

maintenance man to replace striker Schwenzer who had tendered a written resignation. There was no other maintenance man on the pre-strike payroll and none of the 18 strikers had the qualifications to fill this specialized job. In September and October, the Employer advertised for experienced men in crucible melting operations with the view of setting up a second shift to handle certain potential business. These advertisements were not for additional help on the day shift where the Employer was currently working to capacity with a full complement of employees. While 5 strikers applied for reinstatement thereafter, they had theretofore been replaced with specific replacements and the record does not establish that these 5 strikers had the specialized skills to meet the Employer's requirements.

Under the circumstances, we find that the 18 strikers in question have been permanently replaced.<sup>4</sup> Economic strikers lose their right to reinstatement upon being permanently replaced in a specific job.<sup>5</sup> As these 18 economic strikers are not entitled to reinstatement, they are ineligible to vote.<sup>6</sup>

[Text of Direction of Election<sup>7</sup> omitted from publication.]

<sup>4</sup> We find no merit in the UAW's contention that the "termination" of 1 of the 18 strikers, Thomas Liccardi, was illegal under the law of the State of New York because he was on workmen's compensation leave at the time. The alleged State law is irrelevant to the present inquiry.

<sup>5</sup> *N. L. R. B. v. Mackay Radio & Telegraph Co.*, 304 U. S. 333.

<sup>6</sup> See, e. g., *John W. Thomas Co.*, 111 NLRB 226.

<sup>7</sup> UAW contends in effect that Kramer should not be placed on the ballot because he is fronting for a labor organization which has not complied with Section 9 (f), (g), and (h) of the Act or because he intends to establish such an organization in the future. Kramer testified in substance that if he is certified as bargaining representative, he will bargain with the Employer with the aid of a committee of employees and, if necessary to defray expenses, assess willing employees. Although Kramer intends to consult such employees with respect to bargaining matters, Kramer will reserve full rights as a certified representative. We find no merit in the UAW's contention. The showing of interest, as reflected by the employees' petition of June 23, 1955, runs to Kramer and not to any labor organization or any other person. There is no such supposed organization presently in existence. Kramer's plans for establishment of an advisory organization to implement any certification he may receive do not preclude him from acting as a certified representative.

**Malone & Hyde, Inc. and General Drivers, Salesmen & Warehousemen's Local 984, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO,<sup>1</sup> Petitioner.** *Case No. 32-RC-861. February 17, 1956*

## DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a stipulation for certification upon consent election executed July 29, 1955, between the parties and the Regional Director

<sup>1</sup> We take official notice of the merger of the AFL and CIO and amend the identification of the Petitioner's affiliation.

for the Fifteenth Region, an election by secret ballot was conducted on August 4, 1955, under the supervision of the Regional Director, among employees of the Employer in the unit herein found appropriate. At the conclusion of the election, the parties were furnished with a tally of ballots. The tally shows that of approximately 140 eligible voters, 131 cast valid ballots; of these 60 were for the Petitioner, 69 were against the Petitioner, and 2 ballots were challenged. The challenged ballots are therefore insufficient in number to affect the results of the election.

On August 9, 1955, the Petitioner filed timely objections to conduct affecting the results of the election, a copy of which was served on the Employer. In accordance with the Rules and Regulations of the Board, the Regional Director conducted an investigation of the objections in which he found that the objections did not raise substantial or material issues affecting the results of the election, and in which he recommended that the objections be overruled. On November 15, 1955, the Petitioner filed exceptions to the Regional Director's report requesting that the election be set aside and a new election directed.

Upon the basis of the entire record in this case, the Board finds the following:

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

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

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.

4. The following employees of the Employer constitute a unit<sup>2</sup> appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All country and city truckdrivers, mechanics, mechanic helpers, washers, greasers, tirechangers, and warehouse employees at the Employer's Memphis, Tennessee, operations, excluding all office clerical employees, professional and technical employees, watchmen-guards, cash and carry salesmen, and all supervisors as defined in the Act.

