

In the Matter of NORTH AMERICAN AVIATION, INC., EMPLOYER *and*  
INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, LOCAL 887, PETITIONER

*Case No. 21-UA-1797.—Decided February 28, 1949*

DECISION  
AND  
ORDER SETTING ASIDE ELECTION

On August 20, 1948, the Regional Director for the Twenty-first Region (Los Angeles, California), pursuant to the Rules and Regulations of the National Labor Relations Board, conducted a union-shop authorization election among certain employees of the Employer. Such election was conducted by mail ballot.

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 15,532 eligible voters, 8,771 cast valid ballots, of which 6,314 were for, and 2,457 against, authorizing an agreement requiring membership in the Petitioner as a condition of continued employment. Five ballots were void, and 92 were challenged. Thus, the Petitioner did not obtain a majority of the eligible voters, as is required by Section 8 (a) (3) of the Act.

Thereafter, on August 27, 1948, the Petitioner filed Objections to the Conduct of the Election. On October 19, 1948, the Regional Director issued and duly served upon the parties his Report on Objections, in which he recommended that the Petitioner's Objections be dismissed. On November 8, 1948, the Employer filed timely Exceptions to the Report on Objections. On November 12, 1948, the Petitioner filed Exceptions to the Report on Objections, which Exceptions were not received within the time provided for filing Exceptions.<sup>1</sup> Although the Board will not ordinarily consider Exceptions which are not timely filed, we shall, in view of the character of the Petitioner's

---

<sup>1</sup> The time for filing Exceptions was extended by the Board to November 8, 1948. The Petitioner's Exceptions were received by the Board on November 12, 1948, 4 days beyond the extension date granted.

Objections, consider its Exceptions on the merits, together with the Employer's Exceptions.<sup>2</sup>

*The Substance of the Employer's Exceptions*

The validity of the filing of the Petitioner's Objections is raised by the Employer in its Exceptions to the Regional Director's Report on Objections. The Employer alleges, in effect, that such Objections were not properly filed pursuant to Section 203.61 of the Rules and Regulations of the Board because the Employer was not served with a copy thereof. The Board has generally held, however, that technical defects in the filing of objections will not affect their validity where no prejudice has resulted therefrom.<sup>3</sup> In the present case, it does not appear that the Employer has been prejudiced by not having received a copy of the Petitioner's Objections, since such Objections were embodied in the Regional Director's Report on Objections, a copy of which the Employer admittedly received. We find, therefore, that the Employer's Exceptions are lacking in merit, and they are hereby overruled.

*The Substance of the Petitioner's Objections and Exceptions*

The Petitioner's Objections and Exceptions, read together, can be construed as raising two major contentions: (1) that the conduct of the election by mail ballot was improper; and (2) that there were certain irregularities in the conduct of the election which prevented proper and adequate distribution and return of the ballots.

With regard to the first contention, the Board has stated that a Regional Director has broad discretion in arranging the details of an election, including, in appropriate instances, the determination as to whether to conduct the election in whole or in part by mail.<sup>4</sup> In the present instance, inasmuch as there were 15,532 eligible voters at separately located plants, and since the Employer refused to permit the election to be held on its premises, we do not believe that the conducting of the election by mail ballot was "*per se*" objectionable or improper.

With regard to the second contention, it appears that the irregularities complained of arose by virtue of the insistence of the parties

<sup>2</sup> Cf. *Matter of Woodmark Industries, Inc.*, 80 N L R B 1105, wherein the Board of its own motion considered objections to the conduct of an election, filed by a labor organization not a party to or entitled to participate in the election, where such objections concerned matters of Board policy.

<sup>3</sup> See *Matter of P. D. Gwaltney, Jr., and Company, Inc.*, 74 N L R B. 371.

