

papercutters, both journeymen and apprentices, employed by the Employer at its Athens plant may constitute a separate appropriate unit and may, if they so desire, be represented in such unit for the purposes of collective bargaining by the Petitioner, a labor organization whose international union traditionally represents such employees. However, we also find, on the basis of the bargaining history, that the papercutters may remain a part of the larger unit set forth in the Intervenor's contract. We shall, therefore, make no final unit determination at this time, but shall direct that the question concerning representation be resolved by a secret election among the employees in a voting group consisting of the papercutters, both journeymen and apprentices, at the Employer's Athens, Ohio, plant, excluding all other employees and all supervisors as defined in the Act.

If a majority of the employees in the voting group vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit and the Regional Director conducting the election directed herein is instructed to issue a certification of representatives to the Petitioner for this unit, which the Board, under such circumstances, finds to be appropriate for the purposes of collective bargaining. In the event a majority do not vote for the Petitioner, these employees shall remain a part of the larger unit and the Regional Director will issue a certification of results of election to such effect.

[The Board revoked and set aside the Decision and Order issued herein on December 20, 1956.]

[Text of Direction of Election omitted from publication.]

Allis-Chalmers Manufacturing Co. and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL-CIO, Petitioner. *Case No. 6-RC-1843. March 22, 1957*

DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election executed on October 11, 1956, an election by secret ballot was conducted on October 17, 1956, under the direction and supervision of the Regional Director for the Sixth Region of the National Labor Relations Board among the employees in the stipulated unit. Following the election, the parties were furnished a tally of ballots, which showed that, of ap-

proximately 94 eligible voters, 47 cast votes for, and 45 against, the Petitioner. There were no void or challenged ballots.

On October 22, 1956, the Employer filed timely objections to conduct affecting the results of the election. In accordance with the Rules and Regulations of the Board, the Regional Director conducted an investigation of the objections and, on December 21, 1956, issued and served on the parties his report on objections in which he found that the Employer's objections did not raise any substantial or material issues with respect to conduct affecting the election and recommended that the objections be overruled. Thereafter, the Employer filed timely exceptions to the Regional Director's report with supporting brief. During the pendency of the investigation of the Employer's objections, the Employer also filed a motion to reopen the record and to vacate the consent-election agreement. The Petitioner filed a memorandum in support of the Regional Director's report on objections and in opposition to the Employer's motion to vacate the consent-election agreement.

In its petition originally filed in this case, the Petitioner sought to represent all technical employees of the engineering department at the Employer's Pittsburgh, Pennsylvania, Works. On October 11, 1956, the parties entered into their stipulation for certification upon consent election setting forth as the appropriate unit "All Designers 'A,' Designers 'B,' Draftsmen 'A,' Draftsmen 'B,' Detailers, and Tracers presently so classified in the drafting sections of the product engineering department of the Pittsburgh Works, excluding employees of the engineering development section, guards, professional employees and supervisors as defined in the National Labor Relations Act, as amended, and all other employees." On November 5, 1956, after the election herein was held and while the objections were under investigation, the Petitioner filed another petition in Case No. 6-RC-1864, in which it sought to represent a unit of "All draftsmen employed by the company's maintenance department" at the Pittsburgh Works.

The Employer contends in its motion to vacate the consent-election agreement that the filing of the petition in Case No. 6-RC-1864 demonstrates that the Petitioner did not in good faith seek the bargaining unit described in its petition herein and that its real purpose was to organize a residual group of the Employer's employees¹ piecemeal on an extent of organization basis. In a consent-election proceeding, however, it is the agreement of the parties rather than extent of organization which the Board considers controlling in the absence of any statutory defect in the stipulated unit, and the Employer makes no claim that the unit in any other way contains any

¹ The hourly rated production and maintenance employees at the Pittsburgh Works have been represented by the Petitioner since 1949. See *Allis-Chalmers Manufacturing Company*, 84 NLRB 30

inherent statutory defect. Under these circumstances, it would be contrary to the salutary purpose served by the consent-election procedure, which is specifically recognized by the provisions of the Act,² to permit the Employer to vacate its agreement to certification upon consent election.³ It is therefore immaterial that the employees in the unit may, as the Employer alleges, be only a segment of its unrepresented employees.⁴ Accordingly, the Employer's motion is denied.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Murdock and Rodgers].

Upon consideration of the report on objections, the Employer's exceptions and brief, the Petitioner's memorandum, and the entire record in this case, the Board finds:

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

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain 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 purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All designers "A," designers "B," draftsmen "A," draftsmen "B," detailers, and tracers presently so classified in the drafting sections of the product engineering department of the Pittsburgh Works, excluding employees of the engineering development section, guards, professional employees and supervisors as defined in the National Labor Relations Act, as amended, and all other employees.

5. The election herein began at 10 a. m. on October 17, 1956. On the afternoon before the election, the Employer distributed a letter from the general manager of the Pittsburgh Works to all employees in the voting unit, in which there appeared, among other things, the following:

I would like to briefly review with you some of the substantial benefits which the company has voluntarily placed into effect for for salaried employees:

1. Group Life Insurance.
2. Health and Accident Insurance.
3. Vacation Plan.

² Section 9 (c) (4) of the Act.

³ See *The Baker and Taylor Co.*, 109 NLRB 245; *Growers Warehouse Company, Inc.*, 114 NLRB 1568; *A. Harris & Co.*, 116 NLRB 1628.

