

**Donner Packing Company and Teamsters "General"
Local Union No. 200, affiliated with the Interna-
tional Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America, Petitioner.
Case 30-RC-3283**

July 19, 1978

**DECISION AND DIRECTION OF SECOND
ELECTION**

BY CHAIRMAN FANNING AND MEMBERS 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 the objections to an election held April 7, 1978,¹ and the Regional Director's report recommending disposition of same.² The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the Regional Director's findings³ and recommendations.⁴

[Direction of Election and *Excelsior* footnote omitted from publication.]

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 50 for, and 42 against, the Petitioner; there was 1 challenged ballot, an insufficient number to affect the results.

² The relevant portion of the Regional Director's report is attached hereto marked "Appendix."

³ In agreeing that the Petitioner's leaflet interfered with the employees' free choice in this election, within the holding of *GAF Corporation*, 234 NLRB 1209 (1978), cited and relied on by the Regional Director, Member Murphy further notes that the said leaflet was similar to those which she would also have found improperly misrepresented the Board's position as set forth in her separate opinions in *George J. London Memorial Hospital*, 236 NLRB 797 (1978), and *Monmouth Medical Center*, 234 NLRB 328 (1978).

⁴ The Employer contends, in requesting a hearing on Objections 2 and 3, that we should order additional "remedies" requiring the Petitioner to send notices to all employees stating that the Petitioner will not coerce or threaten them, and to secure a new showing of interest. The Employer also states that a sufficient period of time must pass before there can be a second election, to insure that there is an atmosphere allowing free choice. We find no merit in these contentions. Such remedies are not available in matters arising under Sec. 9(e) of the Act. Furthermore, the adequacy of the showing of interest is an administrative matter only and is not litigable. The purpose of the showing of interest is to avoid the conduct of a frivolous election. Since an election has already been conducted, any issue regarding the adequacy of the showing of interest is further mooted. *Northeastern University*, 218 NLRB 247 (1975); *O. D. Jennings & Company*, 68 NLRB 516 (1946). In view of our disposition of Objection 1, we find that a hearing on the remaining objections is unnecessary. The Employer's request for a hearing is hereby denied.

APPENDIX

Objection 1:

1. The Petitioner has engaged in deceptive campaign practices improperly involving the National

Labor Relations Board and its processes. Petitioner has used forged NLRB documents which rendered the employees unable to recognize the Petitioner's letters and documents sent to all employees for what they really were.

Investigation of Objection 1:

The uncontradicted evidence shows that on March 15, 1978, a letter was sent by Petitioner over the signature of its business representative, James Bonnett, to employees in the bargaining unit. The letter consisted of two pages which are attached hereto as Exhibits A and B. Similarly, on March 29, a flyer and a letter (attached hereto as Exhibits C and D, respectively) were mailed to employees, again over the signature of Petitioner's business representative, James Bonnett. The letter of March 15 makes reference to "the enclosed article published by the National Labor Relations Board, an official government agency." The attachment to this letter contains an article entitled, "Teamsters Keep Rolling." The March 29 letter makes reference to a "report published by the NLRB [in which], they stated the following" The letter then contained a paragraph concerning the "Win-loss" record of the Teamsters in NLRB-conducted elections compared to the win-loss record of AFL-CIO affiliated unions. Neither the document attached to the March 15 letter (Exhibit B) nor the excerpt reproduced on the March 29 letter (Exhibit D) were taken from NLRB sources. In each case, a reproduced excerpt [was] taken from the *Wisconsin Teamster*, the "Official Publication Wisconsin Teamsters Joint Council No. 39." As composed, the letters use the name of the National Labor Relations Board in a manner which creates the impression that the Agency has granted the Petitioner its imprimatur or support. This use would mislead voters into believing that the Board has lent its name and prestige to support Petitioner—something which the Board cannot countenance. *GAF Corporation*, 234 NLRB 1209

Based on the above, I conclude that the Petitioner has engaged in conduct which warrants setting aside the election. Thus, I recommend that Objection No. 1 be sustained. I further find it unnecessary to deal with the Employer's Objections Nos. 2, 3 and 4 because of the clearly objectionable conduct found above.