

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-FIVE

Indianapolis, IN

JBM, INC., d/b/a BLUEGRASS SATELLITE  
Employer

and

Case 25-RC-10327

LOCAL UNION NO. 135, CHAUFFEURS, TEAMSTERS,  
WAREHOUSEMEN AND HELPERS, INDIANAPOLIS,  
INDIANA, AND AIRLINE EMPLOYEES OF THE STATE  
OF INDIANA a/w THE INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS

Petitioner

SIXTH SUPPLEMENTAL DECISION  
ON CHALLENGES AND ORDER

Three elections have been conducted to determine whether the employees of the Employer desire to be represented by a labor organization for the purposes of collective bargaining.<sup>1</sup> Mail ballots have been used in all three elections because of the geographically wide-spread, multi-locations of this unit with facilities in a 5-state area stretching from Iowa into Kentucky and Ohio. The first election beginning July 12, 2006<sup>2</sup> involved three choices: Petitioner; Production Workers Union, Local 707 (NPW); and None.<sup>3</sup> As a result of the election,

---

<sup>1</sup> The appropriate unit as set forth in the Second Supplemental Decision and Direction of Runoff Election is as follows:

All full-time and regular part-time technicians, trainers, and clerks employed by the Employer at all its Illinois, Indiana, Iowa, Kentucky, and Ohio facilities (excluding the Columbus, Ohio facility); BUT EXCLUDING all sales employees, professional employees, guards and supervisors, including head area technicians and working team leaders, as defined in the Act, and all other employees.

<sup>2</sup> Since mail ballot elections necessarily extend over a period of weeks (see Sec. 11336.2(d)), the beginning date that ballots were mailed is referenced.

<sup>3</sup> This election was directed pursuant to the June 15, 2006 Supplemental Decision and Direction of Election.

the two leading vote-getters were Petitioner and None.<sup>4</sup> A mail ballot runoff election commenced on October 27, 2006 in order to determine whether or not certain employees of the Employer desired to be represented by the Petitioner for purposes of collective bargaining.<sup>5</sup> The results of this runoff election were, however, set aside based on the Employer's objectionable conduct.<sup>6</sup> A new (second) runoff mail ballot election began on August 22, 2007 and the ballots

---

<sup>4</sup> The tally of ballots from the initial election, as revised in the September 27, 2006 Second Supplemental Decision and Direction of Runoff Election showed the following results:

Approximate number of eligible voters	747
Void ballots	28
Votes cast for the Petitioner	172
Votes cast for the Intervenor	107
Votes cast against participating labor organizations	123
Valid votes counted	402
Unresolved Challenged ballots	1
Valid votes counted plus challenged ballots (including sustained challenges)	445
Sustained challenges (voters ineligible)	42

<sup>5</sup> The tally of ballots for the runoff election showed the following results:

Approximate number of eligible voters	685
Number of void ballots	3
Number of votes cast for the Petitioner	140
Number of votes cast against participating labor organization	170
Number of valid votes counted	310
Number of challenged ballots	18
Number of valid votes counted plus challenged ballots	328

<sup>6</sup> Hearing Officer Kim Sorg-Graves issued her Hearing Officers Report on Objections and Recommendations to the Regional Director on February 15, 2007, recommending that certain of the Objections filed by the Petitioner be sustained and a re-run of the runoff election be held. These recommendations were affirmed and adopted by the undersigned in the June 4, 2007 Fourth Supplemental Decision on Objections and Order. On July 17, 2007 the Board denied the Employer's Request for Review of this Fourth Supplemental Decision.

were counted on September 11, 2007.<sup>7</sup> Since the challenged ballots in this third election were sufficient in number to affect the results of the election, the undersigned directed a hearing to resolve the challenges.<sup>8</sup>

On November 26, 2007, Hearing Officer Derek Johnson issued his Hearing Officer's Report on Challenges and Recommendations to the Regional Director, recommending that the challenges to the ballots of the 152 individuals who were hired by the Employer after the payroll eligibility cutoff dates used for the original election (individuals identified in Exhibits 1 and 3 of the Stipulation attached to the Fifth Supplemental Decision) be sustained and their ballots neither be opened nor counted; the challenges to the 26 individuals who were hired prior to the original payroll eligibility cutoff dates and employed at the Employer's Maysville, Kentucky facility (individuals identified in Exhibit 2 of the Stipulation attached to the Fifth Supplemental Decision) be overruled<sup>9</sup>; and the challenges to the ballots of George Ayers and Jessie Anderson Tapp be overruled as agreed to by the parties.

