

American Optical Company and Teamsters Local 592, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 5-RC-9843

June 1, 1977

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 a determinative challenge in, and objections to, an election held November 18, 1976,¹ and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the

¹ The election was conducted pursuant to Stipulation for Certification Upon Consent Election. The tally was: 12 for, and 11 against, the Petitioner; there was 1 challenged ballot, a sufficient number to affect the results.

² The Employer excepted to certain credibility resolutions made by the Hearing Officer. It is the long established policy of the Board not to reverse a hearing officer's credibility resolutions when they are based on his observation of the demeanor of witnesses as they testify at the hearing unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *The Coca-Cola Bottling Company of Memphis*, 132 NLRB 481 (1961); *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We have carefully examined the record in this case and see no basis to reverse the Hearing Officer's credibility resolutions.

³ At the hearing, the Employer moved to quash the proceedings on the ground that the challenge to the ballot of Dorothy Brannon was improperly

exceptions and brief and hereby adopts the Hearing Officer's findings² and recommendations.³

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Teamsters Local 592, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 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 unit found appropriate herein for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment:

All hourly paid lab operators and clerks employed by the Employer at its Richmond, Virginia, location, excluding all other employees, all salesmen, guards and supervisors as defined in the Act.

sent to hearing. The Hearing Officer denied Employer's motion since the Employer failed to file exceptions to the Acting Regional Director's report on challenges and objections, issued December 29, 1976, in which he directed a hearing as to Brannon's ballot. In support of its exception to the Hearing Officer's ruling, the Employer contends that the Regional Office failed to serve a copy of the Acting Regional Director's report on counsel for the Employer until after the period for filing exceptions had expired.

The Employer was timely served on December 31, 1976, and the Employer's counsel received a copy of the report long before the Board's original Decision issued in the above-entitled matter. The Employer's counsel at that time did not raise any objections to the report nor did he object that he had received it late. Under these circumstances, we conclude that Employer has failed to demonstrate that it has suffered any prejudice. Accordingly, the Employer's motion to quash the notice of hearing is hereby denied.