

**Wayne Metal Company, Inc. and United Steelworkers of America, AFL-CIO-CLC, Petitioner.** Case 17-RC-8743

November 7, 1979

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

Pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted on June 13, 1979, 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 of approximately 69 voters, 67 cast ballots of which 36 were for and 30 against the Petitioner, and 1 was challenged. The challenged ballot was not sufficient in number to affect the results of the election. Thereafter, the Employer filed timely objections to the election.

In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and, on August 24, 1979, issued and duly served on the parties his report on the objections in which he recommended that the objections be overruled and that the Board issue a Certification of Representative. Thereafter, the Employer filed timely 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 Petitioner is a labor organization claiming 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 Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees at the Employer's Marshfield, Missouri, location constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, truckdrivers, leadmen, and plant superintendent, but excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

5. The Board has considered the objections, the Regional Director's report, and the exceptions, and hereby adopts the Regional Director's findings,<sup>1</sup> conclusions, and recommendations.<sup>2</sup>

Accordingly, as the tally shows that the Petitioner has obtained a majority of the valid votes cast, we shall certify it as the exclusive bargaining representative of the employees in the certified unit.

**CERTIFICATION OF REPRESENTATIVE**

It is hereby certified that a majority of the valid ballots have been cast for United Steelworkers of America, AFL-CIO-CLC, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit found appropriate herein for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

<sup>1</sup> The Regional Director recommended, *inter alia*, that an objection of the Employer to a threat of harm made by employee Robert Neff to employee Robert Loe be overruled on the following grounds: (1) There is no evidence that Neff's conduct intimidated Loe in casting his ballot, (2) Neff's statement was not sanctioned by the Union, and (3) Neff's statement was isolated and did not create a general atmosphere of fear and coercion which rendered a fair election impossible. We disavow (1) as it is well established that proof of coercive effect is unnecessary in determining whether conduct may reasonably be said to tend to interfere with an election. See *The Denver Post*, 245 NLRB No. 14 (1979). However, we find that the objections in question has no merit.

<sup>2</sup> We find that the Employer's exceptions to the Regional Director's report raise no material or substantial issues of fact or law which warrant reversal of the Regional Director's findings or require a hearing. In adopting the Regional Director's recommendation that the Employer's objections based on allegations of material misrepresentations be overruled, Member Murphy relies on her concurrence in *Shopping Kart Food Market, Inc.*, 228 NLRB 1311 (1977). See her dissent in *General Knit of California, Inc.*, 239 NLRB 619 (1978).