

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

OPTOMEN PRODUCTIONS, INC.,

and

Case 2-RC-23545

WRITERS GUILD OF AMERICA
EAST, INC., AFL-CIO

DECISION AND DIRECTION

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held on December 14, 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 4 for and 4 against the Union, with 3 determinative challenged ballots.¹

The Board has reviewed the record in light of the exceptions and briefs and has adopted the hearing officer's findings² and recommendations.³

¹ The Union filed objections to the election. By unpublished order dated April 13, 2011, the Board overruled the Acting Regional Director's decision to reject the Union's objections as untimely and ordered that the objections be accepted. The currently pending objections do not affect our decision here.

² 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.

DIRECTION

IT IS DIRECTED that the Acting Regional Director for Region 2 shall, within 14 days from the date of this Decision and Direction, open and count the ballot of Amy Van Vesseem. The Acting Regional Director shall serve on the parties a revised tally of ballots and take further appropriate action.⁴

Dated, Washington, D.C., July 26, 2011.

Wilma B. Liebman, Chairman

Craig Becker, Member

Mark Gaston Pearce, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

³ We agree with the hearing officer's recommendation that the challenge to Josh Vinitz's ballot be sustained on the basis that Vinitz did not share a sufficient community of interest with employees in the stipulated bargaining unit. We note that this finding is further supported by the testimony of Maria Silver, the Employer's executive in charge of production, that Vinitz received full benefits and that only management personnel were entitled to full benefits.

We agree with the hearing officer's analysis and recommendation that the challenge to Laura Donaghey's ballot be sustained on the basis that Donaghey's title of "assistant producer" was not included in the parties' stipulated unit description, which included only "associate producers" and "post producers." The Employer claims that, despite Donaghey's title, she should be included in the unit because she performed bargaining unit work on the show "Vegan Treats." The Employer's claim is unavailing, however, because the record establishes that the production process for "Vegan Treats" did not begin until after December 13, 2010, the eligibility cutoff date. See *Meadow Valley Contractors*, 314 NLRB 217, 217 (1994) (employee was not eligible to vote in upcoming election because he had not performed unit work for a sufficiently substantial amount of time prior to the eligibility cutoff date.)

⁴ Should the final tally of ballots result in a majority of votes for the Union, the Acting Regional Director should certify the Union accordingly. The Union's certification would render moot the Union's pending objections. Should the final tally result in a majority of votes against the Union, the Acting Regional Director shall take appropriate action concerning the pending objections.