

F. C. CASTELLI COMPANY, PETITIONER *and* LOCAL 155, UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA¹ *and* LOCAL 123, INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, CIO.² *Case No. 4-RM-114. March 9, 1953*

Supplemental Decision and Amended Direction of Election

On October 1, 1952, the Board issued a Decision and Direction of Election in the above-entitled proceeding.³ The direction of election, as subsequently amended on November 17, 1952, required the election to be held within 90 days of October 1, 1952. Thereafter, the Board was administratively advised that only a small minority of the previous plant complement was then employed and that, because the Employer's business may be seasonal in nature, a further postponement of the election might be necessary.

As there was no evidence in the record upon this matter, the Board ordered on December 8, 1952, that the record be reopened and remanded the proceeding to the Regional Director of the Fourth Region for further hearing on the question of the seasonal nature of the Employer's business, and ordered further indefinite postponement of the election. The hearing was duly held before Julius Topol, hearing officer, on January 13, 1953. All parties appeared and participated. The Board has reviewed the rulings made by the hearing officer and finds that no prejudicial error was committed. The rulings are hereby affirmed.

Upon the entire record in this case, the Board⁴ makes the following supplemental findings of fact:

The primary issue presented at this stage of the proceeding is the determination of the proper time for holding the election previously directed but subsequently postponed.

The Employer is a manufacturer of toys. Its operations have in the past followed a seasonal cycle, which has been reflected in changes in the size of the work force.⁵ At the hearing the Employer stated that *if the hiring rate in 1953 followed the usual pattern*, the plant complement would increase gradually from 27 employees in January to 75 in March, 140 in June, and would reach a peak of 160 to 190 in September.

¹ Herein called UE

² Herein called IUE.

³ Not reported in printed volumes of Board decisions.

⁴ 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 Styles and Peterson].

⁵ In referring to the Employer's employees in this Decision, we make reference only to those employees in the unit found appropriate in our original Decision in this proceeding.

ber and October, with a sharp drop in November and December. However, the Employer also stated that it is planning about July 1953 to eliminate the foregoing fluctuations and to stabilize employment by maintaining a crew of 140 to 165 employees during 11 months of each year.

It appears from the record that 75 employees is the minimum complement required by the Employer for an assembly line operation, utilizing all categories of skills possessed by the employees in the unit. It is expected, as already stated, that a work force of 75 employees will in the current year be achieved in March.

The record shows further that former employees are given preference in rehiring.⁶ In the past, approximately 80 former employees have returned each year out of a total peak complement of 190 employees. The Employer predicts, however, on the basis of informal inquiries, that by midsummer 1953 approximately 125 former employees will have returned.⁷ In view of the foregoing, we find that former employees laid off for not more than 1 year, who have not been rehired at the time of the election and who possess rehiring seniority, have a reasonable expectation of reemployment and are in effect only temporarily laid off. Consequently, we find that they are entitled to participate in the selection of the bargaining agent unless they have obtained permanent employment elsewhere, have expressed their present intention not to return, or have failed to respond to an offer of reemployment by the Employer.⁸

It is the position of the Employer that the election should be held at the earliest possible date, commensurate with affording a substantial number of employees the opportunity to vote for a bargaining agent. IUE likewise seeks an early election at such time as there is a representative number of employees in the plant. UE contends the election should be held when the work force is stabilized at approximately 150 employees.

It is the Board's usual practice in cases involving seasonal operations to hold an election at or near the seasonal peak period, which in the instant case would not occur until next September. However, in view of the Employer's expectation of stabilizing employment during the current year, and the large proportion of the peak plant complement that will be eligible to vote as temporarily laid-off em-

⁶ Preferential rehiring for former seasonal employees who have been laid off for not more than 1 year is provided for in the Employer's contracts with U E. The Employer, moreover, stated at the hearing that, even absent a contract provision, it would follow such a rehiring policy.

⁷ Of the 27 employees in the plant at the time of the hearing, 26 were old employees.

⁸ *San Joaquin Compress and Warehouse Company*, 95 NLRB 279.

ployees, whatever the date of the election, we will direct an election in this proceeding on a date when a representative number of employees are determined by the Regional Director to be actually employed by the Employer.⁹

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

⁹ See: *Evan Hall Sugar Cooperative, Inc.*, 97 NLRB 1258; *San Joaquin Compress and Warehouse Company, supra*.

HERPOLSHEIMER COMPANY *and* RETAIL CLERKS UNION, LOCAL 1682,
RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL, PETITIONER.
Case No. 7-RC-1863. March 9, 1953

Supplemental Decision and Certification of Results of Election

On October 9, 1952, the Board¹ issued a Decision and Direction of Election in the above-entitled proceeding.² Thereafter, and pursuant thereto, the Regional Director for the Seventh Region, on November 3, 1952, conducted an election by secret ballot among certain employees of the Employer. 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 approximately 422 eligible voters, 405 cast ballots, of which 125 were for the Petitioner and 253 were against the Petitioner. There were 27 challenged ballots. The challenges are not sufficient in number to affect the results of the election.

Thereafter, on November 6, 1952, the Petitioner filed timely objections to the conduct of the election, alleging that (1) the Employer by the sending of a letter to all employees intimidated and coerced the employees; (2) the Employer relegated certain employees to regular part-time status and increased their wages after the filing of the petition; and (3) the Employer included a number of ineligible persons on the eligibility list.

Thereafter, on January 21, 1953, the Regional Director, having conducted an investigation, issued his report on objections. In his report, the Regional Director found no merit in the Petitioner's objections of November 6, 1952, and recommended that they be overruled. No exceptions have been filed by either of the parties to the Regional Director's findings and recommendations with respect to

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with the supplemental proceedings in this case to a three-member panel [Chairman Herzog and Members Styles and Peterson].

² 100 NLRB 1452.

103 NLRB No. 19.