

Star Video Entertainment L. P. and Production, Merchandising and Distribution Employees Union, Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO, Petitioner.
Case 22-RC-9934

August 31, 1988

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS
JOHANSEN AND CRACRAFT

The National Labor Relations Board has considered objections to an election held May 13, 1988, 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 8 for and 15 against the Petitioner, with 1 challenged ballot, 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, and finds that a certification of results of election should be issued for the following reasons.

As indicated above, an election was held by secret ballot on May 13, 1988.¹ The Petitioner filed timely objections to the election on May 18.² The Regional Director, by letter dated May 20, notified the Petitioner of the requirement that evidence in support of objections to an election be submitted in accordance with Section 102.69(a)³ and that the deadline for submission of supporting evidence was May 26. The Petitioner failed, however, to submit evidence by that date. Although noting the Petitioner's submission of evidence on June 2, the Regional Director issued his report recommending dismissal of the Petitioner's objections for failure to proffer timely evidence in support of the objections.

¹ All dates are in 1988 unless otherwise specified

² The Petitioner's objections were filed in accordance with Sec 102.69(a) of the Board's Rules and Regulations which states, in pertinent part

Within 7 days after the tally of ballots has been prepared, any party may file with the Regional Director an original and five copies of objections to the conduct of an election or to conduct affecting the results of the election, which shall contain a short statement of the reasons therefor

³ Sec 102.69(a) states, in pertinent part

Within 7 days after the filing of objections, or such additional time as the Regional Director may allow, the party filing objections shall furnish to the Regional Director the evidence available to it to support the objections

The Petitioner's attorney contends,⁴ *inter alia*, that on May 27, the day following the Regional Director's deadline, a Board agent granted the Petitioner an additional 48 hours to submit the names and addresses of witnesses and set aside June 3 as the date he would take statements from the Petitioner's witnesses. The Petitioner's attorney stated that he immediately contacted the Petitioner and advised it to present the names and addresses of witnesses within 48 hours. Despite this additional time, however, the Petitioner did not submit any evidence in support of its objections until June 2.⁵

As of September 29, 1986, the Board revised its Rules and Regulations regarding the time periods in which to file documents with the Board, including the submission of evidence in support of objections to an election. In pertinent part, Section 102.69(a) was revised to increase the time period allowed by the rule for the filing of objections to an election and the submission of evidence in support of objections from 5 to 7 days. These revisions, along with an explanatory statement, were published in the Federal Register on July 1, 1986.⁶ In so doing, the Board put all parties on notice, with full explanation, that the new rule would be strictly applied. The Petitioner's argument that the Regional Director mechanically applied the rule is particularly unpersuasive in light of the additional time granted by the Board agent.⁷

For these reasons, the Board adopts the Regional Director's recommendations and issues a certification of the election results.

CERTIFICATION OF RESULTS OF ELECTION

It is certified that a majority of the valid ballots have not been cast for Production, Merchandising and Distribution Employees Union, Local 210, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and that it is not the exclusive bargaining representative of the unit employees.

⁴ The Petitioner's attorney submitted an affirmation of certain facts that are not challenged in the record

⁵ The Petitioner's attorney, in his affirmation, states, "[u]pon information and belief, the message was misunderstood by the Petitioner's business agent

⁶ 51 Fed Reg 23744 (1986)

⁷ In response to the Petitioner's argument that affidavits were to be taken June 3, it is obvious that the submission of names and addresses within the 48 hours granted by the Board agent was a prerequisite to the taking of statements, both because the Petitioner had already missed the previous deadline and because the Board agent specifically requested the names and addresses of witnesses who were to give statements on June 3. In fact, as indicated above, the Petitioner's attorney acknowledges the terms of the Board agent's extension of time