NOT INCLUDED IN

BOUND VOLUMES

PMcE
Hobart, IN

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HANSON COLD STORAGE CO. OF INDIANA
d/b/a HANSON LOGISTICS

and Case 13-CA-178619

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 142

ORDER REMANDING

This test-of-certification proceeding is on remand to the National Labor Relations Board from the United States Court of Appeals for the Seventh Circuit. For the reasons explained below, the Board has decided in turn to remand this proceeding to the Regional Director for Region 13 for further processing, consistent with the court's opinion and this Order.

Hanson Cold Storage Co. of Indiana (the Employer) is engaged in providing refrigerated storage and transportation across the Midwest, and operates a facility in Hobart, Indiana. On February 4, 2016, the International Brotherhood of Teamsters Union Local No. 142 (the Petitioner) filed a petition to represent "full-time and regular part-time warehousemen, dockworkers, pickers, runners, team leads, inventory workers and maintenance workers employed by [the Employer]" at its Hobart facility. Pursuant to a Stipulated Election Agreement, an election was held on February 29, 2016. The initial Tally of Ballots showed 18 for and 17 against the Petitioner, with 2 determinative challenged ballots. The Petitioner challenged the ballot of Lawrence Kelly, arguing that, even though Kelly was on medical leave

at the time of the election, he had effectively resigned from his position and was therefore ineligible to vote. The Employer, meanwhile, challenged the ballot of an unknown individual, contending that irregular markings on the ballot rendered the voter's intent unclear. Both parties submitted offers of proof and position statements in support of their challenges.

On March 25, 2016, the Acting Regional Director issued a Decision and Certification of Representative. In his decision, the Acting Regional Director found that the irregularly marked ballot should be counted in favor of the Petitioner. Because counting this ballot in favor of the Petitioner resulted in a vote of 19 for and 17 against the Petitioner, the Acting Regional Director found that Kelly's ballot was no longer determinative and he accordingly did not pass on the merits of the challenge, finding it moot.

On September 13, 2016, the Board granted the General Counsel's motion for summary judgment and found that the Employer violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Petitioner as the exclusive representative of all employees employed by the Employer in the appropriate unit. See *Hanson Cold Storage Co. of Indiana*, 364 NLRB No. 121 (2016). The Employer refused to comply with the Board's Order and filed a petition for review with the United States Court of Appeals for the Seventh Circuit, and the Board filed a cross-application for enforcement.

On June 20, 2017, the court granted the Employer's petition for review, denied the Board's cross-application for enforcement, and remanded this proceeding to the Board. See *Hanson Cold Storage Co. of Indiana v. NLRB*, 860 F.3d 911 (2017). The Seventh Circuit held that the unknown voter's ballot—which included a large X marked in and extending beyond the "yes" box, along with "indecipherable scribbling both inside and outside of the box"—was void, because the scribbles could reasonably be interpreted as an attempt to void the ballot, and

therefore the unknown voter's intent was unclear. Id. at 915-917. The Seventh Circuit then found that, since the irregularly marked ballot was void, Kelly's ballot was in fact outcome determinative and the Board should have considered the Petitioner's challenge to the ballot. Id. at 918. The court accordingly remanded for proceedings consistent with its opinion.

On September 14, 2017, the Board advised the parties that it had accepted the court's remand and invited the parties to file statements of position. Subsequently, the Employer filed a timely statement of position, asserting that Kelly's ballot should be opened and counted because Kelly was on medical leave at the time of the election and therefore was eligible to vote. The Petitioner did not file a statement of position with the Board.

Having accepted and considered the court's opinion as the law of the case, we find that the issues raised by the court can best be resolved by remanding this proceeding to the Regional Director for further analysis in light of the court's opinion, including reopening the record, if necessary.

Accordingly, this case is remanded to the Regional Director for Region 13 for further appropriate action consistent with this Order, including reopening the record, if necessary, and the issuance of a Supplemental Decision.

Dated, Washington, D.C. February 26, 2018.

Mark Gaston Pearce, Member

Lauren McFerran, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD