

TA Investment Co., Inc. d/b/a Operator Services West and International Brotherhood of Electrical Workers, Local Union No. 396, AFL-CIO, Petitioner. Case 28-RC-4802

October 12, 1990

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

The National Labor Relations Board, by a three-member panel, has considered objections to an election held March 30, 1990, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 16 for and 72 against the Petitioner, with 4 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the Regional Director's findings and recommendations,¹ and finds that a certification of results of election should be issued.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for the International Brotherhood of Electrical Workers, Local Union No. 396, AFL-CIO, and that it is not the exclusive representative of these bargaining unit employees:

All full-time and regular part-time operators, customer service representatives and accounting employees employed by TA Investment Co., d/b/a Operator Services West, 1500 East Tropicana Av-

enue, Las Vegas, Nevada; but excluding all managerial and professional employees, confidential employees, guards and supervisors as defined by the Act.

MEMBER DEVANEY, dissenting.

I do not join my colleagues in adopting the Regional Director's recommendation to overrule the Petitioner's timely objections. On April 13, 1990, 1 day after the deadline for the submission of evidence supporting the objections, the Petitioner forwarded to the Regional Director a position statement, arguments, and a witness list, and it also asked for a brief additional period in which to obtain witness affidavits. The Petitioner indicated that an unexpected family emergency involving its counsel had caused the delay. Relying on *Star Video Entertainment*, 290 NLRB 1010 (1988), the Regional Director refused to consider the Petitioner's reasons for its tardiness, rejected its evidence, denied its request for a brief extension, and recommended that its objections be overruled. In my view, the Regional Director misconstrued the Board's decision in *Star Video* and consequently failed to properly exercise his discretion to accept the documents, pursuant to Section 102.69(a) of the Board's Rules and Regulations.

Section 102.69(a) provides in pertinent part that "[w]ithin 7 days after the filing of objections, or such additional time as the Regional Director may allow [emphasis added], the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections." Thus, as noted in my dissent in *Public Storage*, 295 NLRB 1034, 1035 (1989), "Section 102.69(a) expressly leaves to the Regional Director the discretion to allow a party additional time to submit its evidence in support of its objections [footnote omitted]." The admonition in *Star Video*, supra, to "strictly appl[y]" Section 102.69(a) does not eliminate or curtail the discretion available to a Regional Director to grant a reasonable extension to the objecting party under certain appropriate circumstances.

I find that the Petitioner's asserted reasons for its tardiness justify its desire for additional time beyond the April 12, 1990 deadline to submit its supporting evidence. Therefore, unlike my colleagues, I would reverse the Regional Director's decision not to consider the Petitioner's objections on their merits.

¹ We agree with the Regional Director that the Petitioner's objections should be overruled pursuant to the principles set forth in *Star Video Entertainment*, 290 NLRB 1010 (1988), because it did not timely submit evidence in support of its objections. The Petitioner contends in exceptions that the Regional Director should have granted its request for a brief extension of time to submit evidence. It argues that a personal family emergency of the attorney handling the case presented special circumstances warranting such an extension. Although the alleged emergency arose on April 11, 1990, the Petitioner admits that it did not request an extension of time or submit a position statement and list of potential witnesses until April 13, 1 day after the April 12 deadline for submission of evidence. Contrary to our dissenting colleague, we find that Sec. 102.69(a) of the Board's Rules and Regulations does not require consideration of a request for an extension of time when the request itself is untimely. Moreover, assuming arguendo that consideration of an untimely request is permitted under the Rules and *Star Video*, we disagree with the dissent's implicit view that the Petitioner has proved that the Regional Director abused his broad administrative discretion by not granting its request.