

**Bob G. Lewis, d/b/a Classic Courts, Employer-Petitioner and Carpenter's Floor Workers' Local Union No. 2144, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 21-RM-1959**

November 29, 1979

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election held on May 14, 1979,<sup>1</sup> and the Regional Director's report and his order denying a motion for reconsideration recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief, and hereby adopts the Regional Director's findings and recommendations.

Contrary to our dissenting colleague, we find that the Regional Office's conduct in this case was entirely appropriate. The record reveals that on May 16, 1979,<sup>2</sup> the Union filed timely objections to the election. Pursuant to established practice, the Regional Director advised the Union of the responsibility to submit to the Region the evidence relied upon in support of the objections by the close of business on May 23. The Regional Director also advised the Union that failure to make such a submission would result in the objections being overruled without further investigation. Specifically, the Regional Director instructed the Union's attorney that:

Evidence should be in the form of affidavits, written statements, or documents. If the evidence cannot be submitted in written form, but is to be presented through witnesses with knowledge of the allegations set out in the objections, a short statement as to the evidence each witness will be able to furnish must be submitted by the above date.

By letter dated May 22, and received by the Region on May 23, the Union's attorney submitted a response to the Regional Director's instructions. The response, however, merely provided the name and telephone number of the union business representative assigned to the election, and stated that the objections "filed in this matter clearly states [sic] the basis upon which the objections have been filed."

<sup>1</sup> The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: none for, and three against, the Petitioner; there were three challenged ballots, an insufficient number to affect the results.

<sup>2</sup> Hereafter all dates refer to 1979.

Based on the Union's failure to comply with established Board procedures and the specific instructions of the Regional Director to provide supporting evidence in the form of affidavits, written statements, or documents, or a description of what each witness would furnish, the Regional Director recommended that the Union's objections be overruled.

The Union filed exceptions to the Regional Director's recommendation,<sup>3</sup> claiming that prior to the May 23 deadline set by the Regional Director its business representative had attempted to contact the Board agent assigned to the case for the purpose of making arrangements for witnesses to give statements. In support of its exceptions, the Union attached an affidavit from its business representative wherein he states that on "May 22 or 23" he called the Board agent assigned to the case. According to the affidavit, the Board agent's secretary informed the business representative that the Board agent was at a meeting out of the State. The Union's business representative then informed the secretary of the purpose of his call and left a message requesting the Board agent to return his call.

In view of the need for prompt handling by regional office personnel of matters related to representation elections, it is clear that regional directors properly may insist that objecting parties submit written statements outlining supporting evidence that they plan to offer. Our dissenting colleague agrees with this practice; however, she has taken the position in this case that the Union fulfilled its obligation to supply such evidence when the union business representative left a message with the Board agent's secretary. We disagree. We do not find that a telephone message left with a member of the Board's clerical staff constitutes timely submission of evidence in support of objections. Clearly, once the union business representative, who was aware that the supporting evidence was due by the close of business that day, was informed that the Board agent was not available, he had an obligation to make arrangements for the timely receipt of the evidence. We find, therefore, that the Regional Director acted properly in recommending that the objections be overruled because of the Union's failure to timely submit evidence.

**CERTIFICATION OF RESULTS OF ELECTION**

It is hereby certified that a majority of valid ballots have not been cast for Carpenter's Floor Workers' Local Union No. 2144, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved.

<sup>3</sup> The Union also filed a motion for reconsideration with the Regional Director which was denied.

within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

MEMBER MURPHY, dissenting:

I cannot agree with my colleagues that the Regional Director correctly overruled the Union's objections to the election on the ground that the Union failed to comply with his request for evidence in support of those objections. Indeed, the majority is engaged in an excessively technical application of our rules by permitting the dismissal of specific, facially substantive objections without even requiring an investigation by a Board agent. Accordingly, I would reverse the Regional Director and order the Region to proceed with an investigation of the Union's objections.

In its objections the Union alleged that representatives of the Employer threatened employees by telling them that they "had better vote 'no union' or they would not have a job." Also alleged was that just prior to the election the Employer offered to pay directly to employees vacation pay that the Employer owed to a pension and vacation trust fund.

An additional two objections alleged that Employer representatives offered to share the Employer's profits with employees and offered to promote certain employees to journeyman level if the employees voted against the Union.

