

In the Matter of THE TOLEDO DESK AND FIXTURE COMPANY and UNITED
WHOLESALE, WAREHOUSE AND DELIVERY EMPLOYEES, LOCAL 363
(CIO)

Case No. 8-R-1474

SUPPLEMENTAL DECISION
AND
CERTIFICATION OF REPRESENTATIVES

August 11, 1944

On May 29, 1944, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above entitled proceeding.¹ Pursuant to the Direction of Election, an election by secret ballot was conducted on June 21, 1944, under the direction and supervision of the Regional Director for the Eighth Region (Cleveland, Ohio). On the same day of the election, the Regional Director, acting pursuant to Article III, Section 10, of National Labor Relations Board Rules and Regulations, Series 3, issued and duly served upon the parties a Tally of Ballots.

As to the balloting and its results, the Regional Director reported as follows:

Approximate number of eligible voters.....	108
Valid votes counted.....	25
Votes cast for United Wholesale, Warehouse and Delivery Em- ployees, Local 363 (CIO).....	16
Votes cast for Maumee Valley District Council of Carpenters, Local 1359 (AFL).....	9
Votes cast against the participating unions.....	0
Challenged ballots.....	33
Void ballots.....	0

On June 27, 1944, Maumee Valley District Council of Carpenters, Local 1359, (AFL), herein called the AFL, filed "Objections to Election" and on July 19, the Regional Director, having investigated the objections, issued and duly served upon the parties copies of his Report on Challenges and Objections. Thereafter, the AFL filed exceptions

¹ 56 N. L. R. B. 1022.

57 N. L. R. B., No. 198.

and the Company expressed certain objections to the Regional Director's report.

The first objection of the AFL is to the effect that sample ballots mailed by the Board's Regional Office to all eligible voters were defective in that the name of the AFL was in part obliterated by the coincidence of a few letters in its name with the word "sample" which is written across the face of the ballot. In view of the fact that its name is clearly legible despite the superimposed print, we fail to see how the AFL was injured in any manner thereby, and we shall, therefore, overrule its objection.

The AFL's second objection relates to the alleged campaigning by members of the United Wholesale, Warehouse and Delivery Employees, Local 363 (CIO), herein called the CIO, on the day of the election, at or near the election booth. In support of this objection, the AFL submitted an affidavit by C. Groll, an employee of the Company, to the effect that while on his way to vote, about 10 feet away from the polling booth, he was stopped by Mrs. L. E. Wright, and asked "Which way are you going to vote?" Upon replying that he didn't know, Mrs. Wright said, "Don't forget, CIO." In addition to the above affidavit, the AFL submitted a statement signed by two supervisory employees and an office clerk which reads, in part, "At the time Mary Gerhardinger appeared at the booth to cast her vote, she asked La Verne Ellis (Mrs. Wright) 'What are you doing here?' La Verne Ellis replied, 'I was placed here by the CIO.'"

The Regional Director's report shows that Mrs. Wright was an official observer for the CIO, and it was therefore part of her official duties to be stationed near the polling booth. In an affidavit submitted by Mrs. Wright she states that she did not talk to any voters or tell anyone how to vote. Moreover, she denies speaking to either Groll or Gerhardinger. On the evidence submitted by the AFL in support of its objection we are not convinced that Mrs. Wright made the statement attributed to her by Groll,² or that each voter was not otherwise given an opportunity to vote his ballot in secret.³ Following the recommendation of the Regional Director, we shall overrule this objection.

Since there were 25 valid votes counted, and 33 challenged ballots, the latter can obviously affect the result of the election. Four ballots were challenged by the CIO, 11 by the AFL, and 18 by the Company. The CIO advised the Regional Director that it desired to participate

² We note that the evidence with respect to the conversation between Gerhardinger and Wright is pure hearsay, but even if we are to accept it, the statement attributed to Wright contains nothing objectionable.

³ A statement was signed by a representative of each party at the conclusion of the balloting indicating that all voters had received such an opportunity.

in the challenges of the Company and the AFL. According to the Report on Objections and Challenges, all parties to the election are in agreement that 29 challenges should be sustained. Inasmuch as the remaining 4 challenged ballots cannot affect the results of the election, we find it unnecessary to rule on them. No exceptions having been filed to this part of the Report, we shall sustain the challenges to the 29 ballots.

The Company contends that the results of the election do not represent the desires of its employees as they allegedly will be constituted in the near future and therefore urges that the certification of the CIO be withheld pending a redetermination of the question concerning representation. As of the date of hearing, the Company employed about 115 employees who were engaged in the mass production of mess tables, benches, and shelvings for branches of the armed services. In peace times the Company produced fixtures and furniture for department stores, specialty shops, restaurants, and night clubs. For the manufacture and installation of these custom-made articles, the Company required the services of about 18 skilled craftsmen. Between the date of the hearing and the holding of the election, the Company laid off all but approximately 29 employees because of the fact that it had completed its war contracts. The Company states that, in reconverting its facilities to its normal peacetime production, it will employ the same number of skilled craftsmen that it had formerly employed, and that such craftsmen will of necessity have to be recruited outside the ranks of those presently employed. A certification of the CIO, the Company argues, will result, therefore, in the establishment of a bargaining agent not chosen by the majority of the employees who will constitute the Company's personnel upon the completion of its reconversion plans. We are of the opinion, however, that the Company's objections are premature. The record contains nothing specific relating to the future operating plans of the Company that would tend to support its contention; at best, the indication is that such plans are purely speculative. Inasmuch as a majority of the Company's present employees have indicated their desire to be represented by the CIO, we are constrained to the view that under the circumstances now present in the plant a certificate should issue.

CERTIFICATION OF REPRESENTATIVES

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 9 and 10, of the National Labor Relations Board Rules and Regulations—Series 3, as amended,

IT IS HEREBY CERTIFIED that United Wholesale, Warehouse and Delivery Employees, Local 363 (CIO), has been designated and selected

by a majority of all employees of The Toledo Desk and Fixture Company, Toledo, Ohio, but excluding spot laborers, supervisors, working foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the Act, United Wholesale, Warehouse and Delivery Employees, Local 363 (CIO) is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

CHAIRMAN MILLIS took no part in the consideration of the above Supplemental Decision and Certification of Representatives.