

**Mission Industries and Ralph Barbosa, Petitioner
and International Union of Operating Engi-
neers, Local 501, AFL-CIO. Case 31-RD-1032**

18 May 1987

**DECISION AND CERTIFICATION OF
REPRESENTATIVE**

**BY MEMBERS JOHANSEN, BABSON, AND
STEPHENS**

The National Labor Relations Board, by a three-member panel, has considered objections to an election held 24 October 1986 and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement.

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the Regional Director's findings and recommendations only to the extent that they are consistent with this decision.¹

Pursuant to a Stipulation for Certification Upon Consent Election, a secret mail ballot election was conducted on 24 October 1986. A ballot was mailed to each of 31 eligible voters, whose names and addresses were provided by the Employer. Twenty-eight ballots were returned. The tally of ballots shows 14 for and 13 against the Union, with 1 ballot declared void and none challenged. The Employer alleged in its Objections 1 and 2 that the voided ballot should be opened and counted (Objection 1) or, in the alternative, that the Board, through its agents, should have challenged the ballot rather than consider it void (Objection 2). The Union has excepted to the Regional Director's recommendation that the Employer's Objections 1 and 2 be sustained. We find merit in the Union's exceptions.

The mail ballot in question arrived at the Regional Office enclosed in the appropriate official envelope. The identification stub of the mail ballot envelope, however, was missing. This identification stub would have exhibited both the signature of the voter and a "key number" matching the particular ballot to that voter on the eligibility list. Although the main portion of the disputed mail ballot envelope was postmarked in Santa Barbara, California, the Board agent was unable to identify its source as an eligible voter and thus voided the ballot.

After the election, the Employer interviewed the only four eligible voters whose names were not checked on the eligibility list as having voted. Each of these individuals signed statements, which

the Employer submitted to the Regional Director in support of its objections. Only one of the four eligible voters interviewed attested to having mailed his ballot, with the identification stub attached and signed, from Santa Barbara.²

The Regional Director determined that these affidavits and the Santa Barbara postmark were sufficient to establish positively that the eligible voter who claimed to have mailed his ballot from Santa Barbara was the source of the ballot in question. Therefore, the Regional Director recommended that the ballot previously declared void be opened and counted and that a revised tally be issued.

The Union has excepted to the Regional Director's recommendation with respect to the Employer's Objections 1 and 2. The Union contends, inter alia, that the envelope identification stubs are necessary to ensure that only eligible voters participate in the election. We agree with this contention. As noted in *Brink's Armored Car*, 278 NLRB 141 (1986), mail ballot elections are more vulnerable to the destruction of laboratory conditions than are manual elections, due to the absence of direct Board supervision over the employees' voting. Accordingly, the Board has adopted mail ballot election procedures, including the use of an identification stub, designed to preserve the integrity of the election process and to ensure that no reasonable doubt is raised about the fairness or validity of that process. The absence of an identification stub, in itself, raises a reasonable doubt concerning whether only eligible voters participated in the election and whether each of those eligible voters cast only one ballot. See *Northwest Packing Co.*, 65 NLRB 890 (1946). We further find that permitting inquiry into the source of a mail ballot without an identification stub would greatly increase the potential for confusion and coercion and that such inquiries are not likely to dispel the reasonable doubt concerning the validity of such ballots.³ Accordingly, we con-

² The ballot declared void by the Board agent conducting the election has been retained in an official Board envelope and secured at the Regional Office. The Regional Director designated the four eligible voters whose names had not been checked off on the eligibility list as having voted as Employees A through D. Employee A indicated that he signed the identification stub of his mail ballot envelope and watched his wife deposit it in a Santa Barbara mailbox. Employee A's wife also provided a statement corroborating Employee A's account. Employees B and C claimed that they mailed their ballots from locations other than Santa Barbara. These ballots were not received by the Regional Office. Employee D, who resides in Santa Barbara, maintained that he never received a ballot from the Regional Office and, therefore, he did not vote. No party has excepted to the Regional Director's findings that the apparent failure of the Regional Office to receive the ballots of Employees B and C, as well as Employee D's apparent nonreceipt of a ballot, did not warrant setting aside the election.

³ Moreover, even assuming inquiry into the source of the presently disputed ballot would be appropriate, which we decline to do for the policy reasons set forth above, we would find that the Santa Barbara postmark on the mail ballot envelope and the employee affidavits would not be sufficient evidence to establish positively the identity of the voter.

¹ In the absence of exceptions, we adopt, pro forma, the Regional Director's recommendation that the Employer's Objections 3, 4, and 5 be overruled.

clude, contrary to the Regional Director, that the mail ballot in issue should remain void. We therefore overrule the Employer's Objections 1 and 2 and find that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for the International Union of Operating Engineers, Local 501, AFL-CIO and that it is the exclusive collective-bargaining repre-

sentative of the employees in the following appropriate unit:

Included: All engineers and automotive repairmen employed by Mission Industries at its facilities located in Bakersfield, Eureka, Fresno, Lancaster, Morro Bay, Oceanside, Oxnard, Pacific Grove, Sacramento, Salinas, Santa Barbara, Santa Cruz, Santa Maria, Turlock, Ventura and Victorville, California.

Excluded: Office clerical employees, professional employees, guards and supervisors as defined in the Act, and all other employees.