

a certification of representatives, be issued in accordance with the provisions of Section 102.61 of the Board's Rules and Regulations, Series 6, as amended.

As provided in the order directing hearing on challenged ballots, any party may, within 10 days from the date of the issuance of the report, file with the Board in Washington, D. C., an original and six copies of exceptions thereto. Upon filing such exceptions, the party filing same shall serve a copy thereof upon each of the other parties and shall file one copy with the Regional Director. If no objections are filed thereto, the Board will adopt the recommendations of the hearing officer

---

JEWEL PAINT AND VARNISH COMPANY, Petitioner *and* PAINT, VARNISH, LACQUER & ALLIED PRODUCTS, LOCAL 950, BROTHERHOOD OF PAINTERS, DECORATORS & PAPERHANGERS and MISCELLANEOUS WAREHOUSEMEN, LOCAL 781, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA. Case No. 13-RM-142. May 12, 1953

### DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Upon a petition duly filed and pursuant to stipulation for certification upon consent election, an election by secret ballot was held in this proceeding on November 25, 1952, under the direction and supervision of the Regional Director for the Thirteenth Region. 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 showed that, of approximately 50 eligible voters, 15 cast valid ballots for, and 33 cast valid ballots against, the Union.

On December 1, 1952, the Union filed objections to the election, alleging, in substance, that the Employer, by its supervisors and agents, issued leaflets and questioned, threatened, and promised benefits to its employees, so as to interfere with their freedom of choice in the election. The Union requested that the election be set aside and a new election directed.

In accordance with the Board's Rules and Regulations, the Regional Director investigated the matters raised by the objections and, on January 30, 1953, issued and served on the parties his report on objections, in which he found that certain alleged acts mentioned above raised material and substantial issues with respect to the election and therefore recommended that a hearing be held to resolve the issues. On February 11, 1953, the Employer filed exceptions to the report and recommendation.

On February 17, 1953, the Board,<sup>1</sup> having considered the Regional Director's report and the Employer's exceptions thereto, found that the objections raised substantial and material issues of fact with respect to the election, and ordered a hearing on the issues. The Board further ordered the hearing

---

<sup>1</sup>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].

officer designated for the purpose of conducting the hearing to prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the objections.

Pursuant to notice, a hearing was held on March 10, 1953, before Ivan C. McLeod, hearing officer. Both parties appeared and participated. The Board has reviewed the rulings made by the hearing officer at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On March 19, 1953, the hearing officer issued and served on the parties his report containing findings of fact, conclusions, and recommendations to the Board. The hearing officer found, among other things, that although one Paul Carl Otto was a supervisor as defined in Section 2 (11) of the Act, a single remark of Otto's,<sup>2</sup> made to employee Edward Allen Fralick 2 or 3 weeks before the election, had no perceptible effect upon the employees' freedom of choice therein. The hearing officer further found, however, that the remark, even if coercive, was followed by three company leaflets, assuring employees of their freedom of choice in the prospective election, and that the remark, under these circumstances, was an isolated incident and would not justify setting aside the election. The hearing officer recommended that the Union's objections be dismissed and that a certification of results of election be issued.

On April 1, 1953, the Union filed timely exceptions to the hearing officer's report and recommendations. The Board, having considered the hearing officer's report and the Union's exceptions thereto, and the entire record in the case, hereby overrules the Union's exceptions and adopts the hearing officer's findings and conclusions and his recommendation with respect to certification with the following modification:

As noted above, the hearing officer found that although Otto was a supervisor as defined in the Act, his isolated remark about the Christmas bonus had no perceptible effect on the employees' freedom of choice in the election. We deem it unnecessary, however, to determine Otto's status at this time. His remark, even if coercive, was, in the circumstances of this case, such an isolated incident as not to warrant setting aside the election.<sup>3</sup>

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

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.
2. The Union is a labor organization within the meaning of the Act.
3. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

<sup>2</sup>The remark was to the effect that Otto thought that employees would lose their Christmas bonus "if the union would get in."

<sup>3</sup>The American Envelope Co., 97 NLRB 1541, 1552.

All production and maintenance employees at the Employer's paint, varnish, and enamel plant at Chicago, Illinois, excluding salesmen, office clerical employees, laboratory employees, professional employees, and supervisors as defined in the Act.

Because we have overruled the Union's exceptions, and because the tally of ballots shows that the Union lost the election, we shall issue a certification of results of election to this effect.

### CERTIFICATION OF RESULTS OF ELECTION

IT IS HEREBY CERTIFIED that a majority of the valid ballots has not been cast for Paint, Varnish, Lacquer & Allied Products, Local 950, Brotherhood of Painters, Decorators & Paperhangers and Miscellaneous Warehousemen, Local 781, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and that the said labor organization is not the exclusive representative of the employees of the Employer, in the unit heretofore found appropriate, within the meaning of Section 9 (a) of the National Labor Relations Act.

---

PEPPER & POTTER, INC. *and* RALPH DIAMOND, COSMO BARBIERI, ELIAS DEGESTNOS, JOSEPH LINYEAR, HAYNES O'NEIL, NATHAN SACHER, JOHN E. McCOVERY, HARRY TIMMERMANN, AND MARGARET O'LEARY LANDOLFI. Case No. 2-CA-1912. May 13, 1953

### DECISION AND ORDER

On November 12, 1952, Trial Examiner Frederic B. Parkes II issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices in violation of Section 8 (a) (3) and (1) of the Act, and recommending that the Respondent cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in a certain other alleged unfair labor practice and recommended that the complaint be dismissed with respect thereto.<sup>1</sup> Thereafter the Respondent filed exceptions to the Intermediate Report.

The Board has reviewed the rulings of the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, and the entire record in this case, and hereby adopts the findings, conclusions,

<sup>1</sup>In the absence of exceptions to the Trial Examiner's finding that the discharge of Margaret O'Leary Landolfi did not constitute a violation of the Act, we shall dismiss the complaint with respect thereto.