

**Harold M. Pitman Company and Ronald Stenten,
Petitioner and Local 560, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO. Case 22-RD-983**

July 5, 1991

DECISION AND DIRECTION

BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY

The National Labor Relations Board, by a three-member panel, has considered determinative challenges and objections in an election held March 1, 1990 and the hearing officer's report recommending disposition of them.¹ The election was conducted pursuant to a Stipulated Election Agreement, and the tally of ballots shows 10 for and 8 against the Union, with 7 challenged ballots, a number sufficient to affect the results.

The Board has reviewed the record in light of the exceptions and briefs and adopts the hearing officer's findings² and recommendations only to the extent consistent with this decision.

The hearing officer recommended, inter alia, that the Union's challenges to the ballots cast by employees Frank Olivo and LanFranco Catanzaro be sustained based on his findings that the employees subjectively intended to quit their employment with the Employer shortly after the election. We disagree.

The record shows that both employees were employed by the Employer on the eligibility date and the

date of the election.³ Moreover, the credited testimony reveals that these individuals were employed in positions within the unit and that the Employer considered them permanent employees. Nevertheless, the hearing officer found that they were not eligible to vote in the election. The sole basis for this finding was the hearing officer's determination that Olivo and Catanzaro intended at the time of the election to quit their employment with the Employer and return to their regular businesses. The hearing officer therefore viewed these employees as analogous to seasonal employees and concluded that they did not share a community of interest with the Employer's permanent employees.

Contrary to the hearing officer, the Board has long held that an employee's intention to quit after the election does not affect his or her eligibility. *Personal Products Corp.*, 114 NLRB 959, 961 (1955). See also *Computed Time Corp.*, 228 NLRB 1243, 1250-1251 (1977), modified other grounds 587 F.2d 790 (5th Cir. 1979) (employees eligible even though they announced intention to quit 1 week prior to election). As previously noted, the record establishes no other basis for finding that these employees are not eligible voters. Accordingly, we overrule the challenges to their ballots.

DIRECTION

IT IS DIRECTED that the Regional Director for Region 22 shall, within 14 days of this Decision and Direction, open and count the ballots of LanFranco Catanzaro, Frank Olivo, Frank Anderson, Richard Pardi, Michael Mangerpan, Jose Vasquez, and Keith Wynott, and thereafter prepare and cause to be served on the parties a revised tally of ballots, on the basis of which he shall issue an appropriate certification.

IT IS FURTHER DIRECTED that this matter be remanded to the Regional Director for Region 22 for further processing consistent with this decision.

¹Following an investigation, the Regional Director for Region 22 issued a report recommending that the Board overrule all the challenges and objections. In an unpublished decision dated October 23, 1990, the Board adopted the Regional Director's recommendation to overrule challenges to the ballots cast by Frank Anderson, Richard Pardi, Michael Mangerpan, Jose Vasquez, and Keith Wynott. The Board also adopted the Regional Director's recommendation to overrule the Union's objections alleging that the Employer improperly granted benefits to certain employees and interfered with employee free choice by discriminating against certain employees, and alleging that the Board agent conducting the election improperly refused to accept challenges to five ballots. However, the Board determined that challenges to ballots cast by employees Frank Olivo and LanFranco Catanzaro, together with a unit packing objection, raised substantial and material issues best resolved by a hearing and remanded this proceeding to the Regional Director for a hearing.

²The Union has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

³The hearing officer noted that Olivo's name did not appear on payroll records after February 23, 1990, but that Olivo testified that he did not quit his job until March 5 or 7, 1990. Contrary to the hearing officer, we perceive no "discrepancy" from this evidence. Several witnesses, including Olivo, testified without contradiction that Olivo took a prescheduled vacation starting the week before the election and quit the week following the election while still on vacation. Pursuant to the Employer's vacation policies, newly hired employees like Olivo would not have accrued paid vacation time after only a few months at the job. Under the Board's procedures, an employee absent from work on election day for one of the reasons specified in the direction of election, including vacation, is nevertheless eligible to vote.