On December 10, 2007, the Employer filed exceptions to the Hearing Officer's recommendations with regard to his findings and conclusions regarding the challenges to the 152 employees who were hired after the payroll eligibility cutoff date used for the initial election. No exceptions were filed to the Hearing Officer's findings and conclusions regarding the challenges to the employees employed at the Employer's Maysville, Kentucky facility. I have carefully reviewed the record evidence which forms the basis for the Hearing Officer's Report on Challenges and Recommendations to the Regional Director, as well as the Employer's exceptions and Petitioner's response thereto.

I affirm and adopt as my own the Hearing Officer's findings, conclusions and recommendations to the undersigned. I agree with the Hearing Officer that despite the characterization of the August 22, 2007 election as a rerun election it was a re-run of a runoff or essentially a second runoff election. As such, it is a continuation of a process which started with the initial election on July 12, 2006. Thus, the ordinary practice is to use the prior payroll

---

<sup>7</sup> The tally of ballots for the second runoff election showed the following results:

Approximate number of eligible voters	924
Number of void ballots	12
Number of votes cast for the Petitioner	110
Number of votes cast against participating labor organization	77
Number of valid votes counted	187
Number of challenged ballots	186
Number of valid votes counted plus challenged ballots	373

<sup>8</sup> This hearing was directed pursuant to the October 17, 2007 Fifth Supplemental Decision, Order Directing Hearing and Notice of Hearing.

<sup>9</sup> Excluding George Ayers, whose eligibility is discussed below.

eligibility cutoff dates for establishing the eligibility of voters.<sup>10</sup> In its exceptions, the Employer contends that the various Excelsior lists provided by the Employer establish substantial turnover in employees so as to require a deviation from this ordinary practice and justify the use of a more current payroll eligibility cutoff date. In support of this proposition, the Employer argues that *Lane Aviation Corp.*, 221 NLRB 898 (1975), relied upon by the Hearing Officer, does not preclude the utilization of an updated eligibility list when there is a thirteen month hiatus between elections. Rather, the Employer argues that it was only in the absence of evidence in the record to substantiate substantial employee turnover in that case, that a thirteen month hiatus was found insufficient to require a new eligibility list. However, in the instant case the only record evidence of turnover is the bare lists provided by the Employer for the July 12, 2006, October 27, 2006 (which were the same lists) and August 22, 2007 elections. There is no record evidence regarding the nature, reasons, or circumstances regarding any employee turnover. According to the Employer's assertion, approximately 60% of the approximately 747 employees eligible to vote in the initial election were still employed at the time of the second runoff election. While this represents a smaller percentage of the current employee complement (for what reasons the record does not indicate), it remains a substantial number of employees who were involved in the initial process.<sup>11</sup> The participation of the other employees could potentially nullify the choice of those employees since the newly hired employees were not involved in the narrowing of the ballot choices. Therefore, I find that the evidence is insufficient to establish such substantial employee turnover during the thirteen month delay between the initial election and the second runoff election to establish an exception to the ordinary practice of using the prior eligibility period in a runoff election.

## ORDER

Accordingly, based upon the findings and conclusions set forth in the Hearing Officer's Report on Challenges and Recommendations to the Regional Director, IT IS HEREBY ORDERED that:

1. The challenges to the ballots of the 152 individuals identified in Exhibits 1 and 3 of the Stipulation attached to the Fifth Supplemental Decision are sustained and that their ballots shall be neither opened nor counted.

