

**Palm Container Corp. and Miami Printing Specialty and Paper Products Union, Local 628, AFL-CIO, affiliated with International Printing Pressmen, & Assistants' Union of North America, AFL-CIO, Petitioner.** *Case No. 12-RC-3 (formerly 10-RC-3403). February 26, 1957*

### SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election issued herein on July 16, 1956,<sup>1</sup> an election by secret ballot was conducted on August 3, 1956, under the direction and supervision of the Regional Director for the Tenth Region, among the employees in the unit found appropriate by the Board. Following the election a tally of ballots was furnished the parties. The tally shows that of approximately 39 eligible voters, 33 cast valid ballots; that 19 ballots were cast for the Petitioner, and 14 ballots against the Petitioner; and that 2 ballots were challenged, and 1 was void. The challenges are therefore not sufficient in number to affect the results of the election.

An August 10, 1956, the Employer filed timely objections to conduct affecting the results of the election. In accordance with the Board's Rules and Regulations, the Regional Director caused an investigation to be made of the issues raised by the objections, and on September 11, 1956, issued and served on the parties a report on the election, objections to the election, and recommendations to the Board in which he recommended that the Employer's objections be overruled and that the Petitioner be certified as the collective-bargaining representative of the employees in the appropriate unit. Thereafter, on September 20, 1956, the Employer filed timely exceptions to the Regional Director's report.

The Board has considered the Employer's objections and the entire record in this case.

In its objections the Employer alleged in substance that there was no free and untrammelled choice manifested in the election because: Some of the employees participating in the election were Spanish-speaking employees, who, except for the most elementary of rudimentary words, neither spoke nor understood any English; that other employees participating in the election were Negroes who could neither read nor write English; that the Board agent conducting the election did not explain the nature of the voting, or the ballots, to these employees; and that accordingly, the votes cast by these employees were not expressions of their true intentions.<sup>2</sup>

<sup>1</sup> Not reported in the printed volumes of Board Decisions and Orders.

<sup>2</sup> The Employer also objected to the presence at the polls of Larry Ferrante who cast a challenged ballot. The Regional Director found that this objection raised no material

The Regional Director's report recites that the Board agent conducting the election reported to him that: (1) Prior to the election the Employer's attorney called the agent's attention to the fact that several of the employees could not read or write English; (2) it was agreed that the observers would be instructed to call to the Board agent's attention any such voter and that the Board agent would explain the ballot to such voters; (3) it was further agreed that an adequate explanation with respect to the Spanish-speaking employees would consist of the Board agent showing such voters a ballot, and "with the forefinger making a gesture similar to that of an 'X' mark in the 'yes' box with the explanation, 'Union, Sí,' and then making a similar gesture in the 'no' box with the explanation 'Union, No'"; and that an adequate explanation with respect to the illiterate Negro employees would consist of showing them the ballot and explaining that "all that was required was an 'X' or cross mark in the proper box; the 'Yes' box for the Petitioner and the 'No' box opposed to the Petitioner"; (4) the agent instructed the observers to call to his attention any persons who might not understand the ballot; and (5) whether or not such voters were thus called to his attention, the agent took particular pains to ask each "Latin appearing" and each Negro voter whether he understood the ballot, and if the voter did not answer in the affirmative, the agent explained the ballot in accordance with the agreed procedure.

The Regional Director's report recites further that Petitioner's observer at the election corroborated the Board agent's statements, stating that he called the Board agent's attention to one employee who did not read, speak, or understand English, and in this instance as well as in other instances, he saw or heard the Board agent ask voters if they understood the ballot and observed the Board agent giving instructions to such voters.

The report also recites that the Employer's observer at the election "recalled one specific case where the Board agent explained the ballot to a voter"; that the Employer's observer "can state that such words and actions [explanation to Spanish-speaking employees] did not take place more than three times at the very maximum"; that to the best of the knowledge and belief of the Employer's observer the Board agent made no unusual explanation to Negro voters; and that the Employer's observer stated that during the election he was busy with difficult names and voting lists, and consequently was unable to watch all the Board agent's acts.

The Regional Director also found that the Board's official notices of election were well promulgated and posted several days prior to

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or substantial issue with respect to the election results. The Employer did not except to the Regional Director's finding in this respect, and, accordingly, we hereby adopt the finding.

the election; and that the Employer called all employees together 2 or 3 days before the election, and, using a sample ballot to illustrate, explained the ballot to them, and told them how to mark it. The Regional Director also found that the Employer's objections did not allege that any voter had indicated that he had not understood the ballot, and during the investigation the Employer presented no evidence to such effect. The Regional Director further noted that some of the Spanish-speaking employees spoke English as well as Spanish, and that there was a substantial amount of discussion among the employees prior to the election.

On the basis of these findings, and upon his analysis of the matter, the Regional Director concluded that the Employer's objections did not raise a substantial or material issue with respect to the results of the election.

In its exceptions, the Employer denies that it was a party to a pre-election agreement concerning the Spanish-speaking and Negro employees, as described in the Regional Director's report. The Employer also contends that it was prejudiced by the fact the Board agent who conducted the election also investigated the Employer's objections, because, according to the Employer, its objections "relate to the conduct of the Board representative who conducted the election."

We find the Employer's exceptions lack merit. Certain uncontradicted facts have been established: (1) the Board's official election notices were posted in the usual fashion before the election; (2) the Employer itself explained the ballot to its employees before the election; (3) the Board agent explained the ballot to certain of the Spanish-speaking employees; (4) some of the Spanish-speaking employees spoke English, and there was considerable employee discussion before the election; and (5) most significantly, there is no evidence whatever of any employee who has claimed that his ballot, as marked, did not express his true intent. In addition, we do not perceive that the Board agent's statement that he explained the ballot to the Negro voters has been clearly controverted by the Employer through the statements of its observer.

In these circumstances, whether or not the Employer actually was a party to the disputed preelection agreement is not a material factor. Neither do we think it material that the Employer's observer only partially corroborates the Board agent's version of what transpired at the election. Nor do we agree with the Employer's assertion that the conduct of the Board agent at the election is here in issue, no acts which constitute misconduct on the latter's part having been alleged by the Employer.<sup>3</sup>

In summary, we are satisfied, and agree with the Regional Director, that a fair election was conducted in this case, and that the voters

<sup>3</sup> See *Huntsville Mfg Co.*, 203 F. 2d 430, 433 (C. A. 5).

were given an opportunity to express a free and untrammelled choice. We, therefore, hereby overrule the Employer's objections and exceptions, and deny the Employer's request for a hearing.

As the tally of ballots shows that the Petitioner received a majority of the valid ballots cast, we shall certify the Petitioner as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified Miami Printing Specialty and Paper Products Union, Local 628, AFL-CIO, affiliated with International Printing Pressmen, & Assistants' Union of North America, AFL-CIO, as the designated collective-bargaining representative of the production and maintenance employees at the Employer's corrugated box plant located in Miami, Florida, including the run planner but excluding all other employees, estimators, invoice clerk, the stenographer, the telephone operator, office clerical employees, guards, and supervisors within the meaning of the Act.]

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

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**Local Union No. 313, International Brotherhood of Electrical Workers, AFL-CIO and Peter D. Furness, trading as Peter D. Furness Electric Co. Case No. 4-CC-58. February 27, 1957**

### DECISION AND ORDER

On December 22, 1955, Trial Examiner Sidney Lindner issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. He also found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the modifications noted hereafter.

1. We concur in the Trial Examiner's finding that the Respondent violated Section 8 (b) (4) (A) of the Act by inducing and encouraging employees of subcontractors and various transportation firms to en-