Pen Mar Packaging Corporation *and* Teamsters, Chauffeurs, Warehousemen & Helpers Local #453 a/w the Interntional Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 5-RC-11640

May 13, 1982

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered a determinative challenge to an election held on October 21, 1981,[1] and the Hearing Officer's report recommending disposition of same. Having reviewed the record in light of the exceptions and brief, the Board hereby adopts the Hearing Officer's findings only to the extent consistent herewith.

The ballot of Robert Blucker was challenged by the Board agent conducting the election. The Employer contends that Blucker was a temporary employee who lacked sufficient community of interest with unit employees to be an eligible voter. The Petitioner contends that Blucker was a regular part-time employee who had a reasonable expectation of becoming a regular full-time employee.

Blucker admitted in his testimony that he and employee Ed Jones were hired by the Employer on July 14, 1981,[2] with the express understanding that they would work only for the summer months, with no possibility of permanent employment. Blucker and Jones were hired primarily to perform tasks which did not require specialized training, but they did occasionally fill in for full-time employees. Jones and Blucker were paid $4 per hour, whereas all full-time employees were paid $5.40 per hour. They also did not receive the hospitalization benefits or the uniform which the regular force received.

The election eligibility date was August 27. In early September, Jones quit and returned to college. Blucker continued to work because the Employer had more work than expected and because the Employer and the Petitioner had agreed, prior to signing the stipulation in mid-September, for an election, that Blucker would not be laid off until after the election. At this time, Blucker, who still admittedly considered himself a temporary employee, began making inquiries about whether he could get a permanent position. On approximately September 25, the Employer's production manager indicated to Blucker that permanent employment was a possibility. On November 9, almost 3 weeks after the election, Blucker was terminated.

The Hearing Officer found that Blucker was hired on the express condition that he was to leave as soon as the busy summer season ended. Since Blucker continued to work until November, worked the same hours and occasionally performed the same jobs as regular employees, and at the time of the election had no definite or contemplated date of termination, the Hearing Officer further found that Blucker was a regular part-time employee who shared a sufficient community of interest with other unit employees. Accordingly, the Hearing Officer recommended overruling the challenge to Blucker's ballot. We do not agree with this recommendation.

It is established Board policy that a temporary employee is ineligible to be included in the bargaining unit[3] and that an employee's eligibility status is determined by his status as of the eligibility payroll date.[4] Here, it is clear that Blucker was hired as a temporary employee inasmuch as he was informed that he was being hired only for the summer with no expectancy of permanent employment. Contrary to the Hearing Officer, we find the prospect of termination at summer's end to be sufficiently finite to dispel reasonable contemplation of continued employment after that season. There is no evidence to indicate that Blucker's employment status changed between the time he was hired and the eligibility date of August 27. Indeed, Blucker testified that as of early September he still considered himself to be a temporary employee. We, therefore, find that Blucker was a temporary employee as of the determinative August 27 eligibility date. It is irrelevant that due to unforeseen circumstances Blucker subsequently worked until November and may have even been considered for a permanent position, because such events occurred after the eligibility date.

Based on the foregoing, we find Blucker to be a temporary employee who does not share a community of interest with any of the unit employees. Accordingly, we shall sustain the challenge to Blucker's ballot and issue a Certification of Results of Election.

[1] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally of ballots was six votes for and six against the Petitioner, with one challenged ballot. The challenged ballot was sufficient in number to affect the results of the election.

[2] All dates hereinafter refer to 1981.

[3] See *Hygeia Coca-Cola Bottling Company*, 192 NLRB 1127 (1971); *Owens-Corning Fiberglass Corporation*, 140 NLRB 1323 (1963); and *E. F. Drew & Co., Inc.*, 133 NLRB 155 (1961).

[4] *Belcher Towing Company*, 122 NLRB 1019 (1959).

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for Teamsters, Chauffeurs, Warehousemen & Helpers Local #453 a/w The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that said labor organization is not the exclusive representative of all the employees in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.