Clarence E. Clapp and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, General Teamsters Local Union No. 324, Petitioner. Case 36-RC-4802

18 April 1986

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN DOTSON AND MEMBERS DENNIS AND JOHANSEN

The National Labor Relations Board, by a three-member panel, has considered objections to an election held 9 July 1985 and the Acting Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows two for and two against the Petitioner, with no challenged ballots. Neither the Petitioner nor the Employer filed objections to the election.

The Board has reviewed the record in light of a postelection letter received by the Subregional Office from an eligible voter who claimed that he was denied an opportunity to cast a ballot, the Acting Regional Director's disposition of the claim, and the Employer's exceptions, and has decided to adopt the Acting Regional Director's findings and recommendations only to the extent consistent with this decision.

Following the 9 July 1985 election, Jeffrey P. Fudge, an eligible voter, complained by letter dated 28 July 1985, and received by the Subregional Office 31 July 1985, that he had arrived at the polling area prior to the scheduled 5 p.m. closing of the polls, but that he found the polls closed and was thereby denied an opportunity to cast a ballot. Fudge's letter also contained a statement executed by three witnesses attesting to his arrival in the building where the election was conducted at 4:59 p.m., as well as a statement by such witnesses that the Board agent in charge of the election had returned the key to the room where the election was conducted at 4:50 p.m.

The Acting Regional Director's investigation revealed that the Board agent in charge of the election prepared a stipulation, executed by the parties prior to the voting, which provided that the polls would be closed ahead of the previously scheduled 5 p.m. closing in the event all eligible voters had cast ballots. The stipulation also contained the provision "except that the parties understand that Jeff Fudge will not appear at the polls to vote." This language was inserted in the stipulation following a telephone call at 2:45 p.m. on the day of the election to the Board agent from an official of the Petitioner who asserted that Fudge had contacted the Petitioner to report that he was in Portland, Oregon, some 50 miles distant from the Salem, Oregon polling location, and would not be able to appear in time to cast a ballot. The Board agent conducted the election and left the polling area, as alleged by Fudge and witnesses, at approximately 4:50 p.m. The service of the tally of ballots was accomplished by mail on 10 July 1985, the day following the election.

On 15 August 1985 the Acting Regional Director issued an Order to Show Cause why the election should not be set aside based on the aforementioned circumstances. The Employer, in a letter received 26 August 1985, responded to the Show Cause Order, contending that Fudge was not a party to the election and therefore had no standing to file objections to the election and that, in any event, Fudge's objection was not timely filed. Additionally, the Employer argued that the polls were closed early pursuant to a stipulation between the parties and the Board agent, and that such agreement was reached based on information received from Fudge that he would not be able to appear to vote prior to the scheduled 5 p.m. closing of the polls. The Petitioner did not respond to the Order to Show Cause.

The Acting Regional Director found that closing the polls ahead of that closing time set forth in the Notice of Election is directly contrary to that policy set forth in the NLRB Casehandling Manual at Section 11324. That section provides in pertinent part that "the polls may not be closed early even though it may appear that 100 percent of the eligible voters have voted." He also indicated that Fudge was apparently in a situation where he faced disenfranchisement through no fault of his own, but because he was away from the polling area making a delivery at the behest of the Employer, and that it might have been appropriate to extend the polling time in this matter. The Acting Regional Director stated further that to close the polls ahead of schedule insured the disenfranchisement of Fudge, whose vote would have been determinative, and was based on a hearsay claim made by an official of the Petitioner to the Board agent that Fudge would not appear to vote. Finally, the Acting Regional Director concluded that, under such circumstances, the election must be set aside, the previously issued Certification of Results revoked and a second election held to enable all eligible voters an opportunity to cast a ballot.

The Employer excepts and we find merit in its exceptions.

The Board has long held that individual employees are not "parties" within the definition of "party" as set forth in Section 102.8 of the Nation-
We find, therefore, that Jeffrey P. Fudge is not a “party” to this proceeding and we shall dismiss Fudge’s letter as purported objection made by an individual who is not a “party” to this proceeding. Moreover, were this letter a proper objection, inasmuch as the election was held on 9 July 1985 and Fudge’s letter was not received by the Subregional Office until 31 July 1985, 21 days after the election and 8 days after the date for timely filing of objections, we find that Fudge’s purported objection was untimely filed. Finally, the record shows that Fudge failed to serve a copy of his letter on the Employer, as required by Section 102.69(a) of the Board’s Rules.

In view of this procedural posture, we have no choice but to reverse the Acting Regional Director without reaching the merits. We shall, therefore, certify the results of the election.

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1 Westinghouse Electric, 78 NLRB 315 (1948) In that case, the Board received exceptions to the Regional Director’s recommendation purporting to be signed by individual employees of the employer. The Board held that it did not consider the individual employees to be parties to the proceeding within the definition of “party” in the Board’s Rules and Regulations.