

World Southern Corporation and United Steelworkers of America, AFL-CIO, Petitioner. Case 11-RC-3942

December 4, 1974

DECISION ON REVIEW

BY CHAIRMAN MILLER AND MEMBERS FANNING AND KENNEDY

On September 9, 1974, the Regional Director for Region 11 issued a Decision and Direction of Election in the above-entitled proceeding, in which he found that there was a substantial and representative segment of the Employer's ultimate complement of employees, and directed an immediate election. Thereafter, the Employer filed a request for review of the Regional Director's Decision on the ground that he departed from officially reported Board precedent in directing an immediate election where there was immediate and certain planned expansion of the present employee complement.

By telegraphic order dated October 2, 1974, the Board granted the request for review and stayed the election pending decision on 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 considered the entire record in this case with respect to the issues under review and makes the following findings:

On August 10, 1974, the date on which the hearing herein was conducted, there were approximately 297 employees on the job. By October 1, there would be 372 and, on November 1, 445 employees with the ultimate complement of 550 employees by April 12, 1975.

The Decision and Direction of Election issued September 9, 1974, with eligibility determined by the payroll period immediately preceding that date.

In the circumstances of this case we agree with the Employer that the Regional Director, by using a payroll period preceding September 9, 1974, unreasonably disenfranchised a substantial number of employees who

were definitely scheduled to be hired by the first part of November 1974.¹

Accordingly, we hereby remand the case to the Regional Director for the purpose of conducting an election pursuant to the Decision and Direction of Election, except that the payroll period for determining eligibility shall be that immediately preceding the issuance date of this Decision on Review. [*Excelsior* footnote omitted from publication.]

MEMBER FANNING, dissenting:

I dissented from the grant of review in this case, and I dissent here again from the majority's finding that the Regional Director somehow erred in issuing a Decision on September 9, 1974, in which he directed an immediate election in the unit involved here rather than waiting until some later time when the Employer's work force would be larger.

On the facts, the Regional Director correctly concluded that the Employer's operations were sufficiently established and stabilized and were manned by a substantial and representative segment of the Employer's ultimate working complement so that an immediate election could be directed. His decision was consistent with applicable Board precedent² and I therefore dissent from the majority's failure to adopt it.

¹ It is noted that in the cases relied on by our dissenting colleague, the eligibility periods for the elections were fixed so as to render eligible a substantial number of employees who were scheduled to be hired within several months after the close of the respective hearings therein.

² See, e.g., *Rheem Manufacturing Company*, 188 NLRB 436 (1971); *General Cable Corporation*, 173 NLRB 251 (1968). While the majority notes that in these two Decisions the Board included, as eligible employees, a substantial number of employees who were hired within several months after the close of the respective hearings therein, such action by the Board is clearly explainable by the length of time that had passed between the hearings in those cases and the issuance of the Decisions and Directions of Elections therein. Thus, 3 months passed in *Rheem Manufacturing* between hearing and Decision date, and over 4 months so elapsed in *General Cable*. Here, the Regional Director was able to issue his Decision 19 days after the hearing. While it may well be that, had the Regional Director taken as long to issue his Decision as was taken in *Rheem Manufacturing* and *General Cable*, he would have included the employees that the majority now includes, that is not the issue. Rather, the issue is whether the Regional Director correctly concluded that the complement of employees present at the time of his Decision and Direction of Election was sufficiently representative and substantial to warrant holding an immediate election. This is the test set out in *Rheem Manufacturing* and *General Cable* and what these cases stand for. On such a test, I conclude the Regional Director was correct in issuing his Decision and Direction of Election at the time he did.