

Alyeska Pipeline Service Company and General Teamsters Local 959—State of Alaska, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 19-RC-8587

June 20, 1978

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

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 November 29, 1977¹ and the Regional Director's report recommending disposition of same, a portion of which is attached hereto as an appendix. The Board has reviewed the record in light of the exceptions and brief, and hereby adopts the Regional Director's findings and recommendations.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for General Teamsters Local 959—State of Alaska, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that, pursuant to Section 9(a) of the Act, the said labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

All office clerical employees employed in the Employer's Anchorage, Alaska, warehouse excluding all other employees, guards and supervisors as defined in the Act.

CHAIRMAN FANNING, dissenting:

I disagree with the Regional Director's determination that *Rebmar Inc.*, 173 NLRB 1434 (1968), is not dispositive of this case, and I would set the election aside.

In *Rebmar*, the Board found objectionable the distribution by a union of a copy of a part of the Board's Notice of Election, entitled "Rights of Employees," on the back of which the union had printed its partisan message. We there stated that our concern was not with the substance of such a partisan message, but with the possibility that the addition of

such a message to an official Board document, or copy thereof, could mislead voters and be interpreted as an endorsement by the Board of one of the parties to an election.

The fact that in this case the partisan message was stapled to the same Board document, rather than printed on the back of it, and the phrase "Reprinted from a National Labor Relations Board Bulletin" was added to the bottom of the document does not, in my view, dispel the possibility that the Board's nonpartisan role in conducting the election could be suspect.

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: three for, and one against, the Petitioner; there were no challenged ballots and one void ballot.

APPENDIX

The Employer's objection concerns the distribution of a five-page document. . . . The Employer contends that the Petitioner, by duplicating a publication of the National Labor Relations Board and attaching same to Petitioner's campaign literature, wrongfully caused bargaining unit members to perceive the Board as advocating Petitioner's cause.

Investigation revealed that Petitioner conducted meetings for unit members on September 13 and October 3, 6, and 11. Employees attending these meetings were advised that the Document was available, along with other literature, at the front of the room, where it could be picked up by anyone interested. The evidence indicates that several employees did secure copies of the Document. It is undisputed that the last page of the five-page set is [a] full-size, single-color duplication of that portion of the Board's standard Notice of Election, entitled "Rights of Employees." The duplicated portion, including the Board's name and seal, is stapled with the other four pages, which consist of a general explanation of certain "Teamster" policies and fringe benefits. The "Rights" page bears no added language except "Reprinted from a National Labor Relations Board Bulletin." There is no evidence of reference to, or explanation of, the page by either party during the campaign.

The Board has long had a policy of prohibiting reproduction of portions of the Board's official documents when they are coupled with "personal partisan messages," where the combination is capable of being interpreted by employees as an endorsement by the Board of one of the parties to the election. This rule extends to duplication of ballots (*Silco, Inc.*, 231 NLRB 23 (1977)), Regional Director's communications (*J. Ray McDermott and Co.*, 215 NLRB 570

(1974)), and other Board publications. In *Rebmar, Inc.*, 173 NLRB 1434 (1968), the petitioner reproduced the "Rights of Employees" portion of the Board's standard Notice of Election, together with the Board's seal and name, and then added the phrase "The Government protects your right to organize yourself and a union," on one side of the handbill. On the opposite side was "an explanation couched in broad generalized language, of what a union is, how a union functions and what a collective-bargaining contract contains." (173 NLRB at 1434.) The authorship of the document was not set forth. The union was not specifically mentioned by name on the document.

The instant case involves the Petitioner's duplication of the identical document involved in the *Rebmar* case. A distinguishing characteristic herein is that Petitioner's message was printed on four sheets of paper separate from the Board document but attached with staples rather than being printed on the reverse side of the document.

While the Board should guard against having its prestige put to possible abuse, I conclude that the Act of Petitioner's stapling the attachment "Rights of Employees" to its message, rather than distributing or making available the documents separately at its meeting, does not rise to the level of abuse of the Board's processes.

The Board document "Rights of Employees" is routinely posted by the Employer prior to the election in representation cases at the request of the Board. Since the attached document was plainly marked "Reprinted from N.L.R.B. bulletin," I do not believe that the employees would have been misled into the belief that the Petitioner's campaign literature was endorsed by the Board. In this instance, I conclude that the employees were clearly capable of evaluation and comprehension of the material in the form presented and, further, that the Board's finding in *Rebmar, Inc.*, 173 NLRB 1434 (1968), is not controlling in this case. Accordingly, I shall recommend that the Employer's objections be overruled and that a Certification of Representative issue.