---

<sup>10</sup> Following discussions with the parties, I decided to utilize the more expansive payroll eligibility cutoff dates of July 15, 2007 for trainers and clerks and July 18, 2007 for technicians in the Notice of Election for the third mail ballot election. This best preserved the arguments of both parties regarding the appropriate eligibility date to be used for the third election which could be resolved following the election. This decision further provided for the most comprehensive list of potentially eligible voters giving them an opportunity to cast ballots, since the election was being conducted by mail. The reason for using the more expansive date was to avoid the possibility of having to run yet a fourth election, thus causing further delay in this process. After reviewing the evidence presented at hearing and the parties' arguments, I agree that the earlier payroll eligibility cutoff date is appropriate in this case.

<sup>11</sup> The substantial number of employees voting in the second runoff election is also apparent from the vote totals. In the second runoff election the 110 votes cast for the Petitioner and the 77 votes cast against when counted with the 28 remaining (uncounted) challenged ballots totals 215. This is over 65% of the 328 valid votes counted plus challenged ballots cast in the first runoff election.

2. The challenges to the ballots of the 26 individuals identified in Exhibit 2 of the Stipulation attached to the Fifth Supplemental Decision (excluding George Ayers) are overruled and those ballots should be opened and counted only if they are determinative after the resolution of the challenges described above in number 1.
3. The challenges to the ballots of George Ayers and Jessie Anderson Tapp are overruled and should be opened and counted only if such ballots are determinative after the resolution of the challenges described above in number 1.
4. A revised Tally of Ballots shall issue.

### **REVISED TALLY OF BALLOTS**

Based upon the above conclusions, I hereby issue the following Revised Tally of Ballots:

	Original Tally	Final Tally
Approximate number of eligible voters	924	
Number of void ballots	12	12
Number of votes cast for the Petitioner	110	110
Number of votes cast against participating labor organization	77	77
Number of valid votes counted	187	187
Number of uncounted challenged ballots	186	28
Number of valid votes counted plus uncounted challenged ballots	373	215
Sustained challenges (voters ineligible)		158 <sup>12</sup>

The remaining uncounted challenged ballots shown in the Final Tally column are NOT sufficient in number to affect the results of the election.

A majority of the valid votes counted plus uncounted challenged ballots in the Final Tally column has been cast for Local Union No. 135, Chauffeurs, Teamsters, Warehousemen and Helpers, Indianapolis, Indiana, and Airline Employees of the State of Indiana a/w the International Brotherhood of Teamsters

---

<sup>12</sup> Included in the 158 sustained challenges are the 152 ballots of individuals hired after the payroll eligibility date of the initial election described in number 1 of the Order. The additional 6 sustained challenges (the ballots of Benjamin Addington, Donald Burrell, Jason Louis Finley, Clifford Alan Kinsey, Ryan Andrew LeRoy and Will Preston Wright) were agreed to by the parties and approved by the undersigned in the October 17, 2007 Fifth Supplemental Decision.

## RIGHT TO REQUEST REVIEW

Under the provisions of Sections 102.69 and 102.67 of the Board's Rules and Regulations, a request for review of this Sixth Supplemental Decision may be filed with the Board in Washington, D.C. The request for review must be received by the Board in Washington, D.C., addressed to the Executive Secretary, 1099-14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by **January 29, 2008**. A copy of the request for review should be simultaneously served upon each party and upon the Regional Director.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file one of the documents which may now be filed electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. Guidance for E-filing can also be found on the National Labor Relations Board web site at [www.nlr.gov](http://www.nlr.gov). On the home page of the website, select the **E-Gov** tab and click on **E-Filing**. Then select the NLRB office for which you wish to E-File your documents. Detailed E-filing instructions explaining how to file the documents electronically will be displayed.

SIGNED at Indianapolis, Indiana, this 15<sup>th</sup> day of January, 2008.

/s/ Rik Lineback

Rik Lineback, Regional Director  
National Labor Relations Board  
Region Twenty-five  
Room 238, Minton-Capehart Building  
575 North Pennsylvania Street  
Indianapolis, Indiana 46204-1577

RL/jcm

H:\Decisions\D2510327sixthsupp