We believe that the Petitioner's newsletter, when read as a whole, makes it abundantly clear that the Petitioner was seeking to exhort employees who might favor the Petitioner to register a vote for that union, rather than to dissuade employees who were not sympathetic to the Petitioner to stay away from the polls. The letter urges all employees to "BE SURE TO VOTE," painstakingly apprises all employees of the places and times set for voting, and urges that the employees cast their votes for the Petitioner. In our opinion, the statement that "NOT VOTING IS THE SAME AS VOTING NO" was a caution to employees affirmatively to register a choice and was not calculated to and could not reasonably be interpreted as an attempt to dissuade antiunion employees from voting. In any event, Petitioner's subsequent letter addressed to the employees clearly spelled out to the employees the true facts concerning the conduct of the election and thereby corrected any alleged mistatements in the original newsletter. Accordingly, we find no merit in the Employer's contention that the statement interfered with the election and that the election should be set aside. We therefore adopt the Regional Director's recommendation that the Employer's exceptions be overruled and that the Petitioner be certified.

[The Board certified Retail Clerks International Association, Local No. 1441, AFL–CIO, as the designated collective-bargaining representative of the employees of Marsh Foodliners, Incorporated (Yorktown, Indiana) in the unit found appropriate.]

Westinghouse Electric Corporation *and* International Union of Electrical, Radio and Machine Workers, IUE–AFL–CIO, Local 130, Petitioner. *Cases Nos. 5–RC–1670 and 5–RC–2143. February 28, 1958*

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election issued by the Board on October 8, 1957,[1] and amended on October 30, 1957, an election by secret ballot was conducted on November 7, 1957, under the direction and supervision of the Regional Director for the Fifth Region of the National Labor Relations Board among the employees in the unit found appropriate by the Board. Following the election, the parties were furnished with a tally of ballots which shows that of approximately 520 eligible voters, 236 cast ballots for International Union of Electrical, Radio and Machine Workers, IUE–AFL–CIO,

[1] Not reported in printed volumes of Board Decisions and Orders.

sometimes referred to herein as the IUE, 113 cast ballots for the Intervenor, International Brotherhood of Electrical Workers, Local Union No. 1805, 3 cast ballots against the participating labor organizations, 1 cast a void ballot, and 118 cast ballots which were challenged. The challenged ballots were insufficient in number to affect the results of the election.

On November 15, 1957, the Intervenor filed timely objections to conduct affecting the results of the election. On November 21, 1957, the Intervenor submitted an additional objection which the Regional Director found was untimely filed. In accordance with the Board's Rules and Regulations, the Regional Director caused an investigation of the objections to be conducted and, on January 16, 1958, issued and served on the parties his report on objections in which he found no merit in either the Intervenor's timely objections or its untimely objection. He recommended that the objections be overruled and that International Union of Electrical, Radio and Machine Workers, IUE–AFL–CIO, be certified as the exclusive bargaining representative in the unit found appropriate by the Board.

The Intervenor filed timely exceptions to the Regional Director's report as it relates to Intervenor's objection designated in the report as number II, 2. The Employer likewise filed timely exceptions. The Employer excepted to the Regional Director's report as it relates to Intervenor's objection designated in the report as number I, 1, and to the objection which the Regional Director found was untimely filed and which was undesignated in the report. The Employer also made, in effect, a motion for reconsideration of the Board's unit finding. The IUE filed a motion to dismiss the Employer's exceptions contending that the Employer lacks standing to file such exceptions and also that they are without merit. The IUE's motion to dismiss is hereby denied because, although the Employer did not file objections, as the Board's Rules and Regulations clearly state in Section 102.61, Series 6, as amended, ". . . *any party may file* with the Board in Washington, D. C., seven copies of *exceptions* to [the] report." [Emphasis supplied.] However, to the extent that the IUE's motion is directed to the merits of the Employer's exceptions, it will be treated herein as a statement of position by one of the interested parties in this proceeding.

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 Rodgers, Bean, and Jenkins].

Objection II, 2, concerns the presence on a shelf in one of the voting booths at about 7:10 a. m. of a piece of IUE literature which had been passed out at the gate. This propaganda material consisted of a card containing three boxes with an "X" marked in the IUE's box. At sometime after 7:10 a. m., it apparently dropped to the floor. For, at about 8:15 a. m. a Board agent noticed the card lying on the floor

near one of the voting booths and removed it. The Board agents checked all the booths about every 15 minutes during the election. The Intervenor excepts to the Regional Director's finding that such employees who saw the propaganda were in a position to make a free choice and to his recommendation that the objection therefore be overruled.

The Intervenor does not contend—as, indeed, it could not, that the material which merely contained voting boxes with an "X" in the IUE's box, was a reproduction of an official ballot and therefore violated the Board's *Allied* rule.[2] The Board has held that distribution of the type of propaganda involved herein is permissible.[3]

No evidence was presented to show that any official or representative of the IUE or any employee acting on instructions of the IUE placed the propaganda in the voting booth. Moreover, we agree with the Regional Director that the situation complained of does not differ substantially from the Board's practice of permitting voters to wear propaganda shirts or buttons in the polling place. Accordingly, we likewise agree with him that the presence of the card for at most 1¾ hours in or near one of the voting booths did not impair the freedom of choice of such employees who voted and may have seen the propaganda during that period.[4]

Objection I, 1, concerns the fact that the election in this case involving the production and maintenance employees, including particularly shop clerical employees, was held on the same day and site that an election in Case No. 5–RC–2173 was being conducted for all salaried employees. The Intervenor contended that, as there were some *salaried* shop clericals, these employees were confused as to which unit they were eligible to vote in; that 1 expediter (Production Clerk Hawes) did not vote in either election because of the confusion; that 3 shop clerks did not vote in the production and maintenance unit, but voted in the salaried employees' election; and, that 1 shop clerk (May) voted in both elections.

