

Fast Food Merchandisers, Inc. and Margaret Battle, Petitioner and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local P-706. Case 11-RD-284

May 4, 1979

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director for Region 11 of the National Labor Relations Board on December 22, 1978, an election by secret ballot was conducted in the above-entitled proceeding on January 11, 1979, under the direction and supervision of said Regional Director. Upon the conclusion of the election, a tally of ballots was furnished the parties in accordance with the Board's Rules and Regulations, Series 8, as amended.

The tally of ballots shows that there were approximately 176 eligible voters and that 169 ballots were cast, of which 80 votes were cast for, and 78 against, the Union; 11 ballots were challenged. The challenged ballots are sufficient in number to affect the results of the election.

On January 18, 1979, the Employer filed timely objections to conduct affecting the results of the election. Pursuant to Section 102.69 of the Board's Rules and Regulations, an investigation of the objections and challenges was conducted under the direction and supervision of the Regional Director and, on March 2, 1979, he issued and duly served on the parties his Report on Objections and Challenges. The Regional Director recommended that the objections be overruled in their entirety and that a hearing be held for the purpose of resolving issues raised by the 11 challenged ballots. Thereafter, both the Employer and the Union filed timely exceptions to the Regional Director's report. The Employer excepts to the Regional Director's recommendation that Objections 1 and 3 be overruled. The Union excepts to the recommendation that a hearing be held on the 11 challenged ballots and contends that the challenges should be sustained on the basis of the administrative record.

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 Regional Director's Report on Objections and Challenges, the exceptions and briefs, and the entire record in this proceeding,

and has decided to adopt the Regional Director's recommendations only to the extent consistent herewith.¹

The Union challenged the ballots of 11 warehousemen, claiming that they were not members of the unit. The Union contends that warehousemen have been specifically excluded from the bargaining unit by agreement of the parties since 1976. On the other hand, both the Petitioner and the Employer contend that the warehousemen's ballots should be opened and counted because warehousemen enjoy a substantial community of interest with the members of the bargaining unit. The Employer further contends that in the election agreement which was approved on December 22, 1978, the parties stipulated to a unit of all production and maintenance employees, and that warehousemen are encompassed by the phrase "production and maintenance employees." Finally, the Employer contends that the warehousemen whom the Employer has agreed to exclude from the bargaining unit since 1976 are warehousemen who work in a facility at the Employer's Rocky Mount, North Carolina, complex which is separate and organizationally unrelated to the facility where the 11 warehousemen in question work. The Regional Director recommended a hearing because, in his view, the "evidence presented by the parties is in conflict."

Contrary to the Regional Director, we find that the challenges raise no issue requiring a hearing. In this connection we note that it is established Board policy that the unit appropriate in a decertification election must be coextensive with either the certified or recognized bargaining unit; hence, community-of-interest factors which would be considered in making an initial appropriate unit determination are not relevant herein. In the instant case, it is clear that warehousemen have been specifically excluded from the recognized bargaining unit. Thus, the record includes a February 1, 1976, agreement whereby the parties agreed to exclude warehousemen and truckdrivers from the bargaining unit and, consistent with this understanding, warehousemen were specifically excluded under the recognition clause of the most recent collective-bargaining agreement.²

Finally, we note that, even if the unit stipulated here of all "production and maintenance employees" was construed, *arguendo*, as an agreement by the parties to include warehousemen for purposes of the election, we would not give effect to such an agreement.

¹ In the absence of exceptions thereto, we adopt, *pro forma*, the Regional Director's recommendation that the issues raised by the Employer's Objection 2, and by the Employer's Objection "Other Acts and Conduct" be overruled. We additionally adopt the Regional Director's recommendation that Objections 1 and 3 be overruled.

² In the face of this evidence, the Employer's assertion that the 11 warehousemen involved here are not the warehousemen it intended to exclude by its agreement with the Union raises no issues warranting hearing.

As we have pointed out elsewhere, "whatever effect given by the Board to stipulated units in representation elections, it would obviously frustrate the Board policy of directing decertification elections in the existing bargaining unit to permit the parties to vary that unit and participate in an election in a different unit of their own choosing."³

Accordingly, as we have adopted the Regional Director's recommendation to overrule the Employer's objections in their entirety and have decided to sustain the challenges to the ballots of the 11 warehousemen based on the administrative record, and as the tally of ballots shows that the Union has received a majority of the valid votes cast, we shall certify the Union as the exclusive bargaining representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Local P-706, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

All production and maintenance employees at the Employer's manufacturing facilities located at 1233 N. Church Street, Rocky Mount, North Carolina, but excluding all truckdrivers, office clerical employees, salesmen, buyers, guards, and/or watchmen, and foremen and supervisors as defined in the Act.

³ *Brom Machine and Foundry Co.*, 227 NLRB 690 (1977).