

ployees in voting group (B) elect to be represented by either the Steelworkers or the UAW, then the Regional Director is instructed to issue a certification of representatives to such latter union for a unit of production and maintenance employees, which the Board under the circumstances finds to be appropriate for purposes of collective bargaining.

However, if a majority of the employees in voting group (A) do not vote for the union seeking to represent them in a separate unit, such group will be appropriately included in the same unit with the employees in voting group (B) and their votes will be pooled with those in voting group (B). The Regional Director is instructed to issue a certification of representatives to the labor organization selected by a majority of the employees in the pooled group, which the Board in such circumstances finds to be a single unit appropriate for purposes of collective bargaining.

[The Board dismissed the petitions in Cases Nos. 14-RC-2611 and 14-RC-2654.]

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS took no part in the consideration of the above Decision, Order, and Direction of Elections.

MEMPHIS FURNITURE MANUFACTURING COMPANY and UNITED FURNITURE WORKERS OF AMERICA, CIO, PETITIONER. Case No. 32-RC-770. January 13, 1955

Supplemental Decision, Order, and Second Direction of Election

Pursuant to a Decision and Direction of Election issued herein on August 23, 1954,¹ an election by secret ballot was conducted on September 21, 1954, under the direction and supervision of the Regional Director for the Fifteenth Region, among employees in the unit found appropriate by the Board. Following the election, a tally of ballots was furnished the parties, which shows that of 659 votes cast in the election, 334 were for the Petitioner, 313 were against the Petitioner, 9 were void, and 12 were challenged. The challenged ballots are not sufficient in number to affect the results of the election.

Thereafter, the Employer filed objections to conduct affecting the results of the election. The Regional Director investigated the objections and, on November 5, 1954, duly served upon the parties a report

¹ Not reported in printed volumes of Board Decisions and Orders.

on objections in which he recommended, among other things, that the Employer's objection concerning the Petitioner's distribution of altered sample ballots before the election be sustained and that the Board therefore set aside the election and direct a new one. The Petitioner filed exceptions to the report on objections.

Having duly considered the matter,² the Board finds as follows:

During the morning of the election, the Petitioner distributed to employees a handbill that contained a purported sample copy of the Board's "Official Secret Ballot," which customarily appears on the Board's notice of election. The purported sample ballot, however, was not in fact a copy of the Board's ballot, but had been altered in the following manner: An arrow pointed to the "Yes" box with an "X" appearing in that box. The reproduction of the official ballot filled about half of the lower portion of the handbill. The top portion contained a facsimile of "Uncle Sam," under which was stated, "UNCLE SAM IS RUNNING THIS ELECTION," and the following printed matter: "MEMPHIS FURNITURE EMPLOYEES: YOU KNOW HOW THE COMPANY HAS TREATED YOU IN THE PAST. YOU CANNOT EAT TELEGRAMS AND DOUBLE TALK"; "TODAY IS *YOUR* DAY"; "VOTE 'YES' BY MARKING YOUR X IN THE LEFT HAND SQUARE WHEN YOU VOTE TODAY, AS SHOWN ON THE SAMPLE BALLOT BELOW."

In opposing the Regional Director's recommendation, the Petitioner argues that the handbill, which contained the purported sample ballot, was clearly union propaganda and did not mislead the employees. The Board recently stated in the *Allied Electric Products* case,³ that a purported reproduction of its official ballot which has been altered for campaign purposes, necessarily tends to suggest Board approval of the material thereon. Thus, the Board decided that it would not permit the reproduction of any document purporting to be a copy of the Board's official ballot other than one completely unaltered in form and content and clearly marked sample on its face. The Board concluded that a violation of this rule is a sufficient ground for setting aside an election.

Although the Petitioner would distinguish between the factual situation here and that in the *Allied* case, we are of the opinion that there are no substantial differences to warrant a departure from the principle established in that case. Accordingly, we find that the Petitioner, by circulating a copy of the Board's official ballot, altered as described above, tended to interfere with the employees' free choice in the election and that the Employer's objection to this conduct was

² The Petitioner's request for oral argument is denied because, in our opinion, the record and exceptions adequately present the issues and positions of the parties.

³ 109 NLRB 1270

valid.⁴ We shall, therefore, set aside the election and direct that a new election be conducted.

[The Board set aside the election.]

[Text of Second Direction of Election omitted from publication.]

⁴ *Allied Electric Products, Inc*, *supra*; *Tube Reducing Corporation*, 110 NLRB 1080; *Bachmann Uxbridge Worsted Corporation (Uxbridge Mill)*, 110 NLRB 1195. See also *The Wilmington Casting Company*, 110 NLRB 2114, wherein the employer and the union circulated separate altered ballots, and the Board, in setting aside the election, held that the wrongful conduct of one party did not neutralize the other party's interference with the employees' freedom of choice.

THE COLUMBUS SHOW CASE COMPANY *and* M. L. GLASS

LOCAL 1423, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL *and* M. L. GLASS. *Cases Nos. 39-CA-319 and 39-CB-46. January 14, 1955*

Decision and Order

On August 6, 1954, Trial Examiner Eugene F. Frey issued his Intermediate Report in the above-entitled proceedings, finding that the Respondents had engaged in certain unfair labor practices, and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent Company and the Respondent Union filed exceptions to the Intermediate Report.¹

The Board has reviewed the rulings of the Trial Examiner made 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 the cases and hereby adopts the findings,² conclusions, and recommendations of the Trial Examiner with the following modification.

¹ The Respondent Union also requested oral argument. In our opinion, the record and the exceptions fully present the issues and the positions of the parties. Accordingly, the request is denied.

² Contrary to the Respondent Union's contention, we find that the Employer's total business in the sale and installation of store fixtures, and not the value of the Corpus Christi installation alone, determines whether the Employer is engaged in interstate commerce. *International Association of Heat and Frost Insulators and Asbestos Workers, Local No. 7, AFL*, 92 NLRB 753, 758.

The Charging Party, M. L. Glass, filed charges against the Respondent Union and the Respondent Employer on February 26 and March 4, 1953, respectively, covering the alleged discriminatory treatment against himself. On March 30, 1953, he filed amended charges listing Hale and Adams as additional discriminatees. The incidents upon which the complaint was based occurred on September 29 and 30, 1952, and involved Hale and Adams as well as Glass. They occurred within the 6-month period antedating Glass' original charges. Without relying on the rationale of *Cathey Lumber Company*, 86 NLRB 157, cited by the Trial Examiner in sustaining the timeliness of the charge, we find that the