

**Y & S Candies, Inc. and Bakery & Confectionery
Workers' International Union of America, AFL-
CIO, Local 289, Petitioner. Case 4-RC-12800**

December 19, 1977

DECISION ON REVIEW

BY MEMBERS JENKINS, PENELLO, AND MURPHY

On September 14, 1977, the Acting Regional Director for Region 4 issued his Decision and Direction of Election in the above-entitled proceeding in which he directed an immediate election in a unit of all production and maintenance employees, quality control inspectors and lab technicians employed by the Employer at its Lancaster, Pennsylvania, facility, thereby rejecting the Employer's contention that the petition was premature. Thereafter, the Employer, in accordance with the National Labor Relations Board's Rules and Regulations, Series 8, as amended, filed a timely request for review of the Acting Regional Director's Decision on the grounds that he departed from officially reported Board precedent and made erroneous findings of fact.

By telegraphic order dated October 6, 1977, the National Labor Relations Board granted the request for review and stayed the election pending decision on review.

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.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

The Employer, a New York State corporation, is engaged in the manufacture and distribution of candies. On April 25, 1977, the Employer opened a new plant in Lancaster, Pennsylvania, for the purpose of producing licorice candy. With the opening of that plant the Employer intended to phase out its obsolescent Brooklyn, New York, facility and to move some of the equipment from the Brooklyn location to Lancaster, where it will have greater production capacity. The Lancaster plant is intended to operate on a two-shift basis whereas the Brooklyn operation entailed only one shift. The Petitioner filed its petition for a unit of production and maintenance employees at the Lancaster plant on July 29, 1977, at which time it estimated there were 35 employees in the unit sought. As of the August 22 hearing date there were approximately 61

employees in the unit in 19 of the 20 ultimate job classifications. The testimony disclosed that only 15 percent of the available space in the Lancaster facility was being utilized as of the hearing date and that the Employer had plans to install 10 additional machines and to hire a substantial number of additional employees between Labor Day and approximately November 1, 1977, when the Brooklyn plant was to be completely shut down. By January 1, 1978, the Employer anticipated having a production and maintenance work complement of approximately 185 to 200 employees. Its employee complement, however, would include only 10 to 15 transfers from the Brooklyn plant. The Regional Director acknowledged these facts but also stated that prior to the issuance of his decision on September 14, 1977, "the Employer will have hired [the aforementioned] additional employees in the unit sought by the Petitioner."

The Employer contends that the record does not support the Regional Director's finding that additional employees would be hired prior to September 14 and asserts that no such hiring has occurred. Rather, the Employer contends, and the record shows, that the 10 machines were to be installed by approximately November 1, 1977, and would require an additional 140 employees, rather than 50 to 60 as estimated by the Regional Director. In these circumstances, we find merit in the Employer's contention that the direction of an election requiring an early September eligibility date would have unreasonably disenfranchised a substantial number of employees, including transferees from Brooklyn, expected to be hired within a relatively brief period following the Regional Director's decision.

It is clear that by November 1 the 10 additional machines were to be installed and employees were to be hired and trained to operate them. Inasmuch as the approximate date for the installation of the 10 machines and hiring of employees to operate them has now passed, we find that a substantial and representative complement of the Employer's ultimate work force now exists which can exercise the franchise extended by our Act.¹

Accordingly, we hereby remand the case to the Regional Director for the purpose of conducting an election pursuant to the Decision and Direction of Election, except that the payroll period for determining eligibility shall be that immediately preceding the issuance date of this Decision on Review. [*Excelsior* footnote omitted from publication.]

¹ *World Southern Corporation*, 215 NLRB 287 (1974); *Hearth Craft, Inc.*, 222 NLRB 1304 (1976).