

**Penske Dedicated Logistics, Inc. and Vincent Lopez,
Petitioner, and Local 560, International Brotherhood of Teamsters, AFL-CIO.** Case 22-RD-1157

December 21, 1995

DECISION AND CERTIFICATION OF
RESULTS OF ELECTION

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

The National Labor Relations Board has considered an objection to an election held June 21 and 22, 1995,¹ and the Regional Director's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 21 for and 37 against the Union, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs and adopts the Regional Director's findings and recommendations only to the extent consistent with this decision.

The Employer runs a trucking facility in Garfield, New Jersey, which operates 7 days a week, including Saturdays, Sundays, and holidays. The Employer employs approximately 61 employees, including 22 part-time employees, who work only on Saturdays and Sundays.

On Friday, June 9, the Employer received from the Board's Regional Office and posted the official Notices of Election. The election notices were posted in the drivers' room and in the dispatch office from that date through the final dates of the election. The Regional Director found that the Employer failed to comply with the Board's Rules in that the notices did not remain posted until the end of the election. In support of this finding, he noted that the drivers' room and dispatch office where the official Notices of Election were posted were closed on Sunday and that approximately 22 employees (36 percent of the unit) were regular part-time employees who worked at the Employer's facility only on Saturdays and Sundays. He apparently concluded that locking the areas where the notices were posted on Sundays was the equivalent of removing the notices for that period of time. Accordingly, he recommended that the election be set aside. We disagree.

Section 103.20 of the Board's Rules and Regulations provides that the Board's official Notices of Election must be posted in conspicuous places at least 3 full

¹ All dates are in 1995 unless otherwise stated.

working days prior to 12:01 a.m. of the day of the election and that the notices shall remain posted until the end of the election. Section 103.20 also provides that the term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.²

The posting here met the literal language of the rule in that the notice was posted for 3 full working days and the notice, once posted, remained posted until the end of the election. Although we share the Regional Director's concern that employees have access to election notices during the posting period we do not believe the locking of the rooms on Sunday, in accord with the Employer's customary practice, is the equivalent of taking the notice down for part of the posting period. Rather, we think this concern is more properly addressed in deciding whether the notice has been posted in conspicuous places. Here, full-time employees had access to the notice for 3 full working days required by the Board's Rules. Further, weekend part-time employees had access to the notice on 2 Saturdays prior to the election. In these circumstances we find that the Employer met its obligation to post notices in conspicuous places. We conclude, therefore, that the notices were posted in compliance with the Board's Rules. Accordingly, we overrule the Union's objection and certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Local 560, International Brotherhood of Teamsters, AFL-CIO, and that it is not the exclusive bargaining representative of these bargaining unit employees.

²Sec. 103.20 provides:

Posting of Election Notices.—(a) Employers shall post copies of the Board's official Notice of Election in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

(b) The term "working day" shall mean an entire 24-hour period excluding Saturdays, Sundays, and holidays.

(c) A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 working days prior to the commencement of the election that it has not received copies of the election notice.

(d) Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of section 102.69(a).