

ingly, we shall reverse the Trial Examiner's ruling dismissing the case on jurisdictional grounds, and shall remand the case to the Trial Examining Division for appropriate further proceedings.

Order

IT IS ORDERED that the Trial Examiner's ruling dismissing the case be, and it hereby is, reversed.

IT IS FURTHER ORDERED that the case be, and it hereby is, remanded to the Trial Examining Division for appropriate further proceedings.

Building Company, 78 NLRB 1243), that policy was thereby overruled. See also *Tri-State Casualty Insurance Company*, 83 NLRB 828, enforced 188 F. 2d 50 (C. A. 10, March 21, 1951); *Intertown Corporation*, 90 NLRB 1145. Cf. *Hotel Association of St. Louis*, 92 NLRB 1664, where the Board declined jurisdiction over hotels because of announced congressional approval of a long-standing policy to that effect.

WILLIAM R. WHITTAKER CO., LTD. and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO (UAW-CIO), PETITIONER. *Case No. 21-RC-1592.*
June 7, 1951

Decision and Order Setting Aside Election

Pursuant to a Decision and Direction of Election,¹ dated February 28, 1951, an election by secret ballot was conducted in this case on March 23, 1951, under the direction and supervision of the Regional Director for the Twenty-first Region among the employees in the Whittaker Division plant of the Employer, the unit found appropriate in said Decision. At the conclusion of the balloting, the Board agent in charge of the election decided that under the circumstances, the counting and tabulating of the votes could not be accomplished in an orderly manner, and thereupon announced that he would impound the ballots, send the ballot box to the office of the Twenty-first Region, and count the votes at a later date. For reasons set forth below, the Regional Director has continued the impounding of the ballots.

On March 23, 1951, before the polls opened, the Employer filed his objections to the conduct and validity of the election and exceptions to the same; also his challenge to the ballot of every employee participating in the election.² On March 27, 1951, the Union filed its "Objections to Conduct of Election and Request That Ballots Remain Impounded Pending Final Report on Objections." Thereafter, on

¹ 93 NLRB 520.

² The Regional Director states that the Employer has failed to furnish proof of service of these objections to the Union. We find this failure is not material as the Employer's objections were fully considered in the Regional Director's report, of which the Union had notice. *Minnesota Mining & Manufacturing Co.*, 81 NLRB 557.

94 NLRB No. 171.

April 6, 1951, following an investigation, the Regional Director issued and duly served on the parties his report on objections, in which he found that the Union's objections raised material issues with respect to the election and recommended (1) that the major objections of the Union be sustained and (2) that the election be set aside.

The Board³ has considered the report on objections to election, the exceptions, affidavits, and brief, filed by the Employer, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Regional Director, insofar as they are consistent with the findings and conclusions set forth below.

The Employer's Objections

As indicated above, the Employer filed its objections just before the voting began. The first four objections, as found by the Regional Director, constitute objections to the Board's finding of the appropriate unit in its Decision and Direction of Election of February 28, 1951. It is well established that the Board will not consider objections to an election which raise the question of the propriety of the voting groups in which the elections were directed, for the reason that such questions have already been fully considered and litigated in the representation hearing. We therefore find no merit in these objections.⁴

The Employer in its fifth objection contends that the Union interfered with the free choice of representatives by the distribution of literature containing false, misleading, and fraudulent statements containing threats of economic reprisals upon employees and alleging other coercive conduct by the Union. As no evidence to support this contention was presented to the Regional Director, he rejected this objection.⁵

In its sixth objection, the Employer states that it reserves the right to make individual challenges to the vote of each employee participating in the election,⁶ and that such challenges and participation

³ Pursuant to the provision of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Murdock].

⁴ *Pacific Gas and Electric Company*, 89 NLRB 938.

⁵ See *Pottlatch Forests, Inc.*, 80 NLRB 613. As the election is to be set aside upon other grounds indicated below, we find it unnecessary to rule on the issue raised by the Employer as to whether the Employer should have submitted evidence to support the objection prior to the counting of the ballots by the Regional Director.

⁶ Herr, assistant personnel manager, stated at the opening of the polls that he challenged, on behalf of the company, each and every vote. The Regional Director found that at the time this statement was made there was a long line of voters waiting to cast their ballots, and that the persons in the immediate vicinity of the checking table could have heard this statement. When Herr was asked whether he wished to follow the Board's customary challenge procedure as each voter presented himself, Herr replied that this statement was a blanket challenge to uphold the Employer's position. We agree with the Regional Director that a blanket challenge of every voter does not constitute a proper challenge under the Board's Rules of Procedure, and we find no necessity to pass thereon.

by the Employer in the election shall not constitute a waiver of the objections and exceptions. As the Employer is in fact stating no objections to the conduct of the election herein, we find no necessity to pass on this contention.

The Union's Objections

The Union filed 12 objections to the conduct of the election, 8 of which concerned the Employer's failure to furnish the Board or the Union with a proper eligibility list. We shall, therefore, consider this primary objection.

