

A & B Cartage, Inc. and Chauffeurs, Teamsters & Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 11-RC-4929

May 14, 1981

DECISION AND DIRECTION

The National Labor Relations Board has considered determinative challenges in an election held November 14, 1980,¹ and the Acting Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exception and brief, and hereby adopts the Acting Regional Director's findings² and recommendations.

DIRECTION

It is hereby directed that the Regional Director for Region 11 shall, within 10 days from the date of this Decision, open and count the ballots of Thomas O'Dell Gilmore, Dwight V. Arey, Sammy Lee Hussey, and Rudy Cassanova and thereafter prepare and cause to be served on the parties a re-

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 7 for, and 4 against, the Petitioner; there were 5 challenged ballots, a sufficient number to affect the results.

² In adopting the Acting Regional Director's finding that the parties' stipulation was not dispositive of Doyle's eligibility, Chairman Fanning and Member Zimmerman note that they do not regard the Board as bound by parties' stipulations on issues of supervisory status. See *Judd Valve Co., Inc.*, 248 NLRB 112, fn. 3 (1980), and cases cited therein.

vised tally of ballots, upon which basis he shall either issue the appropriate certification or, if the ballot of Gary Wayne Doyle remains determinative, direct that a hearing be held to resolve the issue of his supervisory status.

MEMBER JENKINS, dissenting in part:

I disagree with my colleagues' decision to direct that a hearing be held to resolve the issue of Gary Doyle's supervisory status in the event his ballot is determinative.³ There is no dispute that Doyle's name was included on a *Norris-Thermador*⁴ list agreed to by the parties. This list agreed to by the parties includes a factual stipulation as to the duties and authority of Doyle specifically indicating, *inter alia*, that Doyle does not possess any indicia of supervisory status as set out in Section 2(11) of the Act.⁵ Therefore, I see no reason to depart from our general policy that preelection agreements be accorded finality.⁶

³ No exceptions have been filed to the Acting Regional Director's recommendation that the challenged ballots of 4 other named employees be opened and counted and that a revised tally of ballots be issued. Hence, the sole issue presently before the Board is whether, if the ballot of Doyle is determinative after the revised tally is issued, a hearing should be held to resolve the issue of Doyle's supervisory status.

⁴ *Norris-Thermador Corporation*, 119 NLRB 1301 (1958).

⁵ The instant case is readily distinguishable from *Laymon Candy Company*, 199 NLRB 547 (1972), where the stipulation or agreement was only as to the ultimate legal question of eligibility to vote.

⁶ See my concurring opinion in *Judd Valve Co., Inc.*, 248 NLRB 861 (1980).