

**National Van Lines and Van & Storage Drivers Local Union No. 389, I. B. T. C. W. & H. of A., Petitioner.** *Case No. 21-RC-4426.*  
*June 6, 1958*

**SUPPLEMENTAL DECISION AND CERTIFICATION  
OF REPRESENTATIVES**

Pursuant to a Decision and Direction of Election<sup>1</sup> dated April 16, 1957, and Orders Amending the Direction of Election dated May 2, and May 24, 1957, an election by secret ballot was conducted by mail under the direction and supervision of the Regional Director for the Twenty-first Region among the employees in the unit found appropriate in the above-mentioned Decision. Following the election, the Regional Director served on the parties a tally of ballots which showed that of approximately 93 eligible voters, 51 valid ballots were cast, of which 26 were for, and 25 were against, the Petitioner, and 8 ballots were challenged.

No objections to the election or to the conduct of the election were filed. As the challenges were sufficient in number to affect the results of the election, an investigation was made pursuant to Section 102.61 of the Board's Rules and Regulations by the Regional Director who, on August 16, 1957, issued his report on challenged ballots. In his report, the Regional Director recommended that the challenges to the ballots of John Kenney and Jerome Springer be sustained on the ground that the parties were in agreement as to the ineligibility of these individuals. As the parties have not excepted to this recommendation, it is hereby adopted. The Regional Director also recommended that the challenges to the ballots cast by Dante Donati, Wallace Hall, B. C. Pringel, Robert Oltman, Earl Evans, and James Sales be sustained, and that these ballots be declared void on the ground that they were received after the time prescribed for their receipt as set forth in the notices of election. He therefore recommended that an appropriate certification of representatives be issued in the Petitioner's favor.

On August 26, 1957, the Employer filed exceptions to the Regional Director's recommendations that the six ballots be declared void and that the Petitioner be certified. In its exceptions, the Employer contended that the method of mail balloting selected by the Regional Director was inadequate in that it operated to preclude the six employees here involved from making a timely return of their ballots, and impeded the casting of a representative vote. It urged that the Board remand this proceeding for a hearing on its exceptions.

On November 14, 1957, the Board remanded this proceeding to the Regional Director for the purpose of conducting a hearing on certain

<sup>1</sup> 117 NLRB 1213.

limited issues relating to whether the six challenged voters received their original ballots, whether notices of election were posted in places where they could be seen by them, and whether these voters saw the notices and were aware of the election conditions prescribed therein.

A hearing was held before Byron S. Guse, duly designated hearing officer. On February 24, 1958, the hearing officer issued his report on challenged ballots containing resolutions of the credibility of witnesses, finding of fact, and recommendations as to the disposition of said issues. In his report, the hearing officer found that the six challenged voters had an adequate opportunity to cast valid ballots. He therefore recommended that the challenges be sustained and the Petitioner certified. Thereafter, the Employer filed timely exceptions and a supporting brief.

The record in this proceeding discloses that, because of the nature of their widespread over-the-road driving duties, the eligible voters had places of employment and residences which were scattered throughout the United States. In view of this circumstance, the Regional Director determined that the balloting should be conducted by mail addressed to the residences of the prospective voters and returnable to the Twenty-first Region in Los Angeles. He rejected the Employer's suggestion that the balloting be done in person at the Employer's operational installations throughout the country or that all ballots originate and be returned to the Board's Thirteenth Region in Chicago, Illinois. In order to afford the eligible voters adequate time in which to vote, the Regional Director was granted additional time in which to conduct the election.

Three hundred and fifty notices of election were made available to the parties. These notices were posted between May 29, 1957, and June 13, 1957 at various installations of the Employer stretching from New York to California. The notices stated that each eligible voter would be sent a ballot by the Region on May 29, 1957, addressed to their places of residence, and that the ballots, in order to be valid, should be returned to the Regional Office not later than 5 p. m. on Friday, July 12, 1957. The notices also stated that any eligible voter who had not received a ballot by June 12, 1957, should immediately wire collect to the Region and furnish an address at which duplicate ballots should be sent. The notices further provided that ballots would be opened and counted at 10 a. m. on Monday, July 15, 1957.

Ninety-three ballots were mailed by the Region as scheduled on May 29, 1957. On July 8 and 9, 1957, 3 to 4 days before the date on which ballots were to be returned to the Region, the Employer's attorney requested that duplicate ballots be mailed to Donati, Hall, and Pringel because they had not received their originals. This the Region did by air mail special delivery addressed to the places speci-

fied. On Monday, July 15, 1957, the Region received the six ballots here involved. Because they were received subsequent to the date established in the notices of election, the Board agent conducting the count challenged the ballots for that reason.

The record discloses that Hall, who mailed his duplicate ballot from New York on July 13, 1957, read the notice of election at the Employer's offices in Los Angeles early in June. Hall knew of the time and date on which ballots were to be returned to the Regional Office and could have requested a duplicate ballot then, but failed to do so because he was not interested in voting at that time. It was only when Hall was reminded by the Employer's dispatcher in Atlanta, Georgia, that time was running out that Hall decided to participate in the election. Pringel, who mailed his duplicate ballot from Long Island City, New York, on July 12, 1957, testified that he never saw notices of election during the election period and that he was not aware of the time when ballots were returnable to the Region. Because of his manner and demeanor on the stand, the hearing officer discredited him and found that Pringel saw the notices in June at the Employer's offices in Los Angeles which Pringel visited on at least two occasions during that month. On July 8 Pringel was advised by the Employer's dispatcher in New York of the election date and a duplicate ballot was requested for him. This ballot was received at the Employer's New York office on the morning of July 10. Although Pringel was in the city and off duty on that day and could have cast a timely ballot, he did not mail his ballot until July 12. Donati, who apparently mailed his duplicate ballot from the Employer's offices in Broadview, Illinois, talked about the election during June with other drivers. He admitted that he might not have attempted to vote had not an official of the Employer reminded him to do so.

