

**Y-Tech Services, Inc. and International Association of  
Machinists and Aerospace Workers, AFL–CIO.**  
Case 10–RC–131670

January 29, 2015

**DECISION AND DIRECTION OF  
SECOND ELECTION**

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON  
AND MCFERRAN

The National Labor Relations Board, by a three-member panel, has considered objections to an election held August 7, 2014, 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 37 for and 41 against the Union, with 4 challenged ballots, an insufficient number to affect the results.

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

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<sup>1</sup> We adopt the hearing officer's recommendation to set aside the election because five eligible voters, a determinative number, were

[Direction of Second Election omitted from publication.]

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prevented from casting ballots by their work assignments. The Employer contends that the four ballot challenges should first be resolved because that could potentially determine whether the five disenfranchised voters affected the election result. For the reasons stated in *Kansas City Bifocal Co.*, 236 NLRB 1663, 1664 (1978), we disagree and decline to remand for a second hearing on the challenges. While we would be reluctant to set aside an election in the absence of evidence demonstrating that circumstances attributable to a party had a provable prejudicial effect, the fact that a potentially determinative number of eligible employees could not cast ballots due to their work assignments away from the polling location requires setting aside the election. *Id.* Further, the Board's procedure for the conduct of its elections requires that all eligible employees be given the opportunity to vote. *Yerges Van Liners, Inc.*, 162 NLRB 1259, 1260 (1967). Such a procedure was not maintained here.

Member Johnson agrees that the election must be set aside on this record. However, he would find that an employee's failure to vote would not be grounds for setting aside an election if it were shown, as it has not been shown here, that the employee had consciously chosen not to participate in the election by accepting a truly voluntary work assignment.

In the absence of exceptions thereto, we adopt the hearing officer's recommendations to overrule the Petitioner's Objections 1 and 2.