<sup>4</sup> *Matter of E. I. Du Pont de Nemours and Company*, 79 N L R B 345, and cases cited therein. See, also, Section 203.67 of the Rules and Regulations of the Board.

that the election be completed before August 21, 1948, the date upon which the union-security provisions of the Petitioner's contract with the Employer would expire. In an effort to cooperate with the parties, the Regional Director departed in certain respects from the customary practice of the Board. Thus, the Regional Director allotted less time, under the circumstances, than he ordinarily would have allotted for the receipt and return of the mailed ballots.<sup>5</sup> In addition thereto, the Regional Director permitted the Employer to address the ballot envelopes for mailing to employees. In the course of the latter process, it developed, through an oversight, that the return envelopes enclosed with the ballots did not bear the customary postage or Government frank<sup>6</sup> permitting employees to return the completed ballots by mail without the added inconvenience and expense of purchasing and affixing stamps thereto. As the result of these circumstances, the Petitioner now alleges, among other things: (1) that a substantial number of eligible voters did not receive ballots; (2) that such voters were unable to so inform the Regional Office by telephone, as instructed, because of continuous busy signals;<sup>7</sup> (3) that insufficient time was allotted for the mailing and return of the ballots;<sup>8</sup> (4) that a substantial number of ballots were sent to wrong addresses; (5) that the Regional Director made no check as to the thoroughness of the addressing of the envelopes by the Employer; and (6) that there was no Board supervision of the mechanics of distributing the mail ballots.

Were it not for the fact that the Board has the responsibility for maintaining adequate election standards,<sup>9</sup> we should be inclined to overrule the Petitioner's Objections, for the reason that the circum-

<sup>5</sup> Ballots were mailed at the close of business on August 12, 1948, and the advertised return date therefor was midnight, August 19, 1948.

<sup>6</sup> As sufficient time was not available within which to correct this error, the Regional Director obtained clearance from the Post Office Department for delivery of the return envelopes without postage. Also, the voters were notified in the instructions sent to them that the return envelopes need carry no postage.

<sup>7</sup> Four switchboard trunk lines were available at the Regional Office between 4:30 (quitting time of the Employer's first shift) and 8:00 p. m. on the days of August 16 through 19, 1948, for the purpose of receiving anticipated telephone requests for ballots.

<sup>8</sup> It appears that all arrangements for the conduct of the election were acquiesced in by the parties, and at no time prior to the completion of the election did the Petitioner object to the shortness of time allowed for the receipt and return of the ballots. In fact, the Petitioner urged that the election be completed prior to August 21, 1948.

<sup>9</sup> See *Mütter of General Shoe Corporation*, 77 N. L. R. B. 124, wherein the Board made the following observation with respect to its duty to maintain proper election standards: "In election proceedings, it is the Board's function to provide a laboratory in which an experiment may be conducted, under conditions as nearly ideal as possible, to determine the uninhibited desires of the employees. It is our duty to establish those conditions; it is also our duty to determine whether they have been fulfilled. When, in the rare extreme case, the standard drops too low, because of our fault or that of others, the requisite laboratory conditions are not present and the experiment must be conducted over again."

stances complained of have resulted at least in part from the Petitioner's own insistence that the election be completed by a certain date. Moreover, some of the matters complained of may be attributed to the normal hazards of conducting an election by mail ballot. However, the record discloses a chain of events which leads us to the conclusion that the desires of the eligible employees involved herein may not have been given adequate opportunity for expression. While no one of the factors raised by the Petitioner, standing alone, would necessarily prejudice the rights of such employees, we believe that these factors, taken together, create a reasonable doubt as to whether all eligible employees were given a fair opportunity to vote in an election the results of which, under Section 9 (e) of the Act, are to be tested by the votes of a majority of those *eligible* to participate. Under the circumstances, we shall sustain the Petitioner's Objections to the conduct of the election, and shall set aside the election held in this proceeding on August 20, 1948.

#### ORDER

IT IS HEREBY ORDERED that the election held on August 20, 1948, among the employees of the four plants of North American Aviation, Inc., located at Inglewood, Downey, Long Beach, and Los Angeles, California, respectively, be, and it hereby is, set aside.

MEMBER GRAY took no part in the consideration of the above Decision and Order Setting Aside Election.