

Kern County Broadcasters, Inc. d/b/a KERO Radio-TV, Petitioner and Radio & Television Technicians Local 202, International Brotherhood of Electrical Workers, AFL-CIO. *Case No. 21-RM-346. July 12, 1956*

SUPPLEMENTAL DECISION AND DIRECTION

Pursuant to a Decision and Direction of Election,¹ an election by secret ballot was held on September 27, 1955, under the direction and supervision of the Acting Regional Director for the Twenty-first Region, among the employees of the Employer in the unit found appropriate by the Board. Following the election, the Regional Director served upon the parties a tally of ballots which showed that there were approximately 24 eligible voters, that 11 ballots were cast for, and 9 ballots against, the Union, that 4 ballots were challenged, and that there were no void ballots. The challenged ballots were sufficient to affect the results of the election. Thereafter the Union timely filed objections to conduct of election. On November 8, 1955, the Acting Regional Director issued his report on challenges and objections, in which he recommended that 2 challenges be sustained, and the 2 remaining challenges and the objections be overruled. The Union thereafter excepted only to the overruling of its challenge to the ballot of Joseph DeYoung.

On December 16, 1955, the Board issued its order in this proceeding, in which, *inter alia*, it directed the Acting Regional Director to open and count the ballot of Cliff Johnston, as to which the challenge had been overruled, and if that ballot did not determine the outcome of the election, that a hearing be held to resolve the issues raised by the challenge to the ballot of Joseph DeYoung.

Pursuant thereto, the Acting Regional Director opened and counted the ballot of Cliff Johnston. As that ballot was not determinative of the results of the election, the Regional Director issued a notice of hearing for the purpose of determining the challenge to the ballot of Joseph DeYoung.

Pursuant thereto, a hearing was held on February 27, 1956, before William E. Spencer, Trial Examiner. The Employer and the Union appeared and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

On April 18, 1956, the Trial Examiner issued and served upon the parties his report on challenged ballot in which he found that Joseph DeYoung was not so closely allied with management as to warrant his exclusion from the unit. Accordingly, he recommended that the

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

challenge to his ballot be overruled and the ballot be counted. Thereafter, the Union filed exceptions to the Trial Examiner's report.

The Board has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's report, the exceptions, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications:

Joseph DeYoung is the brother of Albert DeYoung, president and majority stockholder of the Employer. He is employed as a part-time cameraman. The Union, aware of the Board's decision in *International Metal Products Company*,² holding that family relationship is not in itself sufficient basis to exclude an individual from a unit, absent evidence that because of that relationship he enjoys a special status allying him with management, contends that such special status is present here.³

In support of this contention, it relies, in its exceptions, on three factors: (1) Joseph's managerial status; (2) the differential between his salary and that of the other cameramen; and (3) the date of his hire.

Joseph's camera work is a part-time job. His regular job is one with Pacific Gas & Electric Co. The Trial Examiner found that this was a managerial job, but that Joseph had nothing to do with adjustment of grievances or anything pertaining to collective-bargaining relations.⁴ The issue before us is Joseph's status at *this* plant, and we do not view his other, unconnected employment as relevant. Accordingly, we reject this contention.

As to the differential in salary, it is not contradicted on the record that the Employer expected to make use of Joseph's services in connection with the solution of certain electrical problems it encountered. It is also uncontradicted that Joseph's qualifications and experience made it likely that he could be useful in such work. The Trial Examiner concluded that the record did not establish that Joseph's engineering services were so negligible as to negate the Employer's position that they warranted the higher salary. Accordingly, we reject this contention.

As to the date of Joseph's hire, the record shows that the Employer's petition herein was filed on April 6, 1955, and that Joseph began work about May 23, 1955. But, as the Trial Examiner found, there is undisputed evidence that Joseph's employment had been decided

² 107 NLRB 65

³ We do not adopt the Trial Examiner's comments in footnote 1 of his report indicating disagreement with the Board's rule.

⁴ Some of the employees under Joseph are covered by a contract between Pacific Gas & Electric Co. and another local of IBEW.

upon months before this petition was filed. Accordingly, we reject this contention.

[The Board directed that the Regional Director for the Twenty-first Region shall, within ten (10) days from the date of this Direction, open and count the ballot of Joseph DeYoung, and serve upon the parties a supplemental tally of ballots.]

CHAIRMAN LEEDOM took no part in the consideration of the above Supplemental Decision and Direction.

Chicopee Manufacturing Corporation, Petitioner and United Textile Workers of America, Local 444, AFL-CIO¹ and Textile Workers Union of America, AFL-CIO²

Chicopee Manufacturing Corporation and Textile Workers Union of America, AFL-CIO, Petitioner. *Cases Nos. 13-RM-256 and 13-RC-3767. July 12, 1956*

DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted on March 1, 1956, under the supervision of the Regional Director for the Thirteenth Region among the employees in the stipulated unit. Upon completion of the election, the parties were furnished a tally of ballots which showed that all but 1 of the 60 eligible voters cast ballots, of which 32 were for TWUA, 26 for Local 444, and 1 against both participating organizations.

Timely objections were filed by Local 444 asserting that (1) TWUA purchased the votes of some of the employees; (2) TWUA distributed on the eve of the election a leaflet containing false statements which Local 444 had no opportunity to rebut; and (3) TWUA threatened certain employees with the loss of their jobs if they did not join and vote for that Union. The Regional Director investigated the objections and on April 23, 1956, issued his report on objections in which he found that the objections were without merit, recommended that the objections be overruled and that the TWUA be certified. Local 444 excepts only to the Regional Director's findings with respect to the second objection.

Upon the entire record in these cases, the Board finds:

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

¹ Herein called Local 444.

² Herein called TWUA.