

Excel Corporation and Gloria J. Rhoads and Francisco Acosta and United Food and Commercial Workers Union, Local 540. Case 16-RD-1300

May 28, 1993

**RULING ON ADMINISTRATIVE ACTION
AND ORDER REMANDING**

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On March 17, 1993, the Regional Director dismissed the instant RD petition on the ground that it was not supported by a sufficient showing of interest. The Board has delegated its authority in this case to a three-member panel. The Board grants Petitioner's request for review. Having considered the matter, the Board concludes that the petition should be reinstated.

The record shows that the Employer and the Union were parties to a collective-bargaining agreement which was to expire April 25, 1993. Thus, the window period during which other parties could file petitions expired February 24, 1993. Petitioners timely filed their petition 13 days before the close of the window period, supported by a large number of signatures which the Regional Office ultimately determined were valid. However, because of the unusually large number of employees in the unit, the apparent high turnover of employees, and delays in the transmission of documents mailed between the Regional Office and the Employer, the Regional Office was unable to verify the number of employees in the unit and the number of valid signatures submitted until after the window period closed. By letter of March 17, 1993, the Regional Director advised Petitioners that the petition was being dismissed because they had failed to submit a showing of interest sufficient to support the petition.

Section 11024.1 of the Casehandling Manual provides that a petitioner must supply evidence within 48 hours of filing a petition and in no event later than the last day on which the petition could be filed. It further provides that the Regional Director at his discretion may give reasonable time to cure a defect in the showing of interest, but in no event will the time be later than the last day on which the petition could be filed. Relying on the foregoing section, the Regional Director administratively dismissed the instant petition.

We find, however, that in the circumstances of this case application of the rule cited by the Regional Director is unduly harsh. We find that the purposes and provisions of the Act are best effectuated by allowing the Petitioners a reasonable, additional period of time to provide the requisite showing of interest, as shall be determined by the Regional Director. The Petitioners have acted diligently and have promptly complied with all requests from the Regional Office. Their petition, with a substantial showing of interest, was filed well in advance of the close of the window period. We find that they should not be penalized because of circumstances beyond their control arising from the extraordinarily large unit, the difficulties in ascertaining the correct number of employees in the unit, problems in verifying validity of signatures, and mail delays between the Regional Office and the Employer which were in no way attributable to them.¹ Accordingly, the petition is reinstated and this case is remanded to the Regional Director for Region 16 for further action consistent with this decision.

¹ Chairman Stephens agrees that flexibility is warranted on the facts of this case but would caution that, under normal circumstances, the petitioner bears the burden of establishing an adequate showing of interest during the window period.