

EDWARD J. SCHLACHTER MEAT CO., INC., PETITIONER *and* AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, LOCAL UNION No. 7, AFL. *Case No. 9-RM-70. September 18, 1952*

Supplemental Decision, Order, and Second Direction of Election

Pursuant to a Decision and Direction of Election issued herein on April 3, 1952,¹ an election by secret ballot was conducted on May 9, 1952, under the direction and supervision of the Regional Director for the Ninth Region, among the employees in the unit found appropriate by the Board. Following the election, a tally of ballots was furnished the Employer.² The Amalgamated Meat Cutters and Butcher Workmen of North America, Local Union No. 7, AFL, hereinafter called the Union, had no authorized observer present at the election. Accordingly, on May 13, 1952, the Regional Director served a copy of the tally of ballots upon the Union.

The Union on May 13, 1952, addressed a letter to the General Counsel of the National Labor Relations Board in which, in substance, it requested a review of the action taken by the Regional Director in disposing of certain unfair labor practice charges and in holding the representation election at a time when a pending charge of 8 (a) (2) violation remained uninvestigated. The Regional Director, by letter dated May 16, 1952, informed the Union that any objections to the election must be filed in accordance with the Rules and Regulations. The Union made no reply. On June 20, 1952, the Regional Director issued and duly served upon the parties a report on objections, in which he made no recommendation, but reported the facts surrounding the holding of the election and referred the matter to the Board for consideration.

After the Board's Decision directing an election the Union, on April 10, 1952, filed unfair labor practice charges alleging discriminatory discharge.³ Since this charge was unwaived, an extension of 7 days' time for conducting the election was granted⁴ so that investigation of the charges could be completed prior to the balloting. Investigation of this charge by the Regional Office failed to disclose merit and on May 5, 1952, the charge was dismissed. On the same day, the Regional Director proceeded to make arrangements for the

¹ *Edward J. Schlachter Meat Co., Inc.*; Case No. 9-RM-70, April 3, 1952, not reported in printed volumes of Board decisions.

² The tally of ballots showed that of approximately 10 eligible voters, 6 cast valid ballots, all of which were cast against the Union.

³ Case No. 9-CA-541.

⁴ *Edward J. Schlachter Meat Co., Inc.*, Case No. 9-RM-70, Order Amending Direction of Election, issued April 30, 1952, not reported in printed volumes of Board decisions.

conduct of the election on May 9, 1952. The Union, although consulted, refused to participate in any manner in arranging for the election. Protesting the holding of the election, it filed a second unfair labor practice charge, alleging violations of Section 8 (a) (1) and (2) of the Act.⁵ The Regional Director refused to delay the election further because of the latter charge which remained uninvestigated, and conducted the election on Friday, May 9, 1952. Subsequent to the election the Regional Director investigated the latest charges and a settlement agreement was entered into with the Employer, and notices posted.

The Union questions the propriety of the Regional Director's action in conducting the election in the face of a pending and uninvestigated unfair labor practice charge. Clearly the issue here was not brought to the attention of the Board by means of the established procedure for raising objections to the conduct of an election, and under ordinary circumstances should not be accorded any consideration.⁶ However, as the primary objective of the Board is to make certain that every election held under Board auspices is conducted fairly and properly, and that the results represent freely expressed desires of employees, we must, on our own motion, occasionally investigate and consider allegations of interference or irregularity when it seems necessary to do so, regardless of how the matter comes to our attention.⁷

To provide and safeguard the laboratory in which an election experiment may be conducted, the Board has administratively established certain standards. Thus it has been the Board's established policy, based on experience, not to conduct representation elections while unresolved unfair labor practice charges are pending, unless waived or filed under circumstances not present in this case.⁸ The charge involved in the present proceeding involved Section 8 (a) (2) of the Act, and was not subject to waiver under Board policy. It appears that the charge was filed sufficiently long before the scheduled election to permit the Regional Director to postpone the election without serious inconvenience to either the Board or the parties to the proceeding. Because of these facts, we regard the departure from Board policy in the instant case to have been sufficiently serious to

⁵ Case No. 9-CA-554.

⁶ See *R & R News Company*, 92 NLRB 1134; *Beacon Mfg Co*, 94 NLRB 881; *National Carbon Company*, 99 NLRB 774; *Freeport Gas Coal Co*, 99 NLRB 949.

⁷ See *Underwood Machinery Company, et al.*, 74 NLRB 641, and cases cited therein, *Worthington Pump and Machinery Corporation*, 99 NLRB 189. Cf. *North American Aviation, Inc.*, 81 NLRB 1046.

⁸ Cf. *Columbia Pictures Corporation*, 81 NLRB 1311; *Association of Motion Picture Producers, Inc.*, 88 NLRB 521.

require that the election be conducted again.⁹ Under the circumstances, we shall set the election aside and direct that a new election be held.

Order

IT IS HEREBY ORDERED that the election held on May 9, 1952, among employees of the Employer at its Covington, Kentucky, plant, be, and it hereby is, vacated and set aside.

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

⁹ See *North American Aviation, Inc.*, 81 NLRB 1046, and cases cited therein.

CAPITAL TRANSIT COMPANY *and* DIVISION 689, AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYEES OF AMERICA, PETITIONER. *Case No. 5-RC-856. September 18, 1952*

Supplemental Decision, Order, and Second Direction of Election

Pursuant to a Decision and Direction of Election issued herein on February 18, 1952,¹ an election by secret ballot was conducted on March 13, 1952, under the direction and supervision of the Regional Director for the Fifth Region, among the employees in the voting group established by the Board. Following the election, a tally of ballots was furnished the parties. The tally shows that of approximately 190 eligible voters, 185 cast valid ballots, of which 81 were for, and 102 were against the Petitioner. There were 2 challenged ballots.

Thereafter, on March 20, 1952, the Union filed timely objections to conduct affecting the results of the election. The Regional Director investigated the objections and, on May 16, 1952, issued and duly served upon the parties a report on objections, in which he recommended that the objections be overruled and that the Board issue a certification of results of election. On May 28, 1952, the Union filed exceptions to the Regional Director's report.

The Employer, asserting that the Union's exceptions should not be considered because (1) they were not filed within the 10 days' time provided in Section 102.61 of the Board's Rules and Regulations, and (2) they were not filed with the Regional Director as required by that rule, urges the adoption of the Regional Director's recommendations. As service of the Regional Director's report was made by mail, 3 days

¹ *Capital Transit Company*, 98 NLRB 141.

100 NLRB No. 183.