The Intervenor did not at any time object to the election arrangements which had been agreed to by all the parties. It did not produce Hawes, May, or any of the three shop clerks alleged to have voted in the salaried employees' election. The Intervenor presented two production clerks. One stated in his affidavit that he heard a rumor that production clerks were to vote in both units. He voted unchallenged in the production and maintenance unit and voted a challenged ballot in the salaried employees' unit. He did not ask any company official, union representative, or Board agent as to where

[2] *Allied Electrical Products, Inc*, 109 NLRB 1270

[3] *Lincoln Plastics Corp.*, 112 NLRB 291.

[4] The hours and places of election were as follows 6 30 a. m to 9 a m and 3 30 p. m. to 5 .15 p m —test office area 5 30 p m. to 6 . 30 p m.—electronics building guardhouse.

he was supposed to vote. The other clerk stated that he was confused as to which unit he was to vote in and asked his supervisor who suggested he vote in both units. He also voted unchallenged in the production and maintenance unit and challenged in the salaried employees' unit. He did not ask any Board agent where he was supposed to vote. The Regional Director was of the opinion that the franchise of both voters was fully protected and recommended that the objection be overruled.

The Intervenor did not except to the Regional Director's recommendation that this objection be overruled, but the Employer does. The Employer's contention appears to be that since two employees were produced who voted in both elections, they evidently were confused and, therefore, the Regional Director should have attempted to seek out, or should have assumed that there were, other employees who were also confused. We find no merit in this contention. It is incumbent upon the party objecting to the conduct of an election to introduce or present evidence in support of its position. Here, no proof has been adduced that any employee failed to vote in his proper unit because of the alleged confusion or, indeed, that any other employees were confused. With respect to the two employees produced by the Intervenor, while they may have been in doubt regarding which election to vote in, as pointed out by the Regional Director, their franchise was fully protected when they voted unchallenged ballots in the production and maintenance employees' election, but challenged ballots in the salaried employees' election. In our opinion, the Regional Director did everything that was required of him when he considered all the evidence submitted to him by the Intervenor in support of its objection.

The undesignated objection concerns the fact that while the Decision and Direction of Election describes the Petitioner as International Union of Electrical, Radio and Machine Workers, IUE–AFL–CIO, Local 130, the ballot made no mention of Local 130. The Intervenor contended that this variance voided the election. The president of Local 130 asserted that at a meeting of all parties in the Board's Regional Office to set up the procedure for the election the parties discussed how the Unions would appear on the ballot and he stated that Petitioner desired to appear as "International Union of Electrical, Radio and Machine Workers, IUE–AFL–CIO," omitting the Local's number. None of the other parties raised an objection at that time or later on when sample ballots were distributed by the Board to the parties showing how the Unions would appear. Both Local 130 and the International Union have indicated that they understood and desired that any certification be issued in the name of the International Union. The Intervenor's attorney did not dispute the

statement of Local 130's president, but contended that the failure to follow the Decision and Direction of Election by not including Local 130's name affected the outcome of the election. He further contended that the 5-day period for filing objections would not apply to this type of objection.

The Regional Director found that the objection, having been submitted more than 5 days after the tally of ballots had been furnished, was, in accordance with Section 102.61 of the Board's Rules and Regulations, untimely filed. Furthermore, with respect to the merits of the objection, he concluded that based upon the Board's decision in the *Sunbeam* case[5] the designation of the International rather than Local 130 on the ballot did not affect the validity of the election and he recommended that the objection be overruled. In the *Sunbeam* case, the Board held that the designation of an international union on the ballot and omission of the local's name was within the scope of the Direction of Election which referred to both unions; that when an international union and its interested local agree that the international alone shall appear on the ballot, such a designation of the international is proper; that the ballot designation of the international did not confuse the voters as to the identity of the respective rival unions participating in the election; that if the Board had been requested by the international and the local to omit the local from the ballot, it would have granted the request; and that the designation of the international rather than the local did not affect the validity of the election.

The Intervenor did not except to the Regional Director's recommendation that this objection be overruled, but the Employer does. The Employer contends that some employees who voted for the Petitioner may be presumed to have done so because the International Union was designated on the ballot rather than Local 130. We find no merit in this contention for the reasons referred to by the Regional Director. We also agree with his finding that the objection was, in any event, untimely filed and it could have been rejected on that basis alone.

Finally, the Employer's exceptions contain what can only be construed as a motion for reconsideration of the Board's unit finding. Inasmuch as this motion contains no new matter or evidence not previously considered by the Board at the time when the Decision and Direction of Election in this case was issued, the motion is hereby denied.

We find that neither the Intervenor's objections and exceptions nor the Employer's exceptions raise substantial and material issues with respect to the conduct or results of the election, and they are

[5] *Sunbeam Corporation*, 89 NLRB 469, at 472.

hereby overruled. As the tally of ballots shows that a majority of the valid votes have been cast for International Union of Electrical, Radio and Machine Workers, IUE–AFL–CIO, we shall certify it as the collective-bargaining representative in the appropriate unit.

[The Board certified International Union of Electrical, Radio and Machine Workers, IUE–AFL–CIO, as the designated collective-bargaining representative of the employees of the Employer in the unit found appropriate.]

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