

in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS took no part in the consideration of the above Decision and Direction of Election.

American Wholesalers and Warehouse Employees Union, Local 730, I. B. T. C. W. & H. of A., AFL-CIO, Petitioner. *Case No. 5-RC-1970. November 2, 1956*

DECISION AND CERTIFICATION OF REPRESENTATIVES

On May 4, 1956, 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 Fifth Region among the employees in the agreed appropriate unit. Upon the conclusion of the election, the Regional Director served upon the parties a tally of ballots which showed that of the 53 valid ballots cast, 27 were cast for the Petitioner and 26 were cast against the Petitioner. There were no void or challenged ballots. On May 10, 1956, the Employer filed timely objections to the election, alleging that the Employer was prevented by an emergency, on May 2, 1956, from fully informing the employees of its position with respect to the then forthcoming election, and that the employees were thereby denied the right to exercise their freedom of choice as guaranteed in Section 7 of the Act. Thereafter, the Regional Director conducted an investigation, and on June 13, 1956, issued and served upon the parties his report on objections in which he recommended that the objections be overruled and that the Petitioner be certified as the exclusive bargaining representative of the employees in the appropriate unit. On July 2, 1956, the Employer filed timely exceptions to the Regional Director's report on objections.

The Board has reviewed the stipulation of the parties, the objections, the Regional Director's report on objections, and the Employer's exceptions thereto.

Upon the entire record in this case,¹ the Board makes the following findings of fact:

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.

¹ The Employer's request for oral argument is hereby denied, as the record, including the stipulation of the parties, the objections, the Regional Director's report on objections, and the exceptions thereto, adequately presents the issues and the positions of the parties.

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 appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All employees of the Employer at its establishment in Washington, D. C., excluding office clerical employees, salesmen, guards, and supervisors as defined in the Act.

5. The substance of the Employer's objections to the election is contained in the affidavit of its managing partner, D. L. Krupsaw, dated May 9, 1956, in which it is alleged that on May 2 all employees were called to a meeting for the purpose of hearing the Employer present its views concerning the impending election scheduled to take place on May 4, 1956. It is further alleged that the meeting commenced shortly after 4:45 p. m.; that at about 5:30 p. m., while the employees were still present, but before the Employer had completely stated its position and before the beginning of a period which the Employer had planned to devote to the answering of employee questions, the meeting was abruptly interrupted by the arrival of fire-trucks; that in light of the fact that the Employer is partially engaged in the manufacture of mattresses, all persons immediately fled from the building; and that although it was later discovered that someone had called in a false alarm, it was impossible to hold another meeting because of the *Peerless Plywood* rule prohibiting such a meeting within 24 hours of the scheduled election.² The Employer asserts that because of the foregoing facts, it was not afforded an opportunity to fully present its views to the employees nor was it given an opportunity to answer any questions which the employees would otherwise have asked, thereby depriving the employees of their freedom of choice at the election.

In his report, the Regional Director found that prior to May 2, 1956, the day on which the Employer called his employees to the meeting, the Employer's supervisory personnel had talked with the employees in small groups, and in some cases individually, concerning the coming election. With respect to the May 2 meeting, he reported that he had found conflicting evidence as to the exact status of this meeting at the time when the firetrucks arrived, there being

² *Peerless Plywood Company*, 107 NLRB 427. The Employer asserts that it was unaware that, as found by the Regional Director, other means of communication with its employees, not proscribed by *Peerless Plywood*, were open to the Employer even within the 24-hour period before the election, and that Krupsaw had closed his speech by informing the employees that the Employer would not discuss the matter further, except to answer any questions that anyone might then want to ask. The Employer also asserts that the nature of the employees' tasks was such as in any event to prevent them from posing unanswered questions to the Employer during their working hours on the day before the election. In view of our decision as hereinafter set forth, we find it unnecessary to resolve the factual issues, if any, arising from these assertions.

considerable evidence that Krupsaw had completed his speech, that he had passed out copies of a magazine article and newspaper clippings critical of the Union, and that, no one having responded to an inquiry as to whether there were any questions, many of the employees had begun to leave. He also reported that he had secured sworn statements from three employees who were alleged by the Employer to have said to Krupsaw that they would have voted against rather than for the Union if they had been able to get the answers to questions which they were prevented from asking by the arrival of the firetrucks. In only one case, however, did such affidavit affirm the allegation that the employee had been prevented from asking questions by the arrival of the firetrucks. This affiant stated he had informed Krupsaw that, having learned the answer to his questions, he would now vote against the Union.³