The Regional Director, in a letter dated May 16, requested that the Union submit by May 23 further evidence in support of the objections. The Regional Director's letter instructed that:

Evidence should be in the form of affidavits, written statements, or documents. If the evidence cannot be submitted in written form, but is to be presented through witnesses with knowledge of the allegations set out in the objections, a short statement as to the evidence each witness will be able to furnish must be submitted by the above date.

The Union's reply letter of May 22 did not provide an indication of what evidence might be forthcoming, but merely stated: "Please be advised that the Union's Objections filed in this matter clearly states [sic] the basis upon which the objections have been filed." In addition, the Union provided the name and telephone number of its business representative, informing the Region that the business representative would give an affidavit to the Board agent in support of the objections and would present additional witnesses who also would submit statements. The Union's letter to the Board agent concludes by stating: "If you have any further questions, please do not hesitate to contact me."

According to the affidavit of the union business representative, which was submitted with the excep-

tions, on May 22 or 23 he placed a telephone call to the Board agent assigned to investigate the objections for the express purpose of making arrangements to have three witnesses give statements directly to the Board agent. The agent, however, was out of the office and, although the secretary was requested to have him do so, the agent did not return the call. This occurred despite the fact that the union business representative fully informed the Board's agent's secretary regarding the reasons for his call.<sup>4</sup>

In his report denying the Union's objections, the Regional Director concluded that the Union's May 22 letter did not comply with his request that it furnish—in writing—the evidence that it relied upon to support its objections. The Regional Director stated that such a submission was a precondition to an investigation by his office.

I find that, in the circumstances of this case, the union business representative's telephone call to the Regional Office constituted substantial compliance with the Regional Director's demand for evidence, and thus had the effect of requiring the Region to act further before dismissing the Union's objections. The majority's holding puts form over substance and will only encourage our regional offices to act arrogantly in dealing with the public.

The Regional Office here had instructed the Union to supply its supporting evidence to a specific Board agent. Prior to the deadline set by the Region, the union business representative telephoned that agent in order to offer evidence and identify the witnesses who would submit statements. Through no fault of his own, the business representative was unable to speak to the Board agent. The majority states that "once the union business representative . . . was informed that the Board agent was not available, he had an obligation to make arrangements for the timely receipt of the evidence." Although this statement implies that it would have been acceptable for the business representative to supply the requested information orally, the majority fails to explain how he was to do this when the only Board agent whose name he had been given was out of the office and the Region did not suggest another agent as a substitute.

Apparently, the majority would require members of the public who, as here, attempt to cooperate and comply with a regional office's dictates to chase around the regional office until they can track down someone who can assist them when a particular Board employee is absent. I refuse to put such a burden on those whom this Agency exists to serve.

<sup>4</sup> The Board agent was absent from May 21 to 29. This explains why he did not respond prior to the May 24 dismissal. It does not explain why the Regional Director chose to dismiss without having someone else do so, or why the Regional Director did not reassign the casehandling to another Board agent as of May 21, since the Union still had 2 days left to present evidence to the Region under the deadline set by the Regional Director.

Rather, I believe that the burden shifts to the regional office once a party calls, to get in touch promptly with that individual in an effort to ascertain what the call was about.

It is not too onerous to require the Board's field offices to return telephone calls placed by the public or to be flexible enough to respond appropriately when a particular agency employee is unavailable. The Regional Office here easily could have gotten someone else in the office to speak to the union business representative on the telephone and inform him on how he should proceed in order to meet the Regional Director's deadline. There is no reason to believe that, given the opportunity to speak to a Board agent, the business representative in this case would not have complied fully with the request for support-

ing evidence. Indeed, he placed the call to make arrangements to do just that.

I fully recognize that the Board's regional offices must be allowed to establish and enforce rules so that their ever expanding caseload can be handled expeditiously. Nevertheless, under the circumstances of this case, the Regional Director has gone beyond the line that I would draw within which our field offices are given wide latitude to set operating procedures. It is not unreasonable to expect the agent of the Board will respond to communications from objecting parties, whether written or oral, and in other respects do more than that which is minimally necessary to satisfy the requirements set forth in the Board's Case-handling Manual. The Board majority's decision here violates all aspects of due process.