

As neither the number of votes cast for the Association nor the number of votes cast for no union constitutes a majority of the total valid votes cast, a second election would be conducted among the eligible employees in the two-plant unit to determine whether or not they wish to be represented by the Association.

The practice of pooling the votes in Globe elections is not an entirely new idea of the Board.⁹ We believe that this procedure would result in unit findings of the Board which conform to the desires of the employees and would therefore better effectuate the intent and purpose of the Globe election doctrine.

⁹See for example Pacific Gas and Electric Company, 3 NLRB 834; New York Evening Journal, Inc., 10 NLRB 197, 209.

AMERICAN SERVICE BUREAU *and* INSURANCE AND ALLIED WORKERS ORGANIZING COMMITTEE, CIO, Petitioner.
Case No. 21-RC-2954. June 9, 1953

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Floyd C. Brewer, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:¹

1. The Employer is engaged in commerce within the meaning of the Act.
2. The Employer moves to dismiss the petition upon the ground that there exists a local of the Petitioner admitting to membership employees of the Employer, and that this local, which the Employer contends is the real party in interest, has not complied with the filing requirements of Section 9 (f), (g), and (h) of the Act. Although the record discloses that literature has been distributed in the name of a proposed local and one witness declared himself to be the appointed shop steward of the group whom Petitioner seeks to represent, the record fails to establish the existence of a local possessing any formal organization, charter, bank accounts, officers, or any other characteristics indicating an ability to function as a labor organization within the meaning of the Act. Under these circumstances we find, contrary to the contention of the Employer, that there is no local or subsidiary body of the Petitioner admitting the employees involved herein to membership and, accordingly, we regard compliance by the Petitioner alone as sufficient.² Moreover, the express intention of the Petitioner to establish a local, in the event of success

¹As the record and the Employer's brief fully present the issues involved herein and the positions of the parties, the Employer's request for oral argument is hereby denied

²General Box Company, 89 NLRB 1439, 1441

in any Board-directed election, does not alter the finding. Whether or not the officers of any local which may be established will comply with the Act is conjectural and, in this respect, the Employer's questioning of the fact of compliance is at best premature.³

The labor organization herein involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The Petitioner seeks a unit of the investigators employed at the Employer's Los Angeles, California, office. The Employer does not oppose the composition of the proposed unit but maintains that the petition should be dismissed because the employees sought are confidential employees, such as the Board normally denies representation, and because the Petitioner also represents insurance sales agents whose employment status and earnings are affected by the investigations made by the employees in the proposed unit. In support of its position, the Employer contends that to permit representation of investigators and agents by the same international union, even though such representation would be in separate units and by different locals, would necessarily give rise to divided loyalty, a result inimical to the spirit and purpose of the Act.

The Employer is not itself engaged in the insurance business nor does it employ insurance agents. Its operations are confined to making investigations, on a fee basis, for various insurance companies engaged in the business of underwriting life and accident and health risks. The employees involved herein conduct the investigations and make written reports thereon which are sent by the Employer to the clients. The investigations fall within four general classifications: (1) Investigations of applicants for positions as insurance sales agents; (2) investigations of applicants for policies of life and accident and health insurance; (3) investigations of claims for benefits covered by the foregoing types of insurance; and (4) miscellaneous, i.e., credit investigations of applicants for mortgages from insurance company mortgages departments. No recommendations are made in the reports of any of these investigations.

The record supports the Employer's contention that the investigations can and do have a definite effect on the employment status or earnings of insurance agents. Thus, the refusal by an underwriter to issue a policy as a result of investigation made by one of the employees involved herein results in loss of commission to the agent who obtained the application. Similarly, an agent may be refused employment as a result of investigation. Any irregularities on the part of an agent discovered by an investigator may result in the discharge of the agent.

³South Jersey Gas Company, 102 NLRB 194.

It is urged by the Employer that the confidential nature of the work performed by the investigators requires their undivided loyalty, and that by reason thereof, the Board should exercise its discretionary authority to limit choice of bargaining representatives so as to prevent possible impairment of such loyalty which could conceivably ensue from representation by the Petitioner of both the investigators and insurance agents.⁴ We agree that the work of the employees herein requires their undivided loyalty, but in balancing the interest of the Employer and the employees in light of the applicable policies of the Act, we find no cogent reason for us to limit the full freedom, normally contemplated by the Act, of employees to select representatives of their own choosing.⁵ In our opinion the Employer's argument--that representation of the investigators by the same union that now represents the insurance agents would result in conflicting interests and possible undermining of the loyalty of the investigators--is entirely speculative and without record foundation. In disposing of similar arguments to restrict the choice of bargaining representatives we have held that self-organization for collective bargaining is not per se incompatible with efficient and faithful discharge by employees of their duties.⁶

Nor do we agree with the Employer that the nature of the work of the investigators makes applicable the restriction imposed by the Act upon the representation of guards. We have held that employees who guard property not belonging to their own employer are not guards within the meaning of the Act and have refused to impose upon such employees the statutory restriction applicable to guards.⁷ That holding is controlling here because the work of the investigators is not performed for the protection of their own employer.

We find, therefore, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of this Act:

All regular employees and regular part-time employees employed at or working under the supervision of the Employer's Los Angeles, California, office, excluding office clerical employees, guards, and supervisors as defined in the Act.⁸

[Text of Direction of Election omitted from publication.]

Chairman Herzog took no part in the consideration of the above Decision and Direction of Election.

⁴We find without merit the Employer's additional contention that the investigators are confidential employees within the Board's definition of such. These employees do not participate in or effect, or assist those who participate in or effect, the Employer's labor-relations policies. Phillips Oil Company, 91 NLRB 534.

⁵Cf. *N. L. R. B. v Jones & Laughlin Steel Corporation*, 331 U.S. 416, 422-423

⁶*Dravo Corporation*, 52 NLRB 322, 327; *Allis-Chalmers Manufacturing Company*, 70 NLRB 348.

⁷*Brinks, Inc.*, 77 NLRB 1182, and subsequent cases.

⁸The unit description is in accordance with the stipulation of the parties made on the record at the hearing