The facts, as found by the Regional Director, are as follows:

Two days after the Board's Decision and Direction of Election of February 28, 1951, the Board's agent telephoned the Employer's personnel manager, Wehrly, for the purpose of making arrangements for the election. After agreeing on the payroll date establishing eligibility of voters, the Board agent requested that a list of eligible voters be prepared and mailed to her. Wehrly agreed to furnish such list and to send a copy of it to the Union for the purpose of checking. On March 13, the Board agent telephoned to Wehrly informing him that the list had not yet arrived, at which Wehrly apologized stating that he would get the list in the mail by the end of that week. On March 19, a Board agent called on Wehrly and was informed that he was out of town, but that Wehrly had left instructions for the Board agent to contact the Employer's attorney, Gould. Thereafter, the Board agent tried to contact Gould but was informed that Gould had left after having received the Board's messages. On March 20, 21, and 22, the Board agent tried to reach Gould and Wehrly several times without success, but left messages requesting the list. On the latter day, the Board agent designated to conduct the election called Gould, and was informed that the list would be produced on election day, 1½ hours before the time for opening the polls. However, on election day, March 23, at 2 p. m. Gould informed the Board agent that the list would not be furnished until just before the opening of the polls. At 3 p. m. one-half hour before the polls opened, Gould handed the Board agent a list of purported eligible employees containing 717 names. Gould did not then inform the Board agent that this list comprised both the Whittaker and Saval plant employees. It was not until March 26, 3 days *after* the election, that the Employer presented the Board with a list containing 356 names, constituting the employees of the Whittaker Division, the unit found appropriate by the Board.⁷

⁷ The Employer's attorney, Gould, stated that the only reason for the Employer having furnished a list containing the employees of both the Whittaker and Saval plants was that the company records were set up in such way that it was impossible to separate em-

The Regional Director found that, because of the refusal of the Employer to furnish the Board and Union with a proper list at a reasonable time prior to the scheduled voting, and because of the inordinately large number of ineligible persons named on the list which was furnished only one-half hour before the polls opened, it was practically impossible to determine eligibility of voters or to check and verify the accuracy of the classifications designated;⁸ that under these circumstances, the Employer's observer, who was assistant personnel manager, was able to recognize a great number if not most of the employees who presented themselves at the polls, whereas the Union's observers, who were not acquainted with all the employees, had no such advantage.⁹

In its exceptions to the report,¹⁰ the Employer, through affidavits of Wehrly and Herr, denies each and every finding made by the Regional Director, demanding that the ballots be counted immediately. However, the Employer does not deny that a list of some 700 names was furnished to the Board just before the opening of the polls, that it refused to furnish the Union with any list whatever and that the correct list of eligibles in the appropriate unit was not presented to the Board until 3 days after the election. The Employer attempts to justify this action by urging that it is under no obligation to furnish any list of eligibles in advance and that in any event the Union could have obtained its own list of eligibles from the evidence presented at the representation hearing, several months prior to the election, or from the time cards kept on the rack in the factory.

We find no merit in the Employer's exceptions. Although it is well established that the Board will not consider "post-election" challenges,¹¹ this policy is based on the assumption that each party has had a reasonable opportunity to exercise the right of challenge.¹² The Board has held that where an Employer refuses in advance to furnish a current list of eligible voters, the Board agent should require all

employees according to the plant in which they worked. Nevertheless, over the week end following the election, the Employer was able to produce a list of the Whittaker plant employees.

⁸ The Union alleged that inaccurate job classifications were set forth opposite the names of eligible voters, and the Regional Director's investigation revealed that errors were made in several classifications. As the ballots are still impounded, it is not possible to ascertain the extent to which such errors appeared in the list submitted before the election.

⁹ The Regional Director also concluded that because of the confusion and disorder which continued throughout the voting, it would not be advisable to make a tally of the ballots, at the close of the election.

¹⁰ The Employer contends that the Regional Director failed to conduct an adequate investigation of the objection to the election. As the Employer has failed to adduce any persuasive evidence to substantiate such contention, we find it to be without merit. *Pacific Gas and Electric Company, supra.*

¹¹ *A. J. Tower Company*, 60 NLRB 1414, enforced 329 U. S. 324.

¹² *Westinghouse Electric Corporation*, 91 NLRB 955.

voters to execute affidavits with respect to eligibility.¹³ Here, however, the Employer did not refuse to furnish such list to the Board. On the contrary, the Employer's representatives for several weeks prior to the election, led the Board agents to believe that a proper list would be furnished. As the improper list, which was finally furnished, was presented to the Board just before the polls opened, it was manifestly impracticable to require affidavits of prospective voters or obtain other evidence of eligibility. Where a list of 700 names, in which about half the employees listed are eligible, is submitted just before an election, many ineligible employees could vote unchallenged.¹⁴

We therefore find that due to the confusion resulting from the use of the Employer's eligibility list, the Union had no reasonable opportunity to exercise its right of challenge, and that the balloting was, for this reason, not conducted under conditions conducive to a fair and orderly election. Under the circumstances, and in accordance with the recommendations of the Regional Director, we shall direct that the impounded ballots be destroyed and that the election be set aside.¹⁵ We shall direct a new election at such time as the Regional Director advises us that the circumstances permit the holding of a proper election in accordance with Board standards.

Order

IT IS HEREBY ORDERED that the election held on March 23, 1951, among the employees of the Employer's Whittaker Division plant, at Citrus Avenue, Hollywood, California, be, and it hereby is, set aside.

¹³ *Stonewall Cotton Mills*, 78 NLRB 28.

¹⁴ *General Petroleum Corporation*, 81 NLRB 749.

¹⁵ The Union has asserted several other reasons for setting aside the election, including the charge that supervisors acted as observers and that a letter addressed to each employee to his home contained threats of reprisals and promises of benefits if the Union won. In view of our holding herein, we find it unnecessary to consider these objections. *Schwarzenbach Huber Company*, 85 NLRB 1490.

MUNTZ TELEVISION, INC. and UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, UE, PETITIONER. *Case No. 21-RC-1425.*
June 7, 1951

Supplemental Decision and Certification of Representatives

Pursuant to a Decision and Direction of Election issued by the Board on November 9, 1950,¹ an election by secret ballot was held on November 30, 1950, at Long Beach, California, under the direction of the Regional Director for the Twenty-first Region. Upon the con-

¹ *Muntz Television, Inc.*, 92 NLRB 29.

94 NLRB No. 176.