

NOT TO BE INCLUDED  
IN BOUND VOLUMES

LBP  
Perris, CA

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Southland Transit, Inc.,  
Employer

and

Case 21-RC-21256

United Transportation Union  
Petitioner

DECISION AND DIRECTION OF SECOND ELECTION

The National Labor Relations Board, by a three-member panel, has considered objections to an election held December 10, 2010, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 47 for and 50 against the Petitioner, with 3 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings<sup>1</sup> and recommendations as specified below,<sup>2</sup> and finds that the election must be set aside and a new election held.

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<sup>1</sup> The hearing officer's report and recommendation erroneously referred the parties to Sec. 102.67 of the Board's Rules and Regulations for any review of the decision. That section governs proceedings before a Regional Director. The hearing officer should have referenced Sec. 102.69, which outlines election procedures, including exceptions to a hearing officer's report concerning election conduct. Despite this error, the Employer properly filed exceptions under the procedures outlined in Sec. 102.69.

## DIRECTION OF SECOND ELECTION

A second election by secret ballot shall be held among the employees in the unit found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during the period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the date of the first election and who retained their employee status during the eligibility period and their replacements. *Jeld-Wen of Everett, Inc.*, 285 NLRB 118 (1987). Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the date of the first election and who have been permanently replaced.

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<sup>2</sup> The Employer 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 have carefully examined the record and find no basis for reversing the findings.

Because we agree with the hearing officer's recommendation to set aside the election based on the Employer's surveillance of voters (Objection 1), we find it unnecessary to pass on the additional allegation that the Employer interfered with the election by creating the impression of surveillance. (Objection 2).

Those eligible shall vote whether they desire to be represented for collective bargaining by union.

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of the Notice of Second Election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election if proper objections are filed.

Dated, Washington, D.C., May 6, 2011.

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Wilma B. Liebman, Chairman

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Craig Becker, Member

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Mark Gaston Pearce, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD