

**Dejana Industries, Inc. and Teamsters Local Union
408, International Brotherhood of Teamsters,
AFL-CIO.** Case 22-RC-12005

December 10, 2001

DECISION ON REVIEW AND ORDER
BY CHAIRMAN HURTGEN AND MEMBERS
LIEBMAN
AND WALSH

On March 30, 2001, the Acting Regional Director for Region 22 issued a Decision and Direction of Election in which he directed an election in a unit of the Employer's sweeper operators, regular seasonal payload operators, and mechanics. In response to the Employer's request for an investigation of supervisory solicitation of the Petitioner's showing of interest, the Regional Director conducted an administrative investigation.

By letter dated April 19, 2001, the Regional Director concluded that there was insufficient evidence to establish that supervisory participation in the organizing drive tainted the showing of interest. Further, the Regional Director found that a check of the Petitioner's showing of interest revealed that it was numerically sufficient, even excluding a card signed by Supervisor Troy Carter.¹ Accordingly, the Regional Director denied the Employer's request for dismissal of the petition.

Thereafter, in accordance with the National Labor Relations Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's determination that the showing of interest was valid, contending that the showing was tainted because of Carter's solicitation of authorization cards. By Order dated April 25, 2001, the Board granted the request for review. The Employer filed a supplemental brief, and the Petitioner filed an opposition brief.

The Board has reviewed the administrative file in this proceeding with respect to the issue on review, and finds, contrary to the Regional Director, that the Petitioner's showing of interest is tainted due to Supervisor Carter's direct solicitation of the cards. We, therefore, dismiss the petition.

The administrative file reveals that in December 2000, Carter and a handful of other employees began talking to the Employer about concerns they were having regarding their deteriorating working conditions. When the Employer failed to respond to the employees' concerns, Carter contacted and set up an initial meeting with the Petitioner. In a sworn affidavit taken by the Region during its investigation, Carter admits that, together with an

employee, he solicited all of the authorization cards constituting the showing of interest.

The Board has held that if a supervisor directly solicits authorization cards, those cards are tainted and may not be counted for the showing of interest. See *National Gypsum Co.*, 215 NLRB 74 (1974) (finding supervisory taint when supervisors personally solicited and obtained signatures and signed their names as "witnesses" on the back of many of the cards before turning them in to the petitioner); *Southeastern Newspapers, Inc.*, 129 NLRB 311 (1960) (petition dismissed when a supervisor participated in obtaining the signatures of all the employees whose cards were submitted for the showing of interest); *Toledo Stamping & Mfg. Co.*, 55 NLRB 865, 867 (1944) (petition dismissed when authorization cards secured with the assistance of a supervisor).

Under this precedent, we find that the petition must be dismissed since Carter admittedly was directly involved in collecting all of the authorization cards used for the showing of interest. In so finding, we recognize that applying this bright-line rule of excluding all cards directly solicited by a supervisor may seem unduly harsh in situations in which employees and petitioning unions may not be fully aware that the card solicitor possesses any of the indicia of statutory supervisory status. However, we find this possible disadvantage is outweighed by the benefits of providing the Board's Regional Directors and all parties in representation cases with clear procedural guidance. A bright-line rule also avoids possible election delays due to administrative investigations, by encouraging petitioners to gather new, untainted cards where there is any allegation that the petitioner's card solicitor possesses supervisory authority.²

Accordingly, we conclude, contrary to the Regional Director, that the Petitioner's showing of interest is tainted and that the petition must be dismissed.

ORDER

The petition is dismissed.

¹ In the Decision and Direction of Election, the Acting Regional Director found Carter to be a supervisor because he had authority to suspend employees. There was no request for review of this finding.

² The Regional Director erred by applying the test set forth in *Sutter Roseville Medical Center*, 324 NLRB 218 (1997). That test has been used by the Board to evaluate prounion supervisory conduct in objections cases raising the issue of whether a supervisor's prounion conduct throughout the entire election campaign warrants setting aside an election. This test is not used in cases, such as the one before us, where the issue is solely whether the petition should be dismissed because the showing of interest has been tainted.