

the Acting Regional Director's recommendation that the challenge to Morrell's ballot be sustained. Because it still appears that the Petitioner has won the election, we must now dispose of the question as to the alleged misconduct of the Petitioner.

As noted above, the Acting Regional Director recommended that the Employer's objection concerning the Petitioner's distribution of leaflets containing altered reproductions of the Board's official ballot before the election be sustained and that the election be set aside. Because the Petitioner filed no exception to the foregoing recommendation, we shall set aside the election and direct that a new election be conducted.

[The Board set aside the Election.]

[Text of Direction of Election omitted from publication.]

Superior Knitting Corporation and Alto Manufacturing Corporation and Sindical Obrera Insular, Inc., Petitioner. Case No. 24-RC-789. May 31, 1955

DECISION, ORDER, AND DIRECTION OF ELECTION

On March 25, 1955, pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted under the direction of the Regional Director for the Twenty-fourth Region. Upon conclusion of the election, a tally of ballots was furnished the parties in accordance with the Rules and Regulations of the Board. The tally shows that, of approximately 184 eligible voters, 166 cast ballots, of which 56 were for, and 108 were against the Petitioner, and 2 voted challenged ballots. The challenged ballots are not sufficient in number to affect the results of the election.

On March 30, 1955, the Petitioner filed timely objections to conduct affecting the results of the election. The Regional Director investigated the objections and on April 20, 1955, issued his report and recommendation on objections to election. In his report, the Regional Director recommended that the Petitioner's objection concerning the Employers' distribution of leaflets containing altered reproductions of the Board's official secret ballot before the election be sustained and that the election be set aside. Thereafter, the Employers filed timely exceptions to the Regional Director's report.

The Board, having considered the Regional Director's report, the Employers' exceptions, and the entire record in the case finds as follows:

1. The Employers are engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organization involved claims to represent certain employees of the Employers.

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

4. The following employees of the Employers constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

All production and maintenance employees of the Employers at their Aguas Buenas, Puerto Rico, plant, including employees working on shoulders, collar looping, sleeves, seaming, collar sewing, latch, ravel, winding, flat, back winding, topping, mending, and examiners, instructors, separators, janitors, shipping clerks, shipping clerk helpers, and knitters, but excluding all executive, administrative, professional personnel, office clerical employees, guards, watchmen, foremen, and other supervisors as defined in the Act.

5. The objections:

The Regional Director recommended that objections numbered 1 and 2 be overruled. As there is no exception to this recommendation, it is hereby adopted.

The Petitioner's third objection is based on the allegation that, on the day before the election, the Employers distributed to eligible voters a document entitled "SPEECH" which contained a facsimile of the Board's official ballot with a large cross inserted in the "no" square. The Regional Director found that the alteration of the Board's official ballot for campaign purposes violated the *Allied Electric Products, Inc.*,¹ rule proscribing the distribution of marked sample ballots. Accordingly, the Regional Director having found merit in the Petitioner's objection recommended that the election be set aside.

The Employers in their exceptions attempt to distinguish the facts of the instant proceeding from those involved in *Allied Electric Products, Inc.*, and later cases applying the rule of that case by contending: (1) The rationale of the *Allied Electric* rule, i. e., the possible impression of Board approval of the material contained on the altered official sample ballot, is not applicable in the present case because the Employers immediately prior to the distribution of the ballots stressed in a speech the impartial role of the Board in conducting representation elections; (2) the Employers marked the ballot in the presence of the employees; (3) the purpose of the alteration was to indicate to the employees how they would like the employees to vote; (4) the sample ballot was circulated not by itself, but as an integral part of a copy of the speech distributed to the employees.

In conformity with the recommendation of the Regional Director, we find that the distribution of the marked sample ballot violated the

¹ 109 NLRB 1270.

Allied Electric rule. The Board has held that such ballots necessarily tend to suggest Board approval of the material thereon, and therefore, interfere with the employees' free choice in the election.² Because of this Board policy not to permit the reproduction and distribution of marked sample ballots, the application of the *Allied* rule is not dependent on whether the employees were, in fact, misled by the altered ballot. In view, therefore, of the Board's rule that the reproduction and distribution of altered sample ballots are, *per se*, sufficient grounds for setting aside the election, we shall set aside the election held in the present proceeding and direct that a new election be conducted.

[The Board set aside the election held on March 25, 1955.]

[Text of Direction of Election omitted from publication.]

² *Memphis Furniture Manufacturing Company*, 111 NLRB 204.

Daugherty Company, Inc. and Joseph B. Irwin and Howard P. McClure and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A. F. of L., United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 625, A. F. of L., Parties to the Contracts

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, A. F. of L., and James Switalski, Special Representative, and United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 625, A. F. of L. and Joseph B. Irwin and Howard P. McClure and Daugherty Company, Inc.; Grinnell Company, Inc.; Hartwell Co., Inc.; Plumbing, Heating, Piping and Air Conditioning Contractors of Charleston, West Virginia, and Vicinities, West Virginia Heating & Plumbing Company, Conditioned Air, Inc., Casdorph Lippert Heating & Plumbing Co., Appalachian Heating & Plumbing Co., Meyers Bros., Bentley Plumbing & Heating, Goff Matthews Plumbing Co., John R. Kegley, Inc., Thrush Refrigeration Co., Harry Dougherty & Sons, Inc., Boddell & Company, Baldwin Plumbing & Heating Co., J. E. Patton Plumbing & Heating, Paul K. Yates Plumbing & Heating, H. M. Krafft Plumbing & Heating, Webster Plumbing & Appliance Co., Inc., Parties to the Contracts