

In the Matter of ANN HARTSTEIN AND FRED HARTSTEIN, CO-PARTNERS,
D/B/A WELDMASTER COMPANY and UNITED BROTHERHOOD OF WELDORS,
CUTTERS AND HELPERS OF AMERICA, LOCAL #22

Case No. 2-R-4287

SUPPLEMENTAL DECISION
AND
SECOND DIRECTION OF ELECTION

April 29, 1944

On March 9, 1944, pursuant to the Decision and Direction of Election issued by the Board herein on February 12, 1944,¹ an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Second Region (New York City). Upon the conclusion of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board.

The tally shows that of the approximately 102 eligible voters 18 cast valid votes, of which 13 were for United Brotherhood of Weldors, Cutters and Helpers of America, Local #22, and 5 against.

Thereafter on March 15, 1944, Ann Hartstein and Fred Hartstein, co-partners, doing business as Weldmaster Company, herein called the Company, filed Objections to the Conduct of the Election, contending that (1) S. T. Gordon, the president of United Brotherhood of Weldors, Cutters and Helpers of America, Local #22, hereinafter called the Union, electioneered at the polling place, and (2) a majority of the eligible employees did not cast ballots because they did not receive notice of the election due to the fact that the Company was unable to post notices of the election at all the places where said employees were working.²

¹ 54 N. L. R. B. 1309. The Decision and Direction of Election is hereby amended by substituting the spelling "Hartstein" for "Harstein" wherever such name appears in the Decision and Direction, and also by substituting the spelling "Weldors" for "Welders" in the name of the labor organization in the caption of the proceeding, in accordance with a stipulation of the parties providing for the correction of the record in the foregoing respects.

² In support of its objections, the Company submitted an affidavit verified by two individual employees and several petitions bearing 51 signatures, stating that the signers were employees of the Company eligible to vote in the election; that they were not notified of the election, and that they desired that a new election be conducted. In opposition thereto, the Union submitted a written statement setting forth that the employee of the Company who signed said statement had notified 31 employees of the time and place of the election.

56 N. L. R. B., No. 34.

On April 7, 1944, the Regional Director issued and duly served upon the parties his Report on Objections wherein he found that (1) there was no evidence to support the objection based on alleged electioneering by the president of the Union at the polling place, and (2) the objection based on the failure of a substantial number of employees to receive notice of the election³ raised substantial and material issues with respect to the conduct of the ballot. The Regional Director recommended that, in view of the probability that a substantial number of eligible employees were not informed of the election and for this reason failed to present themselves at the polls, the election be set aside and a new election be directed. No exceptions have been filed to the findings and recommendations set forth in the Report on Objections.

In view of the election results, we find that the balloting failed to result in a representative vote.⁴ Rather than dismiss the petition, however, we shall direct that another election be held among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Second Direction of Election.

SECOND DIRECTION OF ELECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Sections 10 and 11, of National Labor Relations Board Rules and Regulations—Series 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Ann Hartstein and Fred Hartstein, co-partners, doing business as Weldmaster Company, Brooklyn, New York, an election by secret ballot shall be conducted as soon as possible but not later than thirty (30) days from the date of this Second Direction of Election, among the employees in the unit found appropriate in the Board's Decision of February 12, 1944, who were employed during the pay-roll period immediately preceding the date of the Second Direction of Election, including employees who did not work during said pay-roll period because they

³ The record indicates that the failure of a large number of employees to receive notice of the election was due to the fact that such employees worked for the most part on the premises of third parties where the Company was unable to post the usual notices regarding the election.

⁴ See *Matter of Weisberger Sales Co.*, 28 N. L. R. B. 154; *Matter of S. A. Kendall, Jr.*, 41 N. L. R. B. 395. The failure of an election to result in a representative vote is, however, distinguishable from a mere failure on the part of a majority of the eligible employees to participate in such election. See *Matter of R. O. A. Manufacturing Co., Inc.*, 2 N. L. R. B. 159, 173; *Matter of Spring City Foundry*, 11 N. L. R. B. 1286; *Matter of The Central Dispensary & Emergency Hospital*, 46 N. L. R. B. 437.

were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding any who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by United Brotherhood of Weldors, Cutters and Helpers of America, Local #22, for the purposes of collective bargaining.