

violation and are of a type which the Board will not determine in a representation proceeding. Furthermore, Local 2288 has incorporated these allegations in an unfair labor practice charge⁴ which has been dismissed by the General Counsel. Under the circumstances, we find no merit in these allegations.⁵ As to allegation (d) in objection No. I, the report on objections discloses that, although afforded ample opportunity to do so, Local 2288 failed to submit evidence in support of this allegation. In view of the well-established rule that the Board will not attempt to evaluate an allegation unsupported by evidence,⁶ we find this allegation to be without merit. In agreement with the Regional Director, we overrule objection No. I.

Objections Nos. II and III concerning compliance are directed to the Board's Decision and Direction of Election and to the Board's Order reinstating its Decision and Direction of Election, rather than to any conduct in connection with the election. As these objections do not raise any matters not heretofore considered, we find, in agreement with the Regional Director, that they are without merit. These objections are therefore overruled.⁷

As the Petitioner received a majority of the valid ballots cast in the election, we shall certify it as the exclusive bargaining representative of all employees in the appropriate unit.

[The Board certified Independent Metal Workers of America, as the designated collective-bargaining representative of the employees of the Employer, in the unit heretofore found by the Board to be appropriate.]

MEMBER MURDOCK took no part in the consideration of the above Supplemental Decision and Certification of Representative.

⁴ Case No. 21-CA-2122.

⁵ *Garner Aviation Service Corporation and Lynchburg Air Transport and Sales Corporation, d/b/a Garner Aviation Service Corporation*, 114 NLRB 293.

⁶ *N. B. Liebman & Company, Inc.*, 112 NLRB 88.

⁷ *Globe Steel Tubes Co.*, 103 NLRB 1197, at p. 1198.

The De Vilbiss Company and Richard Glenn Platt, Petitioner and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO) and Its Local Union No. 1237. *Case No. 6-RD-119. November 9, 1955*

SUPPLEMENTAL DECISION, ORDER, AND SECOND DIRECTION OF ELECTION

Pursuant to a Decision and Direction of Election issued August 11, 1955,¹ an election by secret ballot was conducted on August 25, 1955, among the employees of the Employer in the unit found appropriate

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

by the Board. At the conclusion of the election, a tally of ballots was furnished the parties in accordance with the Board's Rules and Regulations. The tally showed that of approximately 46 eligible voters, 45 cast ballots, 20 cast ballots for, and 22 cast ballots against, the participating labor organization. There were three challenged ballots.

On August 25, 1955, the International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO) and its Local Union No. 1237, herein called the U. A. W., filed timely objections to conduct affecting the results of the election. The Regional Director investigated the objections and challenges and on September 27, 1955, served upon the parties his report on objections and challenged ballots.² In his report on the objections, he recommended that the election be set aside and that a new election be directed. Thereafter, the Petitioner and the Employer filed timely exceptions to the Regional Director's report on the objections.

The Board, having considered the Regional Director's report on objections, the exceptions, and the entire record in the case, hereby adopts the findings, conclusions, and recommendations of the Regional Director.

The U. A. W.'s objections allege that the Petitioner circulated a document among the employees which purported to be a sample copy of the Board's official ballot, but which had been altered by placing an "X" in the "NO" box thereon. The Regional Director found that the alteration of the sample ballot in these circumstances violated the rule set forth in *Allied Electric Products, Inc.*,³ forbidding the distribution of marked sample ballots for campaign purposes. It is not disputed that on August 23, 1955, at 5 p. m. the Petitioner mailed or caused to be mailed to the eligible employees of the De Vilbiss Company a circular, containing a sample facsimile of the Board's official ballot with an "X" marked in the "NO" square. On August 24, 1955, at approximately 4:30 p. m. at the close of the work shift, the Petitioner distributed or caused to be distributed at the plant gates to each employee working that day a second circular stating that the first circular was not intended to imply that the National Labor Relations Board approved the material contained in that document or that the National Labor Relations Board was in any way taking a partisan position in the election. This circular added, "The National Labor

² He reported that all parties to the election had agreed that Rose Tokar, a former employee who cast one of the challenged ballots, terminated her employment prior to the election and was ineligible to vote. He therefore recommended that the challenge to this ballot be sustained. As the remaining challenged ballots are not sufficient in number to affect the results of the election, he found it unnecessary to make a determination as to them. No exceptions have been filed to the Regional Director's report and recommendations as to the challenged ballots and we therefore adopt them.