⁴ See *Allis-Chalmers Manufacturing Company*, 117 NLRB 749, in which the Board dismissed the petition in Case No 6-RC-1864, *supra*, for the reason that the employees sought were only a segment of the Employer's unrepresented technical employees.

4. Paid Holidays.
5. Liberal Overtime Provisions.
6. Annual Improvement Salary Increases.
7. Cost-of-Living Adjustment Plan.
8. Pension Plan.
9. Educational Opportunities Through College Tuition Refund Plan.

The next morning the Petitioner distributed a letter to the employees between 7:45 and 8 a. m. The letter came to the attention of the Employer a few minutes before 8:15 a. m. when the workday was scheduled to begin. This letter contained the following paragraph to which the Employer objects in particular:

Local management goes to great length to impress us with their generosity—Let's look at the facts—The items listed in [the Employer's] letter of yesterday are benefits negotiated with [the Employer] for Production and Maintenance people by UAW and passed along to us in restricted form—Had it not been for negotiations with the Union we are certain that many of the benefits would not have been granted.

The Employer alleges that this paragraph is false both in asserting that the benefits mentioned in the Employer's letter were negotiated by UAW for the production and maintenance people and passed on to those in the unit, and in asserting that the benefits were given to the employees in the unit in more restricted form than to the production and maintenance employees. The Employer contends that the election should therefore be set aside because the employees were not in a position to evaluate the truth of the Petitioner's letter and the Employer had no opportunity to rebut the assertions of the letter due to the timing of its distribution and the Board's *Peerless Plywood*⁵ rule prohibiting campaign speeches on company time and property within 24 hours before the scheduled time for an election.

The basic principle governing cases such as this is that expressed in *Merck & Company, Inc.*:⁶

Absent threats or other elements of intimidation we will not undertake to censor or police union campaigns or consider the truth or falsity of official union utterances, unless the ability of the employees to evaluate such utterances has been so impaired by the use of forged campaign material or other campaign trickery that the uncoerced desires of the employees cannot be determined in an election.

⁵ *Peerless Plywood Company*, 107 NLRB 427.

⁶ 104 NLRB 891 at 892.

It is clear under Board precedents, as indeed it appears under the very statement of principle set forth above, that mere falsity does not alone constitute campaign trickery which warrants setting aside an election. Examination of the cases relied upon by the Employer reveals that in each instance in which the Board has made an exception to this general principle, not only was a false utterance made, but the circumstances were such that the knowledge of the true facts was readily available to the publisher of the utterance but not readily available to the employees or the other party or parties.⁷ Here the issue of the comparison of the benefits received by the employees involved to those received by the employees already represented by the Petitioner, according to the allegation of the Employer in its brief, had been raised by Petitioner in its campaign literature prior to the Employer's letter. The employees in the unit worked in the same building as production and maintenance employees and a number of them had transferred into the unit from production and maintenance jobs. Thus, the basic question underlying the alleged false statements was already in issue before the Petitioner distributed its letter and the necessary information to evaluate the Petitioner's claims was close at hand if not in the immediate possession of the employees in the unit from the time the issue was first raised.

Contrary to the Employer's contention, it is not material in this case that the Employer could not address its employees on company time and property after the distribution of the letter and before the election without violating the rule of *Peerless Plywood Company*.⁸ As pointed out in that decision,⁹ the *Peerless Plywood* rule bans only 1 form of campaigning during the 24-hour period prior to an election, and not any other form. Moreover, the Board's reluctance to censor or police union campaign utterances is not premised on any assumption that an employer may always have an opportunity to reply to any specific union utterance. It is based, as indicated above, upon the premise that in the atmosphere of a preelection campaign, absent unusual circumstances, employees will have sufficient knowledge to evaluate campaign propaganda. Accordingly, while not condoning such misrepresentations as the Employer alleges were contained therein, we are of the opinion that the Petitioner's campaign letter did not constitute campaign trickery such as would require setting aside the election. Therefore, in agreement with the Regional Director, we find no merit in the Employer's objections.¹⁰ As the Petitioner received a majority

⁷ See *Reiss Associates, Inc.*, 116 NLRB 217, *The Gummed Products Company*, 112 NLRB 1092.

⁸ *Supra*

⁹ 107 NLRB 427, 430

¹⁰ See *Comfort Slipper Corporation*, 112 NLRB 183; *Gong Bell Manufacturing Co.*, 114 NLRB 342.

of the votes cast in the election, we shall certify the Petitioner as representative of the employees in the appropriate unit.

[The Board certified International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL-CIO, as the duly designated collective-bargaining representative of the employees in the appropriate unit.]

Allis-Chalmers Manufacturing Company and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-AFL-CIO), Petitioner. *Case No. 6-RC-1864. March 22, 1957*

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Joseph Thackery, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Murdock and Rodgers].

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. No 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, for the following reasons:

The Petitioner seeks to represent a unit of all drafting employees in the maintenance department at the Employer's Pittsburgh, Pennsylvania, Works. The Employer contends that this unit is inappropriate.

The Employer's Pittsburgh Works consists of five buildings or plants. Operations are subdivided into general manager's, accounting, engineering, purchasing, and manufacturing divisions. Since 1949 the Petitioner has represented a unit of hourly paid production and maintenance employees, all of whom are in the manufacturing division.¹

In the maintenance department, which is part of the manufacturing division, there are five drafting employees in the classifications of

¹ See 84 NLRB 30.