

In the Matter of YARBROUGH MOTOR COMPANY, EMPLOYER and DISTRICT
LODGE No. 46, INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONER

Case No. 10-RC-525

SUPPLEMENTAL DECISION

ORDER

AND

SECOND DIRECTION OF ELECTION

September 13, 1949

Pursuant to a Decision and Direction of Election issued herein¹ an election by secret ballot was conducted on May 27, 1949, under the direction and supervision of the Regional Director for the Tenth Region, among the employees of the Employer² in the unit found appropriate. At the close of the election, a Tally of Ballots was furnished the parties. The tally shows that 18 ballots were cast, of which 7 were for the Petitioner, 7 were against the Petitioner, and 4 were challenged.

Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election. After an investigation, the Regional Director issued, on July 15, 1949, his "Report on Challenged Ballots and Objections to Conduct Affecting the Results of the Election," in which he recommended that: (1) the challenges to the four ballots be sustained; and (2) the election be set aside and a new election conducted. On July 22, 1949, the Employer filed Exceptions to the Regional Director's Report.

Upon the basis of the Petitioner's Objections to the Conduct of the Election, the Regional Director's Report on Challenges and Objections, the Employer's exceptions and the entire record in the case, the Board² finds:

The Challenged Ballots

Two of the challenged ballots were cast by Arthur Camp, shop foreman, and Paul Bradford, body shop foreman. The Decision

¹ Unpublished.

² 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-member panel [Chairman Herzog and Members Reynolds and Gray].

• 85 N. L. R. B., No. 212.

and Direction of Election specifically excluded these two individuals from the unit as supervisors. As no reason appears for overruling our decision as to their supervisory status, we hereby adopt the Regional Director's recommendation and sustain the challenges to the ballots of Camp and Bradford.

The other two challenged ballots were cast by G. W. Bennett and G. W. Harbin, service salesmen. "Salesmen" were excluded from the appropriate unit in our Decision and Direction of Election. Service salesmen fall within the "salesmen" classification. We therefore find that Bennett and Harbin were not entitled to vote at the election; and, in accordance with the recommendations of the Regional Director, sustain the challenges to their ballots.

The Objections to the Conduct of the Election

The Petitioner objected to the conduct of the election upon the ground, among others, that two employees, Mobley and Dalton, voted despite the fact that they had been hired after the close of the eligibility period set forth in the Direction of Election. The Decision and Direction of Election issued May 12, 1949, provided, in accordance with our usual practice, that only those employees were eligible to vote who were employed during the pay-roll period immediately preceding the date of issuance of the Direction of Election. The Employer's pay-roll period which immediately preceded May 12 ended on May 5, 1949. Through error, the field examiner in charge of the election fixed upon May 11, as the end of the pay-roll period preceding the date of issuance of the decision, and used that period in determining eligibility to vote. As a result, Mobley and Dalton who began working on May 6 and May 9 respectively, were permitted to cast unchallenged ballots. As a tie vote resulted, their ballots may have been decisive in the election. Except for the error of the field examiner in using the wrong eligibility date, they would not have been permitted to vote without challenge. As the election was not conducted in accordance with our direction, with possible prejudicial results, we shall set aside the results of the May 27 election and direct a new election.³

ORDER

IT IS HEREBY ORDERED that the election held on May 27, 1949, among employees of Yarbrough Motor Company, Atlanta, Georgia, be, and it hereby is, set aside.

³ *Matter of Wayne Hale*, 62 N. L. R. B. 1393.

In view of our disposition of the case, we find it unnecessary to consider the other objections raised by the Petitioner.

SECOND DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, an election by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Second Direction of Election, under the direction and supervision of the Regional Director for the Tenth Region and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations, among the employees in the unit heretofore found appropriate, who were employed during the pay-roll period immediately preceding the date of this Second Direction of Election, including employees who did not work during said pay-roll period because they were ill, or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election and also excluding employees on strike who are not entitled to reinstatement, to determine whether or not they desire to be represented, for purposes of collective bargaining, by District Lodge No. 46, International Association of Machinists.