³ 109 NLRB 1270

Relations Board is absolutely Neutral and Impartial." Those employees who did not receive the second circular at the plant but who had received the first in the mail were personally served with the second prior to the election.

The Petitioner and the Employer contend that the second circular, which they characterize as a "retraction," makes the rule of *Allied Electric Products* inapplicable in this case and they also urge the Board to reexamine that rule if it should find the rule applicable. The Employer and the Petitioner add that the Petitioner was unaware of the Board's prohibition against circulating a marked sample ballot when he caused the first circular to be distributed, and that when he was informed of the *Allied Electric* rule, he took immediate steps to neutralize any effects of circulation of the marked ballot.⁴

The *Allied Electric* rule was established in furtherance of the Board's policy to keep the atmosphere surrounding an election free from any suggestion of Board partisanship in favor of any party to an election. The Board has interpreted this rule strictly in subsequent cases.⁵ In *Superior Knitting Corporation*⁶ the employers contended that the *Allied Electric* rule was not applicable because among other things: (1) Immediately prior to the distribution of the marked sample ballots the employers stressed in a speech the impartial role of the Board in conducting representation elections; and (2) the employers marked the ballot in the presence of the employees. The Board in applying the rule in that case said, "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 . . . and direct that a new election be conducted."

In view of these decisions and upon the facts in the instant case, we find, in accordance with the recommendations of the Regional Director, that the Petitioner by circulation of the marked ballot inter-

⁴The Employer also contends that the Regional Director's report should be set aside because of the personal bias and prejudice of the Regional Director, and alleges in support of this contention that after the original hearing in this case, held on May 23, 1955, the Regional Director caused the hearing officer's report to be held up for more than 10 weeks before it was forwarded to the Board. We find no merit in the Employer's contention. Moreover, the Board's records reveal that although some copies of the hearing officer's report were received and stamped August 2, 1955, the hearing officer's original report was in fact immediately forwarded to the Board and received by it on May 25, 1955.

⁵*Boro Wood Products Company, Inc.*, 113 NLRB 474, *Wallace & Tiernan, Incorporated*, 112 NLRB 1352; *Superior Knitting Corporation and Alto Manufacturing Corporation*, 112 NLRB 984.

⁶*Supra.*

ferred with the employees' freedom of choice in the election, and we shall direct that the election be set aside and a new election held.

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

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

MEMBER MURDOCK took no part in the consideration of the above Supplemental Decision, Order, and Second Direction of Election.

Olin Mathieson Chemical Corporation and International Association of Machinists, AFL, Petitioner. *Case No. 1-RC-4172.*
November 9, 1955

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before William I. Shooer, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. International Association of Machinists, AFL, is a labor organization claiming to represent certain employees of the Employer.

The Employer moved to dismiss the petition herein on the ground, *inter alia*, that the Connecticut Federation of Labor is a labor organization within the meaning of the Act, and that it must comply with the filing requirements of Section 9 (f), (g), and (h) of the Act. The record shows that the Connecticut Federation of Labor assisted in the organization of the Employer's employees. Its secretary-treasurer, Rourke, testified that it exists for three purposes: (1) organization of employees, and placing them in international unions; (2) legislative work; and (3) publicity work. Section 2 (5) of the Act defines "labor organization" as an organization ". . . which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." The factual information adduced at the hearing shows clearly that the Connecticut Federation of Labor is not a labor organization within the statutory definition. Accordingly, it is not required to comply with the filing requirements of the Act in order for the Petitioner to be deemed in full compliance.¹

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

¹ See *The Magnavox Company*, 111 NLRB 379, 382.