

Western Electric Company, Inc., Decatur, Illinois and International Brotherhood of Electrical Workers, AFL-CIO, Petitioner

Western Electric Company, Inc., Decatur, Illinois and Allied Industrial Workers of America, AFL-CIO, Petitioner. *Cases Nos. 13-RC-5606 and 13-RC-5613. November 26, 1957*

DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election, an election was conducted on August 15, and a runoff election was conducted on September 11, 1957, under the direction and supervision of the Regional Director for the Thirteenth Region, among certain employees of the Employer. The tally of ballots on the runoff election shows that there were approximately 270 voters; and that 92 valid votes were cast for the International Brotherhood of Electrical Workers, AFL-CIO, herein called IBEW, 98 valid votes were cast for Communications Workers of America, AFL-CIO, herein called CWA, 58 ballots were challenged, and no ballots were declared void.

The challenges were sufficient in number to affect the results of the election. On September 18, 1957, IBEW timely filed objections to the runoff election. On October 4, 1957, the Regional Director, after investigation, issued his report on challenges and objections, recommending that the challenges be sustained and the objections be overruled, and that the Board issue a certification of representatives in behalf of the CWA. On October 16, 1957, IBEW filed exceptions to the Regional Director's report, and on October 22, 1957, CWA filed an answer to the exceptions.

Upon the entire record in this case, the Board¹ finds:

1. The Employer is engaged in commerce within the meaning of Section 2 (6) of the Act.

2. The labor organizations involved claim 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 the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All hourly rated production and maintenance employees at the Employer's Decatur, Illinois, plant, excluding office clerical and plant clerical employees, and professional employees, guards, and supervisors as defined in the Act.

¹ 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 [Members Murdock, Rodgers, and Bean].

5. The Board agent conducting the election challenged the ballots cast by 58 employees on the ground that their names did not appear on the eligibility list. The Regional Director's investigation reveals that 57 of these individuals were hired subsequent to the payroll period for eligibility for the election; and that the 58th challenged ballot was cast by an individual who both quit his employment and was rehired during the period between the eligibility date and the runoff election. The Regional Director found, and we agree, that the eligibility requirements of Section 102.62 of the Board's Rules and Regulations have not been met by the aforesaid 57 employees, because they were not eligible to vote in the election and therefore were not eligible to vote in the runoff election.²

Accordingly, we adopt the Regional Director's recommendation that the challenges to these 57 ballots be sustained. As the remaining challenged ballot is insufficient in number to affect the results of the election, we also agree with the Regional Director's finding that it is unnecessary to make any disposition of this ballot.

6. In substance, both the IBEW's objections and exceptions allege: (1) the stipulation for certification upon consent election should not be honored by the Board because the Employer incorrectly estimated the number of employees which would be employed during the payroll period for eligibility; and (2) a substantial number of employees were disenfranchised because the payroll period for eligibility used in the first election was also used in the runoff election.

With respect to objection 1, the Regional Director's investigation reveals that the IBEW was served a tally of ballots immediately following the first election, but failed to object to that election on the ground of the alleged inaccuracy of the Employer's estimate of its labor force during the payroll period for eligibility. Because of this failure to object to the first election within the 5 days permitted, and because the same payroll period for eligibility was used for the runoff election,³ we find, as the Regional Director did, that objection 1 was not timely filed. Accordingly, we adopt the Regional Director's recommendation that objection 1 be overruled.

With respect to objection 2, IBEW contends that a later payroll period for eligibility should be used, because during the period between the first election and the runoff election 20 employees left the employ of the Employer and 65 new employees were hired. The stipulation executed by the parties provides: "Post Election And Runoff Procedures—All procedure subsequent to the conclusion of counting

² Section 102.62 (b) provides: "Employees who were eligible to vote in the election and who are employed in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election."

³ Although the number of eligible employees for the runoff election was reduced even further because of turnover to 201 employees, we note, as conceded by IBEW, that the number of 221 eligible employees for the first election was also "far short" of the Employer's employment estimate of 250.

ballots shall be in conformity with the Board's Rules and Regulations." As discussed above, the Board's Rules and Regulations require the use in a runoff election of the eligibility date used for the first election. Accordingly, and in the absence of any amendment of the stipulation by the parties thereto, we find that the parties were bound by the provisions of the stipulation and in turn the Board's Rules and Regulations with respect to the runoff election eligibility date.⁴ We therefore adopt the Regional Director's recommendation that objection 2 be overruled.

As we have sustained 57 of the 58 challenges and the 58th challenge can no longer affect the results of the runoff election, as we have overruled the objections to the runoff election, and as CWA has received a majority of the valid votes cast in the runoff election, we shall certify CWA as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified Communications Workers of America, AFL-CIO, as the designated collective-bargaining representative of the employees in the appropriate unit.]

⁴ As indicated by the Regional Director, even an agreement by the parties might not permit the setting of a different eligibility date for the runoff election. See *Cone Brothers Contracting Co.*, 109 NLRB 483, where the Board in similar circumstances held that a material deviation from Section 102.62 of the Rules and Regulations was not warranted and would not be consistent with good administration of the Act.

Alaska Salmon Industry, Inc. and Peter Patrick Mendelsohn.
Case No. 19-CA-1362. November 27, 1957

DECISION AND ORDER

On April 2, 1957, Trial Examiner Howard Myers 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 he cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report, together with a supporting brief.

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

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Inter-