

**Transportation Maintenance Services, L.L.C. and Charles M. Maher, Petitioner and Automotive, Petroleum and Allied Industries Employees Union, Local 618, affiliated with International Brotherhood of Teamsters, AFL-CIO.** Case 14-RD-1568

June 10, 1999

ORDER DENYING MOTION

BY CHAIRMAN TRUESDALE AND MEMBERS FOX  
LIEBMAN, HURTGEN, AND BRAME

On June 25, 1997, the Board issued an Order granting the Union's request for review of the Regional Director's Decision and Direction of Election.<sup>1</sup> While the case was pending before the Board, the Petitioner filed a request with the Board to withdraw the decertification petition. On July 21, 1998, the Board issued an Order administratively dismissing the petition based on the Petitioner's request.

On July 30, 1998, the Employer filed a motion requesting that the Board reconsider its approval of the withdrawal request. The Employer argues that, because an election has already been conducted, it would be inequitable to permit one employee (the Petitioner) to withdraw the petition, thereby depriving unit employees of their vote.

Having fully considered the Employer's motion, we reject it as lacking in merit. Section 11116 of the Board's Casehandling Manual, Representation Proceedings (Part Two) specifically provides for only one circumstance where a withdrawal request submitted after an election should not be approved, i.e., where it appears that the intent of the withdrawal request is to circumvent the 1-year election bar of Section 9(c)(3) of the Act. There is no evidence or claim that the Petitioner's purpose in withdrawing the petition in this case was to circumvent the intent of Section 9(c)(3).

The Board's general approach with regard to withdrawal requests is embodied in Casehandling Manual section 11110.1, which states that the "general policy should favor the effectuation of a petitioner's genuine voluntary desire to drop the proceeding." In this case, there is no evidence that the Petitioner's desire to "drop the proceeding" was anything other than genuine or voluntary. In addition, before the Petitioner withdrew the Petition, the Regional Office informed him that he should first solicit the views of other employees. Thereafter, the Petitioner returned to the Regional Office and filled out a withdrawal request, stating that employees

<sup>1</sup> The Regional Director had directed a decertification election, concluding that such an election was not barred by a previous non-Board settlement agreement in which the Employer agreed to recognize and bargain with the Union. The Regional Director had conducted that election and impounded the ballots pending the Board's decision on the request for review.

were getting upset with the Employer and wanted to withdraw the petition. There is no evidence or allegation that any unit employee opposed the withdrawal of the petition.

Section 11110.1 of the Casehandling Manual also states that approval of the withdrawal request should be withheld if the approval "would result in a situation that would run counter to the purposes of the Act." Unlike our dissenting colleagues, however, we do not conclude that approval of the withdrawal in this case runs counter to the purposes and policies of the Act. If anything, effectuation of the Petitioner's desire to withdraw the Petition, in the absence of any indication that it is anything other than voluntary or any evidence that other employees oppose the withdrawal, actually furthers one of the primary purposes of the Act, namely that of promoting stability in collective-bargaining relationships.

MEMBERS HURTGEN AND BRAME, dissenting.

Contrary to our colleagues, we would rescind the July 21, 1998 Order (granting request to withdraw the decertification petition). We would reinstate the petition, and open and count the impounded ballots.<sup>1</sup>

In our view, once a decertification election has been held, the ballots of participating employees should be counted, and the appropriate certification should issue. The ballots cast in the privacy of the voting booth most accurately reflect the views of unit employees regarding representation. Those views have been expressed through a secret ballot election, conducted under the supervision of a Board agent, and they should not be negated by the subsequent withdrawal by an individual employee (the Petitioner). In the instant case, the only "evidence" regarding the desires of the other employees is the Petitioner's hearsay evidence that they support withdrawal of the petition. Clearly, this hearsay evidence is less reliable than the votes cast in the privacy of the voting booth.

We recognize that the Casehandling Manual suggests that a withdrawal request should be honored unless there is an intention to circumvent the 1-year rule of Section 9(c)(3). However, the Manual does not necessarily represent Board law. For the reasons indicated supra, we think that Board law should reflect the fundamental policy of the Act, viz. to assure that employee wishes, expressed in a free and fair election, are honored.<sup>2</sup>

<sup>1</sup> In doing so, we affirm the Regional Director's Decision and Direction of Election and find, for the reasons he stated, that the recognition that was accorded pursuant to the non-Board settlement in Case 14-CA-23828 does not provide a basis for a recognition bar in this case. In affirming the Regional Director, we find it unnecessary to pass on his alternative finding that, at the time of the decertification petition, a reasonable time for bargaining had passed.

<sup>2</sup> We note that this is not an initial representation situation where a petitioning union seeks to withdraw the petition because it is no longer willing to represent the unit. In that situation, employee wishes cannot be effectuated, for the petitioner-union cannot be compelled to represent the employees.