Oltman, who mailed his original ballot on July 10, 1957, saw the notices and was aware of the time and date on which he was to return his ballot. Although he had ample time to do so, he conceded that voting his ballot did not interest him until he was reminded by the Employer's dispatcher that the election date was near. Evans, who mailed his original ballot on July 11, 1957, read the notices of election. He was reminded by a dispatcher on July 5 of the election date. Evans returned to his home on July 6, 6 days before the election, and filled out his ballot, but left the ballot for his mother to mail several days later. Sales, who mailed his original ballot on July 11, 1957, testified that he received 1 ballot at his home and 3 other ballots at various offices of the Employer. Because he would not conduct any of his business away from his residence, Sales did not vote until he got home although he admitted he could have cast a timely ballot had he chosen to do so.

The Employer contends that the foregoing challenged ballots should be opened and counted because the election procedures adopted by the Regional Director precluded the six challenged voters from casting timely votes, and because the election did not produce a representative vote. We find no merit in these contentions. The Board has frequently pointed out that circumstances surrounding working conditions in various industries require an adaptation of established election standards to those peculiar conditions.<sup>2</sup> Because of these circumstances, the Board has invested Regional Directors with broad discretion in determining the method by which elections shall be conducted. Only where it is affirmatively shown that a Regional Director has clearly abused the discretion afforded him to conduct representative elections will the Board nullify an election and prescribe other election standards.

In the instant case, the Regional Director determined that, in view of the wide dispersion of eligible employees, a mail ballot should be conducted from his office. To insure that the employees would be afforded an adequate period of time in which to vote, the Regional Director requested and obtained from the Board an extension of time in which to conduct the election. Forty-four days were allotted for the election period. Ballots were mailed to the homes of all eligible voters based on lists furnished by the Employer. Three hundred and fifty notices of election were made available to the parties and were posted well in advance of the election date in various installations of the Employer for all eligible voters to read. Out of the 93 individuals to whom ballots were sent, 59 voted in the election.

In our opinion, the Regional Director's decision to conduct a mail ballot from his offices in the Twenty-first Region, under the voting procedures which were prescribed, was designed to afford an adequate opportunity for all eligible voters to cast a ballot and did not constitute an abuse of discretion. The fact that the six challenged voters failed to cast valid ballots was not, in our view, due to any defect in the election procedures utilized, but rather was occasioned by their lack of diligence and interest in mailing their ballots on a date which would have assured their timely receipt by the Regional Director. Furthermore, the fact that 59 out of 93 individuals voted in the election, a figure in excess of 50 percent of the voters, convinces us that the election produced a representative vote.<sup>3</sup>

Accordingly, we shall overrule the Employer's exceptions, sustain the challenges, and issue a certification of representatives in favor of the Petitioner.

[The Board certified Van & Storage Drivers Local Union No. 389, I. B. T. C. W. & H. of A., as the designated collective-bargaining rep-

<sup>2</sup> See *Shipowners' Association of the Pacific Coast, et al.*, 110 NLRB 479, 480.

<sup>3</sup> See *Stiefel Construction Corporation*, 65 NLRB 925, 926-27.

representative of the Employer's lease and owner operators (otherwise known as contract drivers), in the unit found appropriate.]

MEMBERS RODGERS and JENKINS took no part in the consideration of the above Supplemental Decision and Certification of Representatives.

**American Radiator & Standard Sanitary Corporation, Pacific Order Handling Division and Office Employees International Union, AFL-CIO, Petitioner. Case No. 20-RC-3361. June 6, 1958**

### SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election issued by the Board on February 26, 1958,<sup>1</sup> an election by secret ballot was conducted on March 25, 1958, under the direction and supervision of the Regional Director for the Twentieth Region of the National Labor Relations Board among the employees in the unit found appropriate by the Board. The parties were furnished a tally of ballots which shows that of approximately 28 eligible voters, 15 cast ballots for, and 12 cast ballots against, the Petitioner.

Thereafter, the Employer filed timely objections to conduct affecting the results of the election and the Petitioner filed an answer to the Employer's objections. In accordance with the Rules and Regulations of the Board, the Regional Director caused an investigation of the objections to be made and, on April 9, 1958, issued and served on the parties his report on objections, in which he found that the objections did not raise substantial or material issues with respect to the election and recommended that the Board overrule the objections and certify the Petitioner. The Employer filed timely exceptions to the Regional Director's report and a brief in support of objections.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Bean and Jenkins]. The Employer's objections are based upon a statement<sup>2</sup> contained in a leaflet distributed to employees by the Petitioner on March 21, 1958. The Employer urges that this statement was so misleading as to prevent a free and untrammelled choice by the employees and that the employees were unable to evaluate it. The Regional Director

<sup>1</sup> 119 NLRB 1715.

<sup>2</sup> The statement referred to reads as follows: "By voting 'Yes' on Tuesday, March 25, 1958, YOU ARE GUARANTEED BY LAW that all rates of pay and other benefits in effect shall REMAIN IN full force and EFFECT plus all negotiated improvements."