

Employer seeks to distinguish the Talladega case on the basis that here it took steps to dissipate the effect of Cox's conduct by directing her on March 26 to desist from her union activities. We do not consider this a persuasive distinction. The Employer did not notify the employees that it disavowed Cox's alleged coercive conduct. In these circumstances, we conclude that the Employer, having failed to disavow for over 3 months before the election its supervisor's alleged misconduct, may not now upset the election results because of this conduct.³

As it appears from the tally of ballots that the Petitioner has secured a majority of the valid votes cast in the election, we shall certify the Petitioner as the certified bargaining representative of the employees in the appropriate unit.

[The Board certified Amalgamated Clothing Workers of America, CIO, as the designated collective-bargaining representative of the employees of the Employer in the unit found appropriate in the Decision and Direction of Election herein.]

Chairman Farmer and Member Murdock took no part in the consideration of the above Supplemental Decision and Certification of Representatives.

³ Talladega Cotton Factory, Inc., supra, and cases cited therein.

AMERICAN SERVICE BUREAU *and* INSURANCE AND ALLIED WORKERS ORGANIZING COMMITTEE, CIO, Petitioner.
Case No. 21-RC-2954. August 6, 1953

SUPPLEMENTAL DECISION

On June 9, 1953, the Board issued its Decision and Direction of Election¹ in this case in which it directed that an election be held among the investigators employed by the Employer at its Los Angeles, California, office. On June 29, 1953, the Employer timely filed the instant motion for reconsideration by the Board of its Decision upon the grounds that: (1) Since the issuance of the Decision, certain authorities cited as controlling therein have been overruled by the United States Court of Appeals for the Third Circuit; (2) the Board erred in finding that the investigators do not make recommendations in their reports of investigations; (3) the Board erred in stating that the fears of the Employer are speculative and without record foundation; and (4) the Board failed to understand certain contentions of the Employer.

The Board has reconsidered its Decision and Direction of Election in the light of the entire record in this case, the briefs submitted by the parties, and the motion for reconsideration

¹ 105 NLRB 485.

together with the papers submitted in support thereof,² and upon such reconsideration we affirm our original Decision, with the following additions:

The Employer contends that its insurance inspectors come within the literal definition of "guard" as that term is used by the Act and that therefore the statutory restriction upon the choice of representatives by guards is applicable to the inspectors here involved. We find, however, that these inspectors are not guards within the meaning of Section 9 (b) of the Act, inasmuch as they are not employed "as a guard to enforce . . . rules to protect property of the employer or to protect the safety of persons on the employer's premises; . . ."

The Employer alternately contends that even though the inspectors are not guards, the Board nevertheless should, because of their duties, apply to them the same restrictions which the Act imposes upon the representation of guards. In considering this contention in our original Decision and Direction of Election herein, we adverted to our holding in another case,³ which has since been overruled by the court,⁴ that employees who guard property not belonging to their own employer are not guards within the statutory definition. However, reliance on that case was merely an additional reason for not applying to these inspectors the statutory guard restriction and not the basic and fundamental reason for rejecting the Employer's main position, which subsumes its guard analogy argument, that there is such a conflict of interest between inspectors and agents as to preclude them from being represented, even in separate units, by the same labor organization.

Without regard to the fact that inspectors and agents are employed by different employers, we do not believe that the speculative possibility of collusion between inspectors and agents in discharging their respective duties is sufficient to deny inspectors, as employees, the full freedom normally contemplated by the Act of selecting representatives of their own choosing. Such possibility of collusion, which could result in disloyal acts, exists whether they are represented by a common labor organization, by a separate labor organization, or by no labor organization. We believe that integrity is a personal matter unaffected by union membership. Therefore, the only type of disloyalty which the Board may properly consider in this case is that which could reasonably be expected to ensue from membership in a unit of inspectors represented by the Petitioner, which also represents insurance agents. We find nothing in the record to demonstrate that the loyalty of these inspectors, in performing their duties on behalf of their Employer, would be impaired by reason of their membership in

²The Employer also moved for oral argument and for rehearing. For the reasons set forth in our original Decision we shall deny the request for oral argument.

³Brinks, Inc., 78 NLRB 1182.

⁴N. L. R. B. v. American District Telegraph Co., 205 F. 2d 86 (C. A. 3).

the unit sought by the Petitioner. Indeed, we are satisfied that the duties and obligations of these inspectors as members of a labor organization which also represents agents, would not require of them acts or deeds incompatible with the loyal discharge of their duties as employees. We have reached this conclusion after giving due consideration to the legislative history of the Act,⁵ the nature of the employment of these inspectors, the necessity for their complete loyalty to the Employer, and the reasonably anticipated demands which might be made upon them as members of the proposed unit.

Moreover, we would not reach a different conclusion even assuming, as contended by the Employer, that the inspectors do make recommendations in their report on investigations.⁶ In the original Decision herein, we recognized that the inspectors' reports could affect both the earnings and employment status of insurance agents. We do not find that the inclusion of recommendations in the reports would have any greater effect on the earnings and employment status of the insurance agents, or on the nature of the relationship between the agents and the inspectors insofar as representation by the Petitioner is concerned.

Chairman Farmer and Member Styles took no part in the consideration of the above Supplemental Decision.

⁵The legislative history of the Act clearly shows that although the Congress considered the subject of divided loyalty of certain classifications of employees whose duties placed them in situations somewhat analogous to that of the inspectors here involved, it decided after much deliberation to legislate restrictively only with regard to supervisors and guards.

⁶Accordingly, we deny the Employer's motion for rehearing as to the alleged fact that the investigators do make recommendations.

F. H. MCGRAW & COMPANY, Petitioner *and* LOCAL NO. 236, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, AFL¹

F. H. MCGRAW & COMPANY, Petitioner *and* OFFICE EMPLOYEES INTERNATIONAL UNION, AFL.² Cases Nos. 9-RM-87 and 9-RM-88. August 6, 1953

DECISION, ORDER, AND DIRECTION OF ELECTION

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, separate hearings were held

¹Hereinafter called Teamsters. Office Employees International Union, AFL, hereinafter called Office Workers, was permitted to intervene in Case No. 9-RM-87 on the basis of its showing of interest.

²Teamsters was permitted to intervene in Case No. 9-RM-88 on the basis of a contract interest.