

Jam Productions, Ltd. and Treasurers and Ticket Sellers Union, Local 750, International Alliance of Theatrical Stage Employees, Moving Pictures Technicians, Artists and Allied Crafts of the United States and Canada. Case 13-RC-20697

April 30, 2003

DECISION AND DIRECTION

BY MEMBERS LIEBMAN, SCHAUMBER, AND WALSH

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in a mail ballot election held between February 8 through 21, 2002, and the hearing officer's report recommending disposition of them. The tally of ballots shows three votes were cast. The ballots remained unopened, as challenges have been filed to all three ballots.

We agree with the hearing officer's recommendation to overrule the Employer's challenges to the ballots of all three voters. The Employer contended that its loss of potential business following the December 14, 2001 representation hearing has resulted in the regular part-time unit employees becoming casual employees. Contrary to the hearing officer, we find that she could have properly assessed the impact of not only the January 1, 2002 loss of potential business from the Metro Theatre, but also the January 15, 2002 loss of potential business from the Park West Theatre, after the January 10, 2002 voter eligibility cutoff date. See generally *Beverly Manor Nursing Home*, 310 NLRB 538 (1993) (unit per diem employee employed on eligibility cutoff date eligible to vote where

she worked 11.5 hours during week prior to eligibility cutoff date and average of more than 7 hours per week between eligibility cutoff date and date of the election); *Stockham Valve & Fittings*, 222 NLRB 217, 218-219 (1976) (regular part-time employees employed on eligibility cutoff date did not lose community of interest and status as eligible voters because of substantial excused absences during period between eligibility cutoff date and date of the election). However, even considering the Employer's additional loss of potential business from the Park West Theatre, between the eligibility cutoff date and the date of the election, we find that that event is not sufficient to undo the earlier finding that these employees were regular part-time unit employees.

The Board has reviewed the record in light of the exceptions and briefs, and has adopted the hearing officer's findings and recommendations.¹

DIRECTION

IT IS DIRECTED that the Regional Director for Region 13 shall, within 14 days from the date of this Decision and Direction, open and count all the ballots cast in this election. The Regional Director shall then serve on the parties a tally of ballots and issue the appropriate certification.

¹ Member Schaumber notes that he was not involved in the Board's previous denial of review of the Acting Regional Director's Decision and Direction of Election in this case, and expresses no opinion as to the correctness of that denial.