Carol Cable Company West *and* Thomas M. Augustine and United Electrical, Radio and Machine Workers of America, Local 1015. Case 21–UD–343

October 23, 1992

ORDER DENYING REVIEW

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Union's request for review of the Regional Director's Decision and Certification of Results of Election (pertinent portions of which are attached).[1] The request for review is denied as it raises no substantial issues warranting review.

[1] The only issue on which the Union seeks review is whether the Regional Director erred in finding that 104 economic strikers were ineligible to vote in a deauthorization election held more than 1 year after the commencement of the strike.

APPENDIX

The investigation disclosed that, in about mid-June 1991, the Union commenced an economic strike and during that strike the Employer hired replacement workers. The strike was settled on March 3, 1992, resulting in, among other things, a new collective-bargaining agreement and the retention of the replacement employees. Since many of the striking employees made offers to return to work, a preferential recall list was established for the former economic strikers. In this regard, the evidence is uncontroverted that none of the 104 challenged voters, who are on this recall list, had been reinstated as of the date of the election.

The Union asserts that because the former strikers have reinstatement rights, by virtue of the March 1992 strike settlement agreement between the Employer and Union, they are eligible voters. It is the Employer's position that employees who have not actually been reinstated within 12 months after the commencement of the economic strike are not eligible voters. The Petitioner, an individual, did not state a position.

Section 9(c)(3) of the National Labor Relations Act states:

> Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within 12 months after the commencement of the strike.

In *Wahl Clipper Corp*., 195 NLRB 634 (1972), the Board examined the legislative history of the above provision and concluded ''that the 12-month limitation was estabished as a maximum period of voting eligibility for economic strikers.'' *Wahl Clipper Corp*., supra at 635. In *Wahl*, a group of 29 former strikers had not been offered reinstatement by the Employer by the date of the election, which was more than 12 months after the commencement of an economic strike. The Board further stated at 36:

> [I]t seems to us the most reasonable course, as well as the most reasonable interpretation of the statutory language, is to hold that replaced strikers are not eligible to vote in an election held more than 12 months after the commencement of an economic strike . . . . [W]e find that only those replaced former economic strikers who are actually reinstated by the eligibility date of the election should be entitled to vote. [Emphasis added.]

The only exception to the strict adherence to the 12-month provision, as outlined in *Wahl*, was set forth in *Jeld-Wen of Everett*, 285 NLRB 118 (1987), wherein the Board directed that nonreinstated strikers who voted in an election which was conducted within 12 months of the commencement of a strike, could also vote in a rerun election held after the expiration of the 12-month period. As the facts presented in this case differ from the *Jeld-Wen* case, its application herein is not appropriate. As no evidence was presented to etablish that any of the challenged voters in the instant case had actually been reinstated by the date of the election, the challenges to all the challenged ballots are hereby sustained. *Wahl Clipper Corp*., supra, and *Levitz Furniture Co*., 248 NLRB 15 (1980).