

Advance Industrial Security, Inc. and Security Guards Local Union No. 714, affiliated with the International Association of Security Guards, Independent, Petitioner. Case 10-RC-10595

June 9, 1977

**DECISION ON REVIEW AND
CERTIFICATION OF RESULTS OF
ELECTION**

**BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND MURPHY**

On October 21, 1976, the Regional Director for Region 10 issued his Supplemental Decision, Order, and Direction of Second Election.¹ Thereafter, pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a request for review with the Board of the Regional Director's Supplemental Decision.

By telegraphic order dated November 18, 1976, the National Labor Relations Board granted the Employer's request for review with respect to Petitioner's Objections 1 through 6 relating to conduct affecting the results of the election, and remanded that portion of the case to the Regional Director for the purpose of conducting a hearing before a Hearing Officer. It was further directed that the Hearing Officer's report with recommendations be returnable to the Board, in accordance with the Board's Rules and Regulations. The Board held in abeyance its ruling with respect to the Regional Director's finding merit to the Petitioner's objections relating to the failure of the Employer to comply with the Board's *Excelsior* list requirements.²

On February 2, 1977, Hearing Officer E. Walter Bowman III issued his report in which he found Petitioner's Objections 1 through 6 to be without merit and recommended, contrary to the findings of the Regional Director, that they be overruled.

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, including the Regional Director's Supplemental Decision, the Employer's request for review, the Employer's brief on review, and the Hearing Officer's report, and makes the following findings:

¹ The tally of ballots for the election showed that, of approximately 133 eligibles, 36 cast valid votes for, and 56 cast valid votes against, the Petitioner. There was one void and no challenged ballots.

² No exceptions were taken by the parties to the Regional Director's overruling Petitioner's Objections 7, 8, 9, 10, and 13.

³ See *Kentfield Medical Hospital*, 219 NLRB 174, 175 (1975), and cases

In the absence of exceptions thereto we adopt *pro forma* the Hearing Officer's factual findings and recommendations that Objections 1 through 6 be overruled.

As for the Petitioner's objections relating to the Employer's failure to furnish the Regional Office an election eligibility list, as required by *Excelsior Underwear Inc.*, 156 NLRB 1236 (1966), the Regional Director found that the Employer did not substantially comply with the Board's *Excelsior* rule because 9 names were omitted from a list of approximately 152 names. The Regional Director rejected the claim of the Employer that the omissions were inadvertent. We do not agree with the Regional Director's findings.

The Employer explained that five names were left off the *Excelsior* list because the names had not appeared on the payroll register since the employees in question had not worked that payroll period or were on vacation. As for the remaining four names which were left off the list, the Employer's explanation was that the person compiling the list mistakenly considered these employees to be supervisors. The Employer discovered the omissions shortly before the election and immediately brought this to the attention of the Petitioner and agreed to add the nine names to the voting list before the election. On the basis of these uncontroverted facts we are unable to find that the Employer was guilty of gross negligence, bad faith, or intentional deception in these errors. At most, the Employer's inadvertence constituted an error factor of approximately 6 percent of the eligible voters. Under these circumstances we find that there has been substantial compliance and, contrary to the Regional Director, overrule Objections 11 and 12.³

As the Petitioner's objections have been overruled, and as the tally of ballots shows that a majority of the valid votes have not been cast in favor of the Petitioner, we shall certify the results of the election.

**CERTIFICATION OF RESULTS OF
ELECTION**

It is hereby certified that a majority of the valid votes have not been cast for Security Guards Local Union No. 714, affiliated with the International Association of Security Guards, Independent, and said labor organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

cited therein. Chairman Fanning adheres to his dissent in *Kentfield Medical Hospital*, but finds that case distinguishable. Under the circumstances herein, Chairman Fanning would not find the number of omissions so substantial as to require the setting aside of the election. See *Texas Christian University*, 220 NLRB 396 (1975).