

In the Matter of ALLIANCE WARE, INC., EMPLOYER and INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP FORGERS AND HELPERS (AFL), PETITIONER

Case No. 8-RC-821

SUPPLEMENTAL DECISION, ORDER, AND SECOND DIRECTION OF ELECTION

November 14, 1950

Pursuant to the Decision and Direction of Election,<sup>1</sup> issued on July, 19, 1950, an election was conducted in this proceeding on August 10, 1950, under the direction and supervision of the Regional Director for the Eighth Region, among employees in the unit heretofore found appropriate. The tally of ballots shows that 160 valid ballots were cast for the Petitioner; that 108 valid ballots were cast for the Intervenor;<sup>2</sup> that 2 valid ballots were cast against both labor organizations; and that 9 ballots were challenged. The Employer and the Intervenor filed timely objections to the conduct of the election and to conduct affecting the results of the election, contending that the Petitioner, contrary to rules in the Board's notice of election,<sup>3</sup> engaged in electioneering near the polling place during the election, and requesting that the election be set aside.

On October 2, 1950, the Regional Director issued and served on the parties his report on objections. The Regional Director found, among other things, that the Petitioner, from about 6:40 a. m. until 10 a. m. and from 2 p. m. until shortly after 4 p. m. on election day,<sup>4</sup> broadcast electioneering material from a sound truck on a public highway across the street from the Employer's parking lot, approximately 124 feet from the plant gate and approximately 310 feet from the employees' entrance to the plant; that the polling place was

<sup>1</sup> Unpublished.

<sup>2</sup> Alliance Porcelain Employees Association, Inc.

<sup>3</sup> The notice of election states in part: "Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place. Violations of these rules should be reported immediately to the Regional Director or his agent in charge of the election."

<sup>4</sup> The election was held between the hours of 6:30 a. m. and 8:30 a. m. and 2:30 p. m. and 6 p. m. The Employer alleges that the sound truck operated during the entire time that the polls were open.

located inside the plant approximately 30 feet from the employees' entrance; that a substantial percentage of eligible voters approached the employees' entrance by entering the plant gate and crossing a parking lot and an areaway between the sound truck and the entrance; that the sound from the truck could be clearly heard by these employees all the way to the employees' entrance; and that, although the Board agent conducting the election, at the Employer's request, asked the Petitioner's chief observer to do what he could to stop the broadcasting,<sup>5</sup> the Petitioner continued its use of the sound truck.

Because the sound truck was located approximately 310 feet from the employees' entrance and 340 feet from the polling place, because there was no evidence as to whether the door to the employees' entrance was open or closed, or that the broadcasting could be heard at the polling place,<sup>6</sup> and because no employee had to stand outside the employees' entrance awaiting his turn to vote, the Regional Director concluded that, although the voice of the broadcaster was clearly audible from the sound truck to the employees' entrance near the polling place, the objections raised no material or substantial issues and were without merit, and recommended that they be overruled.

On October 9, 1950, the Employer filed exceptions to the Regional Director's report; on October 13, 1950, the Petitioner filed a motion to dismiss the exceptions; and on October 17, 1950, the Employer filed a reply to the Petitioner's motion.

The findings of fact set forth in the Regional Director's report are not disputed. The issue arises with respect to his conclusions. The sole question is whether the electioneering conducted by the Petitioner by means of the sound truck was "at or near" the polling place. We believe that it was. The determining factor is not the linear distance from the sound truck to the employees' entrance or the polling place, but the immediacy of the voice of the electioneering broadcaster to the eligible voters as they approached the polling place through the parking lot and areaway. We are therefore of the opinion and find that the Petitioner engaged in electioneering near the polling place during election hours, and that its conduct was a violation of a material and salutary election rule and constituted interference with the conduct of the election.<sup>7</sup>

Accordingly, we shall set aside the election and shall direct that a new election be held.

<sup>5</sup> The chief observer left the polling place, presumably to contact the persons operating the truck, and upon his return informed the Board's agent that he thought that the Petitioner would cease broadcasting.

<sup>6</sup> There may have been noise caused by machinery in the immediate vicinity of the polling place.

<sup>7</sup> *Detroit Creamery Company, Arctic Ice Cream Plant*, 60 NLRB 178; *The Kilgore Manufacturing Company*, 45 NLRB 468; *Continental Can Company*, 80 NLRB 785.

**ORDER**

IT IS HEREBY ORDERED that the election held on August 10, 1950, among employees of the Employer at its Alliance, Ohio, plant, be, and it hereby is, vacated and set aside.

[Text of Second Direction of Election omitted from publication in this volume.]

CHAIRMAN HERZOG and MEMBER MURDOCK took no part in the consideration of the above Supplemental Decision, Order, and Second Direction of Election.