

In the Matter of **SAFEGWAY STORES, INC., EMPLOYER** and **RETAIL  
CLERKS' UNION, LOCAL NO. 24, PETITIONER**

*Case No. 30-UA-477.—Decided January 28, 1949*

**DECISION  
AND  
CERTIFICATION OF RESULTS**

Upon a petition duly filed pursuant to Section 9 (e) (1) of the National Labor Relations Act, a union-security election was conducted on September 17, 1948, by the Regional Director for the Seventeenth Region, among the employees of the Employer's Pueblo, Colorado, stores, in accordance with the provisions of Section 203.67 of the Board's Rules and Regulations.

At the close of the election, the parties were furnished a Tally of Ballots which shows that 32 of the 36 eligible voters cast valid votes, of which 19 were for and 13 against authorizing the Petitioner to enter into an agreement with the Employer requiring membership in the petitioning union as a condition of continued employment. Four votes were challenged.

On September 23, 1948, the Petitioner filed Objections to the Tally of Ballots and to the results disclosed thereby because the Tally states that the required majority of eligible voters have *not* cast valid ballots in favor of the proposition voted upon. After due investigation, the Regional Director issued and duly served upon the parties his Report on Objections, in which he found that the Objections were without merit and recommended that the Board overrule them and issue a Certificate of Results finding that the required majority have not cast ballots in favor of authorizing the Petitioner to enter into an agreement with the Employer requiring membership in the Union as a condition of continued employment. Thereafter, the Petitioner filed exceptions to the Report on Objections.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.\*

\*Houston, Reynolds, and Murdock.

The Petitioner has excepted to the Regional Director's determination that because three-fourths of the eligible voters have not cast ballots in favor of union-security authorization as required by the Colorado Labor Peace Act of 1943,<sup>1</sup> the Board may not issue a certificate of authority in this proceeding.

Section 6 (1) (c) of the Colorado Labor Peace Act of 1943, provides that :

. . . an employer shall not be prohibited from entering into an all-union agreement with the representatives of his employees, in a collective bargaining unit, where three-quarters or more of his employees shall have voted affirmatively by secret ballot in favor of such all-union agreement in a referendum conducted by the Commission.

Section 2 (10) defines the term "election" and provides that such elections may be conducted by the Industrial Commission of Colorado, or, unless the context clearly indicates otherwise, by any tribunal having competent jurisdiction or whose jurisdiction has been accepted by the parties. The exceptions of the Petitioner are based upon the argument that where the State law does not absolutely prohibit union-security agreements but allows them subject to regulatory provisions which conflict with the Federal Act, the regulatory features of the Federal Act should have precedence over those of the State Act. We find merit in this argument.

Section 14 (b) of the National Labor Relations Act, as amended, provides :

Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial Law.

We have recently construed this Section to mean that State *prohibition* of union-shop agreements shall be given effect, but not that State *regulation* of such agreements shall be given precedence over national regulation.<sup>2</sup>

We conclude, therefore, that inasmuch as the Colorado Statute does not prohibit but only regulates union-shop agreements, the national law prevails. Section 8 (a) (3) of the Act, as amended, permits the making of union-security agreements "if, following the most recent election held as provided in Section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in

<sup>1</sup> Colorado Session Laws (1943), c 131, Secs 1-28

<sup>2</sup> *Northland Greyhound Lines, Inc.*, 80 N L R B. 288.

such election have voted to authorize such labor organization to make such an agreement.” The Tally of Ballots shows that a majority of the eligible voters in the election held herein voted in favor of the proposition appearing on the ballot. Accordingly, we hereby overrule the Regional Director’s recommendations.

### CERTIFICATION OF RESULTS

Upon the basis of the Tally of Ballots, and the entire record in the case, the Board certifies that:

1. A majority of employees eligible to vote in the unit below have voted to authorize Retail Clerks’ Union, Local No. 24, to make an agreement with Safeway Stores, Inc., Pueblo, Colorado, requiring membership in such labor organization as a condition of employment, in conformity with Section 8 (a) (3) of the Act as amended.

2. The appropriate bargaining unit in which the election was conducted comprises:

All food clerks employed in the Employer’s retail stores at Pueblo, Colorado, excluding janitors, parking lot attendants, meat market employees, caddyboys, part-time employees who work less than 20 hours per week, all office employees, guards, watchmen, professional employees, and supervisors as defined in the Act.