The Employer's exceptions and brief do not in general dispute the Regional Director's findings as to the sequence of events at the Employer's meeting with its employees, but do contest his conclusions as to the times when Krupsaw began and ended his speech, and allege that the employees had not left the meeting when the firetrucks arrived. The Employer asserts that, following the completion of Krupsaw's speech, which required 27 to 30 minutes to read, the employees were gathered in groups looking at the magazine article, and that Krupsaw had commenced a second reading of his speech to several late arrivals when the meeting was interrupted by the arrival of the firetrucks. The Employer points out that the results of the election could have been affected by the vote of the one employee who, as found by the Regional Director, indicated that having learned the answer to certain questions he would now vote against the Union; the Employer further contends that it should be allowed to cross-examine, at a hearing, the employees who furnished affidavits.

We find it unnecessary to resolve the factual issues raised by the Employer's exceptions because, assuming that the Employer's contentions are correct as to the status of the meeting when it was interrupted by the firetrucks, we nevertheless find the Employer's objections to be without merit. Thus if, as the Employer asserts, the interruption occurred while the Employer was in the process of rereading its speech to late arrivals, and it was thereby prevented from completing its program planned for the remainder of the employee meeting, we find that such facts do not provide a sufficient basis for setting aside the election. Neither the Act nor Board policy requires that either a union or an employer be guaranteed sufficient time for a full last-

³ According to the affidavits of the other two employees, as reported by the Regional Director, both had looked at the magazine and news articles, had been informed that they might leave, and had left the building before the firetrucks arrived; one of the affiants further stated that he had no questions to ask at the meeting, and the other that he had voted against the Union.

minute expression of its views concerning an impending election⁴ and if, during the course of a meeting called for that purpose, an interruption occurs which is not attributable to any party to the proceeding,⁵ the risk of such eventuality should rightly fall on the parts whose choice as to time and place has set the circumstances under which the scheduled meeting is held.

We agree that, as the Employer argues, the opportunity for discussion and the expression of views and opinion by all parties during the period before an election is conducive to an informed exercise by the voters of their voting privilege. But we do not believe that, especially as in this case where the Employer has both had and utilized substantial opportunity to publicize his views to his employees, the mere chance failure of such a party to complete a last-minute expression of his views necessarily in and of itself so deprives the employees of their freedom of choice as to require that we set aside an otherwise valid election.⁶

Accordingly, and under all the circumstances in this case, we find that the Employer's objections are without merit and hereby overrule them and certify the Petitioner as the bargaining representative of the employees concerned.

[The Board certified Warehouse Employees Union Local 730, I. B. T. C. W. & H. of A., AFL-CIO, as the designated collective-bargaining representative of the employees of American Wholesalers in the appropriate unit.]

⁴ *Massachusetts Mohair Plush Company*, 112 NLRB 41, 43.

⁵ Although the Employer in this case concedes that the identity of the individual who sent in the false fire alarm is unknown, and in an affidavit filed with the Regional Director specifically disavows any inference that the Union or its agents were responsible for calling the false alarm, the Employer nevertheless asserts in its brief, and urges as a reason for setting aside the election, that "Here we are not dealing with . . . Acts of God, but rather an intentional act of man." In the absence, however, of information concerning the circumstances which resulted in the giving of the false alarm, and as there is no implication that the Union or its agents were in any way responsible, we find it immaterial whether the interruption of the Employer's meeting had its origin in some human action or was occasioned solely by force of circumstances. In either case, we cannot regard the occurrence of the alarm at the time of the Employer's meeting as other than a mere fortuity.

⁶ We are not unmindful of the Employer's contention that in this case the election was sufficiently close that the results might have been affected by the ballot of the one employee who indicated that, having learned the answer to his questions, he would now vote against the Union. We regard the evidence in this regard as immaterial, however, for the Board has long held that it will not attempt to enter the speculative realm of evaluation of individual employee reactions and attitudes. *The Rein Company*, 114 NLRB 694, 698; *B. M. C. Manufacturing Corporation*, 113 NLRB 823, footnote 8. In the present case, there is no assurance that the Employer's answers to employee inquiries, even assuming that the attitude of one employee may have since been influenced by communication from some unknown source, would have been of such a nature as to effectively influence the manner in which those employees would vote. Considerations of this sort, which would involve an attempt to ascertain both substance and effect of purely hypothetical conversations, are of too highly speculative a character to justify placing any reliance thereon.