5. In its objections the Petitioner asserted that the warehouse foreman and other supervisors talked to employees between June 30 and August 4, 1955, and promised benefits to the employees if the Union lost the election; and that the Employer and its agents and supervisors engaged in other acts and conduct which interfered with the results of the election through promise of benefits and threats of reprisals and force. In support of these objections the Petitioner submitted a statement signed by certain employees of the Employer to the effect

<sup>2</sup> The unit is in accord with the agreement of the parties.

that the weekly payday was changed in order to gain votes against the Union. The Petitioner also alleged that "a meeting was held within twenty-four hours (24) of the election on the Company dock."<sup>3</sup>

As to the change in paydays, the Regional Director's investigation disclosed that about March 18, 1955, the Employer changed its payday to Monday. On August 18, 1955, subsequent to the election herein, the Employer circulated a bulletin to employees to ascertain their preference for paydays, and on September 2, the payday was changed to Friday. The Regional Director found that although there appeared to be rumors before the election that the payday would be changed to Friday if the Union lost the election, no evidence was adduced to indicate that the Employer had inspired such rumors. He found further that before the election the Employer's personnel manager had, when approached, refused to discuss the question of a change in payday with two employee spokesmen because of the pendency of the election; and he concluded that there was no evidence to support the Petitioner's allegation with respect to the changed payday. The Petitioner, in its exceptions, urges that the Employer was under "a duty to speak out and inform his employees that the payroll change was not dependent upon the results of the election." Under all the circumstances we find this contention to be without merit.<sup>4</sup>

As to the Petitioner's allegation that a meeting was held within 24 hours of the election, the Regional Director's investigation failed to disclose any evidence of such a meeting. The investigation disclosed that for several days before the election, the warehouse superintendent and the personnel director, on encountering individuals and small groups of employees during their trips through the plant, took the occasion to urge the employees to vote. The so-called "meeting," here in question, involved the warehouse superintendent's conversation with a group of 6 or 7 employees on the Employer's dock. These latter employees stated that the superintendent had merely urged them to vote; and in fact none of the employees involved in any of the discussions recalled that the superintendent had done more. The Regional Director concluded that no circumstances had been shown constituting a violation of the Board's 24-hour rule, or any interference with the election. In its exceptions, the Petitioner contends that a meeting where employees are urged to vote constitutes a violation of the *Peerless Plywood*<sup>5</sup> rule, because urging employees to vote is an "election speech" *per se*. We reject this contention.<sup>6</sup>

<sup>3</sup> This allegation was submitted on September 13, 1955. It is not clear from the Regional Director's report whether this allegation was made in support of the Petitioner's previously made objections, or whether it constituted a new and different objection and was accordingly untimely. In these circumstances, and as the Regional Director apparently placed the allegation in the former category, we consider it on the merits.

<sup>4</sup> See *E. H. Blum*, 111 NLRB 110, 112.

<sup>5</sup> *Peerless Plywood Company*, 107 NLRB 427.

<sup>6</sup> *John W. Thomas Co.*, 111 NLRB 226.

The Petitioner also excepts to the manner in which the Regional Director conducted his investigation. It contends that "the interview of employees on company premises could not result in a complete and adequate investigation." We do not agree. The interviewing of employees on the Employer's premises does not create such a coercive atmosphere as to render the investigation unreliable when there is no showing that a representative of the Employer was present during the interviews.<sup>7</sup>

In view of the foregoing, we overrule the Petitioner's objections.<sup>8</sup> As the Petitioner failed to receive a majority of the valid ballots cast, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for General Drivers, Salesmen & Warehousemen's Local 984, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL-CIO, and that this Union is not the exclusive representative of the employees at the Memphis, Tennessee, plant of Malone & Hyde, Inc., in this unit.]

<sup>7</sup> *National Petro-Chemicals Corporation*, 107 NLRB 1610, 1611.

<sup>8</sup> Other conduct objected to by the Petitioner concerned the holding of two picnics, although no picnics for employees had been held in the past. The Regional Director's investigation disclosed that the Employer's decision to hold the picnics was made, the employees were aware of the decision, the dates were set, and a bulletin concerning one of the picnics was distributed prior to the filing of the petition and execution of the consent election agreement herein. Nor was there disclosed any unusual circumstances in the conduct of the picnics or any evidence of objectionable conduct on the part of the Employer at the picnics. Accordingly, the Regional Director, relying on *F. W. Woolworth Co.*, 109 NLRB 1446, found that the circumstances were not of such nature as to interfere with the employees' freedom of choice. The Petitioner filed no exception to this finding.

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**WBAL Division—The Hearst Corporation and International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, and Brotherhood of Painters, Decorators & Paperhangers of America, AFL-CIO, Petitioners.** *Cases Nos. 5-RC-1806 and 5-RC-1878. February 20, 1956*

### SUPPLEMENTAL DECISION AND ORDER

Pursuant to a petition in Case No. 5-RC-1806, filed by International Alliance of Theatrical Stage Employes and Moving Picture Machine Operators of the United States and Canada, AFL-CIO, herein called IATSE, the Board on November 30, 1955, issued a Decision and Direction of Election (not reported in printed volumes of Board Decisions and Orders) wherein it found appropriate a unit of floor directors and artists in the program department at the Employer's television station, WBAL-TV. On December 27, 1955, the Brotherhood of Painters,