

Sab Harmon Industries, Inc. and Communication Workers of America, AFL-CIO, Petitioner.
Case 17-RC-9033

September 30, 1980

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director for Region 17 on May 21, 1980, an election by secret ballot was conducted on June 12, 1980, under his direction and supervision among the employees in the appropriate unit. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that there were approximately 324 eligible voters and that 314 ballots were cast, of which 90 were for Petitioner, 186 were against, and 38 were challenged. The challenged ballots are not sufficient in number to affect the results of the election. Thereafter, the Petitioner timely filed objections to the election.

Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and, on July 23, 1980, issued and duly served on the parties his Report on Objections. He recommended that Petitioner's Objections 1, 3, 4, 5, 6, and 7, and certain unnumbered objections be overruled, but, as alleged in Petitioner's Objection 2, found that the Employer's showing of the film entitled "The Springfield Gun" to its employees prior to the election was objectionable conduct and recommended that the election be set aside and a second election conducted. Thereafter, the Employer timely filed exceptions to the Regional Director's report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees of the Employer constitute a

unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees at the Employer's facilities in Grain Valley, Missouri and Blue Springs, Missouri, including technicians and plant clerical employees, but excluding office clerical and professional employees, watchmen, guards and supervisors as defined in the Act.

5. The Board has considered the entire record in this proceeding, including the Petitioner's objections, the Regional Director's report, and the Employer's exceptions and brief, and hereby adopts the Regional Director's findings, conclusions, and recommendations only to the extent consistent herewith.¹

The Regional Director's investigation of Petitioner's objections revealed that the Employer had shown its employees the film entitled "The Springfield Gun" on or about June 6, 1980, 6 days before the election. The employees had been brought from their work places to view the film, and the Employer's vice president had introduced it by reading from a prepared statement. In the statement, he claimed that the film depicted a true story involving several aspects of unionization, including "the obsession that most unions have with union security contract language," a strike, and discord that is allegedly present in a "union environment." He carefully noted, however, that a strike would not be inevitable if the Union won the election and that a union-security clause would not automatically be included in a collective-bargaining agreement.

The Regional Director found that showing the film was in itself sufficient to justify setting aside the election, citing *Sylacauga Garment Company*, 210 NLRB 501 (1974), in which the Board decided that, in the context of numerous unfair labor practices, showing "The Springfield Gun" to employees violated Section 8(a)(1) of the Act.

We do not agree. In *Sylacauga*, we concluded that the exhibition of "The Springfield Gun" should be controlled by our holdings regarding "And Women Must Weep," an antiunion film with a similar message. (210 NLRB at 506.) Shortly thereafter, in *Litho Press of San Antonio*, 211 NLRB 1014, 1015 (1974), the Board overruled all prior inconsistent decisions, and held that "the showing of the film 'And Women Must Weep' is neither violative of the Act nor a sufficient basis for setting aside an election." Therefore, treating the showing

¹ In the absence of exceptions thereto, we adopt, *pro forma*, the Regional Director's recommendations that Petitioner's Objections 1, 3, 4, 5, 6, and 7, and its unnumbered objections, be overruled.

of "The Springfield Gun" as we would "And Women Must Weep" under *Litho Press*, there is no basis for setting aside the election herein.²

Accordingly, as the tally of ballots shows that the Petitioner has not received a majority of the

valid ballots cast, we shall certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for Communications Workers of America, AFL-CIO, and that said labor organization is not the exclusive representative of all the employees in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

² Chairman Fanning and Member Jenkins would find that showing "The Springfield Gun" in the context of union animus or unfair labor practices could be a sufficient basis for setting aside an election. Their positions are set forth in *Litho Press of San Antonio, supra* at 1015. Nevertheless, they acknowledge that until such time as the majority view changes, they are institutionally bound by *Litho Press*. They also note that there is no evidence of union animus on the part of the Employer herein, nor any allegation that it has engaged in unfair labor practices.