employer comprise classifications which the evidence shows are traditionally represented by the Operating Engineers and to whom that Union's picketing was aimed. Accordingly, they are included in Unit B.

⁵ An issue as to the status of leadmen Monk was raised on the record. Operating Engineers took the position that he was a supervisor, whereas the Employer contends he should be included in the unit. According to the record, Monk was challenged in the initial election. Testimony was taken concerning Monk's duties and authority, however, while it appears he does not possess any primary supervisory indicia, he "oversees that everything is working properly" and consults with Stevens concerning disciplinary problems. Inasmuch as the nature of his direction of the employees is unclear as well as the extent of his authority, if any, to recommend action affecting the employees' status, Monk shall be permitted to vote under challenge in unit B as his duties are similar to those included in the unit.

³ Admitted into evidence as Operating Engineers Exh. I is a copy of a two-page agreement entered into September 20, 1971, between Stevens Trucking and Local 12 in which, among other things, the Employer agrees to accept and be bound by the terms and conditions of multiemployer agreements applicable to the Employer's operations. The agreement states that the Employer is not a signatory to any recognized Operating Engineers multiemployer agreement. It also contains the written words "Rock Sand Gravel" and the signature of Stevens as well as signatures for the Union. Stevens admitted that it was his signature and initials on the agreement but otherwise denied any knowledge of it.

ORDER

It is hereby ordered that the certification of results of election issued September 26, 1975, in the instant

case be, and it hereby is, vacated; and that the election be, and it hereby is, set aside.

[Direction of new expedited elections omitted from publication.]