

above, the Regional Director concluded raised a factual issue, the Petitioner alleged that because of the speed required of its observer in checking off voters, a supervisor was allowed to vote unchallenged. The Employer in its exceptions contends that the Petitioner in its objections did not raise the issues passed on by the Regional Director, that the Regional Director's findings of fact are erroneous, and that his recommendation to set aside the election should be rejected by the Board or, alternatively, a hearing be held upon the factual matters in dispute. However, a determination as to these objections and whether or not they would, if supported by the evidence, warrant setting aside the election must await the counting, as directed below, of six of the challenged ballots. In our opinion, such objections would be of consequence only if the ballots referred to therein could affect the ultimate election results.

Accordingly, we now defer ruling upon the issues raised with respect to objections Nos. 1, 2, and 8.

[The Board directed that the Regional Director for the Eleventh Region shall, within ten (10) days from the date of this Direction, open and count the ballots of G. Bradford, A. Fallin, E. Wester, C. Kelly, M. Maddox, and P. Poindexter and thereafter serve upon the parties a supplemental tally of ballots.]

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

The Jacksonville Journal Company and Jacksonville Newspaper Guild, Local 134, American Newspaper Guild,¹ AFL-CIO, Petitioner

The Jacksonville Journal Company and Jacksonville Mailers Union No. 138, International Mailers Union, Ind., Petitioner.²
Cases Nos. 12-RC-2 (formerly 10-RC-3402) and 12-RC-4 (formerly 10-RC-3435). February 13, 1957

SUPPLEMENTAL DECISION AND DIRECTION

Pursuant to a Decision and Direction of Elections³ issued herein on September 19, 1956, elections by secret ballot were conducted on November 3, 1956, under the direction and supervision of the Regional Director for the Tenth Region among the employees in the units found appropriate by the Board. At the conclusion of the elections, the Employer was furnished with tallies of ballots. The tallies showed

¹ Hereinafter called the Guild.

² Hereinafter called Mailers.

³ 116 NLRB 1136.

117 NLRB No. 50.

that, among the employees sought by the Guild in Case No. 10-RC-3402, approximately 26 employees cast ballots of which 25 were for, and 1 was against, the Guild. Among the employees sought by the Mailers in Case No. 10-RC-3435, 20 employees cast ballots, of which 18 were for, and 2 were against, the Mailers.

On November 13, 1956, the Employer filed objections to the conduct of both elections. On December 6, 1956, the Regional Director issued his report on election, objections to election and recommendations to the Board in which he recommended that the Board overrule the Employer's objections in both cases as untimely filed and issue a certification of representatives in both units. On December 14, 1956, the Employer filed timely exceptions to the Regional Director's report on objections.

In determining that the Employer's objections were not timely filed, the Regional Director relied on the following findings. After the conclusion of the first election (in the mailer's unit), while the Board agent was preparing a tally of ballots and certification of conduct of election, copies of which were required under the Board's Rules and Regulations to be furnished to the parties, the Employer's attorney stated that he would not accept the tally or certification, although the Board agent assured him that they would be ready in a few minutes. The attorney also instructed the Employer's election observer not to accept these papers, asked the Board agent to mail them to his office and left the polling place. When the Board agent completed the tally and certification, he mailed copies to the Employer's attorney. The tally of ballots was received by the Employer's attorney on November 5, 1956. At the conclusion of the second election (among the employees sought by the Guild), no representative of the Employer was present. The tally and certification in this election were likewise mailed to the Employer's attorney and were received by him on November 7.

The Regional Director found that the Board's obligation under the Rules and Regulations to furnish the tallies of ballots to the Employer was met when the offer of the tally was made to the Employer's attorney at the conclusion of the first election; that any subsequent tender was excused in view of the attorney's rejection of the initial tender; that it is immaterial that thereafter copies of the tallies were furnished to the Employer by mail as this was done only as a matter of courtesy. The Regional Director concluded that as the offer of the tallies was made on November 3 (Saturday), the 5-day time for filing objections expired on November 9, and, as the objections were not received until November 13, they were untimely filed.

In its exceptions to the Regional Director's report, the Employer asserts that its attorney requested the Board agent at the election to

furnish the tallies by mail, and that the Board agent agreed to do so, thereby negating any tender by the Board agent at that time; and that, in any event, the Board's Rules and Regulations provide that the time for filing objections in this proceeding should be computed from the date a tally is actually received by the parties and not from the date of any tender thereof. The Employer contends that its objections, filed on November 13, were, therefore, timely, as they were filed within 5 days of the receipt of the tally in each case, omitting the intervening Saturday, Sunday, and a legal holiday (Veterans' Day) in accordance with the Board's Rules and Regulations.⁴ The Employer accordingly requests that the Regional Director be required to investigate the issues raised by its objections. We find merit in the Employer's exceptions.

Section 102.61 of the Rules and Regulations of the Board prescribes election procedure, the preparation of the tally of ballots and the time within which objections may be filed. This section provides, in part:

Upon the conclusion of the election, the Regional Director shall cause to be *furnished* to the parties a tally of ballots. Within 5 days after the tally of ballots *has been furnished* any party may file with the Regional Director four copies of objections to the election or to conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. [Emphasis supplied.]

This rule does not specify in what manner a tally of ballots may be furnished to the parties. However, we deem the term "furnish" to embrace mailing.⁵ Moreover, as the Board agent, for whatever reason, elected to mail the tallies to the Employer's attorney, we deem the date of receipt of such tallies controlling in computing the time for filing objections. In this view, it is immaterial whether or not a tender was made on November 3, by the Board agent, and we do not pass upon that question.

Section 102.83 of the Rules and Regulations provides the manner of computing the time for filing objections. It states, in part:

In computing any period of time allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a

⁴ The Employer contends, in the alternative, that even if the period for filing objections is computed from November 3, such period would expire on November 13. We find no merit in this contention, as it is clear that such period, if computed from November 3, would end on November 9, as found by the Regional Director.

⁵ Compare Section 102.80 of the Board's Rules and Regulations, which provides, in part: Complaints, orders, and other processes and papers of the Board, its members, agent or agency may be served personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served.

legal holiday, in which event, the period runs until the end of the next day which is neither a Sunday nor a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Sundays and holidays shall be excluded in the computation.

In determining the time to be allowed to the Employer to file objections, we shall for reasons already stated, commence the computation, in Case No. 10-RC-3435, on November 5, 1956, the date on which the tally of ballots was furnished by mail. Normally the last day to file objections would be November 10. However, November 10 was Saturday, a day on which the Board offices were closed. November 11 was Sunday, and November 12 was an officially declared Federal holiday. As the objections in this case were filed on November 13, they were timely. As the tally in the other case was not received by the Employer until November 7, the objections filed therein on November 13 were, *a fortiori*, timely. Accordingly, we do not adopt the Regional Director's recommendation that the objections in both cases be rejected as untimely, and we shall remand the cases to the Regional Director for investigation of the issues raised by such objections.

[The Board directed that the Regional Director for the Twelfth Region shall serve upon the parties a supplemental Report on Objections and shall take such other action as may be necessary.]

Marvin Lumber and Cedar Company and International Woodworkers of America, AFL-CIO, Petitioner. *Case No. 18-RC-2971. February 13, 1957*

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 Hjalmar Storlie, 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. 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 Employer is a family business with the father as president and the sons as officers. Although each son has a part of the business for which he is primarily responsible, the responsibility overlaps.