

**Bogus Basin Recreation Association and Service Employees International Union, Local No. 49, AFL-CIO, Petitioner. Case 19-RC-7039**

August 12, 1974

**DECISION ON REVIEW**

BY MEMBERS FANNING, KENNEDY,  
AND PENELLO

On May 20, 1974, the Regional Director for Region 19 issued a Decision and Direction of Election in the above-entitled proceeding and indicated therein that he would "entertain a request from Petitioner for the direction of an immediate election" and that he would consider those employees who were regularly employed during the payroll period immediately preceding the date of the hearing held herein to be temporarily laid-off employees and therefore eligible to vote in the representation election. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's decision on the grounds that his decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the Employer's rights.

On June 18, 1974, the Board, by telegraphic order, granted the request for review and stayed the election pending decision on review. The Employer thereafter filed a brief on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

The Employer contends that the Regional Director's indication that he would entertain a request for an immediate election and that he would consider those employees employed in the payroll period prior to the date of the hearing to be temporarily laid-off employees is erroneous. The Employer requests that the Board dismiss the instant petition and direct an election only if, after the start of the next season, a petition is submitted with an adequate showing of interest among employees then in the unit. We agree that the Regional Director erred concerning the proper date of the election, but we do not agree with the Employer's assertion that the petition should be dismissed.

The Employer operates a recreation area (skiing) at Bogus Basin, Idaho, and its operations are seasonal in

nature. The Employer opens its skiing facilities to the public when the autumn snow is deep enough to allow skiing, usually between mid-November and early December. The season ends in mid-April, at which time the Employer closes down its operations and terminates the employment status of all seasonal employees. All employees in the unit found appropriate by the Regional Director are seasonal employees.<sup>1</sup>

The petition giving rise to this proceeding was filed on March 12, 1974, and a hearing was held on April 3, 1974, near the end of the skiing season. We believe that the Regional Director's reliance on *Aspen Skiing Corporation*<sup>2</sup> for his statement that he would be receptive to a request for an immediate election is misplaced. The facts in *Aspen Skiing* reveal that in a unit of approximately 50 employees, 47 lived in or near the Aspen area, where the employer was located; of the 50 employees, some 20 had worked each winter for the employer for over 5 years. The employer also maintained a staff of approximately 14 employees who were, in the main, recruited from among the winter season employees. The Board granted the petitioning union's request for an immediate election on the basis of the facts recited above and also because the employer did not oppose the union's request. Here, however, we do not know the precise labor market from which the employees in the unit are drawn, and we note the unit is comprised solely of seasonal employees; there are no seasonal employees employed at the present time. The Employer opposes an immediate election. In light of these facts, we shall defer the election until a time deemed appropriate by the Regional Director, at or near the peak of the next skiing season.<sup>3</sup>

We reject the Employer's request that the petition be dismissed and that Petitioner be required to file another petition with adequate showing of interest after the start of the next skiing season. Because the Regional Director found, and the record fully supports his finding, that there is a significant rate of reemployment of the seasonal employees in the unit found appropriate, the showing of interest for the 1973-74 season is sufficient to support the petition herein.<sup>4</sup> No new showing of interest is required as it is the

<sup>1</sup> The unit determined by the Regional Director consists of: "all ski lift employees of the Employer at its Bogus Basin, Idaho, location, including full and part-time lift operators, ski patrol persons, and ticket checkers located at the lifts, but excluding ticket sellers, ticket checkers not located at the lifts, office clerical employees, ski instructors, maintenance mechanics, guards, all other employees, and supervisors as defined in the Act"

<sup>2</sup> 143 NLRB 707 (1963)

<sup>3</sup> *Millbrook, Inc.*, 204 NLRB 1148 (1973), cf. *The Baugh Chemical Company*, 150 NLRB 1034 (1965), *California Vegetable Concentrates, Inc.*, 137 NLRB 1779 (1962)

<sup>4</sup> Out of the approximately 40 employees in the unit found appropriate, approximately 8 had been employed by the Employer in one or more seasons prior to the 1973-74 season

Board's policy, in cases involving seasonal industries, to require a showing of interest only among those employees employed in the unit at the time the petition is filed.<sup>5</sup>

Accordingly, we shall remand the case to the Regional Director for the purpose of conducting an election pursuant to his Decision and Direction of Election except that the election shall be held at or near the peak of the Employer's season, at a time when there is employed a maximum or near maxi-

mum representative complement of employees, to be determined by the Regional Director for Region 19, and the eligibility date for the election shall be the payroll period immediately preceding the date of issuance by the Regional Director of his notice of election.<sup>6</sup>

<sup>5</sup> *Sebastopol Cooperative Cannery*, 111 NLRB 530, 532 (1955), and cases cited therein; cf. *Grower-Shipper Vegetable Association of Central California*, 112 NLRB 807 (1955); and *Camp & Felder Compress Company*, 121 NLRB 871 (1958), where, as in the instant case, a petition was filed at the end of one season and the date of election was set for the peak of the next season, without the requirement of a new showing of interest.

<sup>6</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966), *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that a corrected election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days after the date of issuance of the Notice of Election by the Regional Director. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.