Lloyd A. Fry Roofing Company *and* International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 290, AFL–CIO, Petitioner. *Case No. 12–RC–23. June 24, 1957*

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election of the Board dated February 14, 1957, an election was conducted on March 13, 1957, under the direction and supervision of the Regional Director for the Twelfth Region among the employees in the unit found appropriate by the Board. At the close of the election, the parties were furnished with a tally of ballots, which shows that of approximately 38 eligible voters, 20 cast ballots for the Petitioner, 17 cast ballots against the Petitioner, and there were 8 challenged ballots. The challenged ballots were sufficient in number to affect the results of the election.

Thereafter, the Employer filed timely objections to the election, which, as modified in the course of the investigation, alleged in substance, that (1) the Senate investigation of the parent organization of the Petitioner which occurred subsequent to the election, resulted in such "adverse publicity, indictments and other charges of bad faith" against the parent organization as to militate against Board's certification of the Petitioner on the basis of the result of the election held on March 13, 1957; and (2) the Petitioner, in disregard of the eligibility list furnished by the Employer at the direction of the Board agent which omitted all temporary employees, "encouraged and directed certain temporary employees" to vote in the election thereby affecting the outcome of the election.

In accordance with the Board's Rules and Regulations, the Regional Director caused an investigation to be made, and on April 22, 1957, issued and duly served on the parties his report on objections to election and challenged ballots, in which he found that the objections did not raise substantial and material issues with respect to the conduct of the election or conduct affecting the results of the election, and recommended that the objections be overruled, that the Employer's challenges to the ballots of six employees be sustained, and that the Petitioner be certified as the exclusive bargaining representative of the employees in the unit defined in the Board's Decision and Direction of Election. The Employer filed timely exceptions to the Regional Director's report, alleging that substantial and material issues exist respecting the conduct of the election.

Objection No. 1: In its exception to this objection the Employer reiterates its contention that if the employees in the unit are permitted

to exercise their choice of the bargaining representative in a new election, they would, because of the misconduct on the part of the International's officers revealed by the recent Senate investigation, repudiate the Petitioner as their collective-bargaining agent. In agreement with the Regional Director we find that the Employer's contention is a mere "conjecture" insufficient as a basis for setting the election aside. The only issue before us is whether or not the election of March 13 was valid and properly conducted. We find, in agreement with the Regional Director, that it was, and that to reexamine the results of a valid election in the light of subsequent developments would not only tend to destroy the element of finality in elections but would result in chaos in the administration of the Act.[1]

Objection No. 2: The Employer's exceptions allege that at the preelection meeting, called by the Board agent to settle the date, place and time of election, observers, etc., it was agreed that the Employer would furnish the parties with an eligibility list and a list of temporary employees. It appears that pursuant to such agreement the Employer did furnish the Petitioner and the Board agent a list of temporary employees in advance of the election. The Employer alleges the Petitioner thereafter *encouraged* temporary employees to vote in the election to the Employer's prejudice. There were 17 employees who were ineligible to vote by reason of temporary employment. Eight temporary employees appeared at the polls, were challenged by the Employer, and were permitted to vote subject to challenge. Of the 9, who never appeared at the polls, 2 were no longer on the payroll as of the date of the election, 5 were employed subsequent to the eligibility date, 1 was not at work on the day of election and 1 simply did not appear at the polls. On these facts the Regional Director found that the Employer had suffered no prejudice and recommended the dismissal of the objection. The Employer now excepts to this finding, alleging that the "encouragement" by the Petitioner of the temporary employees to vote in the election and the Board agent's conduct in permitting such employees to vote contrary to the agreement of the parties constituted interference with the employees' freedom of self-determination, the effect of which on qualified voters can be ascertained only in a new election. We see no merit in the Employer's contention.

As agreement between the parties that the Employer would furnish the Petitioner and the Board agent with a list of temporary employees presumably unqualified to vote in the election, and the preparation of

[1] *Thomas Electronics, Inc.*, 109 NLRB 1141, 1144, where the Board held that the repudiation of the petitioner, after election, by a majority of voters was not a basis for setting the election aside—"because conclusive effect must be given to the results of a Board-conducted election for a reasonable period"; see also *J. Spevak & Co., Inc.*, 110 NLRB 954.

such list by the Employer, did not preclude the Petitioner thereafter from urging such employees to vote if the Petitioner, after an independent investigation, came to the conclusion that they are entitled to vote. The Board recently held that a preparation of an eligibility list in advance ordinarily does not constitute a final and binding agreement upon issues of eligibility, but is rather a guide or a tool the use of which is to facilitate the election procedure.[2] The Petitioner thus committed no "breach of faith" nor was guilty of a "show of strength" when it urged certain temporary employees to appear at the polls and assert their right to vote. The Petitioner's conduct, therefore, cannot possibly be regarded as interference with the employees' freedom of choice of a bargaining representative.

In agreement with the Regional Director, we further find that the Petitioner's conduct in urging temporary employees to vote at the election, did not in any way prejudice the Employer. By challenging the ballots of these temporary employees, who were ineligible to vote in the election, the Employer adequately protected its interest in the outcome of the election.[3]

Challenged Ballots

The parties took no exception to the Regional Director's finding that six of the temporary employees, whose ballots have been challenged by the Employer, have no reasonable expectancy of continued employment as of the date of the election, and his recommendation that the challenges to their ballots be sustained We adopt this finding of the Regional Director. The Regional Director did not consider the validity of the two remaining challenges as they are insufficient in number to affect the results of the election.

As the tally of ballots shows that the Petitioner received a majority of the votes cast in the election, we shall certify the Petitioner.

[The Board certified International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 290, AFL–CIO, as the designated collective-bargaining representative of the production and maintenance employees at the Employer's plant located at Fort Lauderdale, Florida, including trucking employees, but excluding shipping and receiving clerks, office clerical employees, guards, and supervisors as defined in the Act.]

MEMBERS RODGERS and JENKINS took no part in the consideration of the above Supplemental Decision and Certification of Representatives.

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[2] *O. E. Szekely and Associates, Inc.*, 117 NLRB 42.
[3] *The De Vilbiss Co.*, 102 NLRB 942.