

so advised by the Regional Director, proceed to dispose of the challenged ballots of Gallant and Brites.

[The Board directed that the Regional Director for the First Region shall, pursuant to National Labor Relations Board Rules and Regulations, within ten (10) days from the date of this Direction, open and count the ballots of Manuel Rezendes, Lorraine Roy, David Grew, Jacob Gajewski, George Anness, Armand Zussy, and Romeo Le Page and serve upon the parties a revised tally of ballots and issue certification.]

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**E. J. Lipschutz, Sam Rosenberg, Nathan Lipschutz, Sidney Lipschutz, and Frank Lipschutz, d/b/a Louisville Cap Company, Petitioner and United Hatters, Cap & Millinery Workers International Union, AFL-CIO. Case No. 9-RM-159. May 5, 1958**

#### SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Decision and Direction of Election<sup>1</sup> of the Board, dated December 9, 1957, an election by secret ballot was conducted on December 20, 1957, under the direction and supervision of the Regional Director for the Ninth Region among the employees in the appropriate unit. Following the election the Regional Director furnished the parties a tally of ballots which showed that of approximately 190 eligible voters, 4 cast valid ballots for the Union, 150 cast ballots against any labor organization, and 4 cast void ballots.

On December 30, 1957, the Union 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 February 19, 1958, issued and served on the parties his report on election, objections to election and recommendations to the Board in which he found that the Union's objections raised no substantial or material issues with respect to the election and recommended that the objections be overruled. On March 5, 1958, the Union filed timely exceptions to the Regional Director's report.

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 Rodgers and Jenkins].

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

1. In its first two objections, the Union alleged that unfair labor practices filed by it against the Employer were pending on appeal to

<sup>1</sup> Not published.

the General Counsel at the time of the election and that additional charges filed by it were summarily dismissed by the Regional Director prior to the election without any investigation.

The Regional Director found no merit in the first objection because the Board does not delay elections in representation cases pending the appeal to the General Counsel of Regional Directors' dismissals of charges. As for the second, the Regional Director found that the additional charges were submitted in support of statements previously given to the General Counsel which had been investigated prior to the submission of the additional charges. He found that the additional charges had been properly dismissed and were under appeal to the General Counsel at the time of the election. Accordingly, he concluded that both objections were lacking in merit.

The Union in its exceptions reiterates its original objections. We find them without merit. The Regional Director properly stated the Board's policy with respect to the conduct of elections pending the appeal to the General Counsel of dismissals of charges.<sup>2</sup> As for the investigation of the additional charges, under the Act the General Counsel has final authority with respect to both the investigation of charges and the issuance of complaints.<sup>3</sup> The Regional Director having dismissed the charges and having been sustained by the General Counsel on appeal,<sup>4</sup> the Board will not consider further these objections and overrules them.

2. In its third objection, the Union contends that the choice of date for the election, over its objections, interfered with the election because it fell on Friday, December 20, 1957, which was the alleged customary date of the Employer's annual Christmas party<sup>5</sup> and which was the last day of the week during which the employees were permitted unusual liberties and were expecting to receive bonds as Christmas bonuses from the Employer. The Regional Director found that the date of the Employer's annual Christmas party was usually the last working day before Christmas rather than the last Friday before Christmas, as the Union contended, and that the election was therefore not scheduled on the traditional party date. He also found that the Employer did not otherwise depart from any of its usual pre-Christmas practices during the week of the election and concluded that the Union was not prejudiced by the choice of date.

In its fifth objection, the Union alleged that police came to the place of the election at the Employer's request to investigate a dis-

<sup>2</sup> *American Thermos Products Company*, 119 NLRB 557.

<sup>3</sup> Section 3 (d).

<sup>4</sup> The Board's administrative records indicate that the Union's appeal to the General Counsel was denied on February 26, 1958.

<sup>5</sup> No contention is made that the 1957 party was in fact held on the day of the election and it appears that the party was held on December 24, 1957.

turbance and remained present for the duration of the voting, standing next to company officials in two lines through which the employees had to pass in order to vote. The Regional Director found that the police were called by the Employer, that there was some evidence that pickets at the plant had been creating a disturbance, and that the police did not inject themselves into election issues nor speak to any employees or voters during the election.

In its exception to both these objections the Union merely reiterates the allegations of its objections<sup>6</sup> without indicating any supporting evidentiary basis therefor. We find under the circumstances that the Union's objections 3 and 5 are lacking in merit and overrule them.<sup>7</sup>

3. In its fourth objection the Union contends that by delivering an antiunion speech to employees on the same day that beneficiary forms for the Employer's Christmas bonus bonds were filled out by the employees, the Employer associated the benefits received with its antiunion position and interfered with the election. The Regional Director found that the speech contained no objectionable matter and that the bonds were given to the employees in accord with the Employer's customary practice. He recommended that the objection be overruled. In its exceptions the Union contends that taken in conjunction with other conduct of the Employer adverted to elsewhere in its objections the antiunion speech was objectionable because the Employer did not inform the employees that they would continue to receive Christmas bonds if the Union won the election. The Union further contends that for many months the employees were informed by the Employer that they would forfeit whatever amenities of employment they enjoyed, including the Savings Bond, if the Union succeeded in winning the election. The first contention is clearly without merit, and the second contention, not made as part of the Union's original objections, is lacking in specificity and unsupported by any proffer of supporting evidence. Accordingly, we find this objection without merit and overrule it.

5. The Union in its sixth objection alleged that employees were released to vote by officers of the company and escorted to the polls by them. The Regional Director found no merit to this objection, and the Union filed no exception thereto. Accordingly, we overrule the Union's sixth objection.

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<sup>6</sup> With respect to the timing of the election, the Union also alleges in its exceptions that the Regional Director erroneously found that the 1956 Christmas party was held on the last working day before Christmas and alleges affirmatively that in 1956 the party was held on Friday, December 21, and the employees thereafter worked on Monday, December 24. We find it unnecessary to resolve this factual conflict as the Christmas party in 1957 was not actually held until after the election, and we are satisfied that regardless of past practice, the timing of the election with respect to the party does not constitute valid cause for setting aside the election herein.

<sup>7</sup> See *J. Spevak & Co., Inc.*, 110 NLRB 954, with respect to the fifth objection. See *Vita Food Products, Inc. of Maryland*, 116 NLRB 1215, 1219.

As we have overruled the Union's objections, and the Union failed to receive a majority of the valid votes cast, we shall certify the results of the election.

[The Board certified that a majority of the valid votes was not cast for United Hatters, Cap & Millinery Workers International Union, AFL-CIO, and that said organization is not the exclusive representative of the Employer's employees in the unit heretofore found appropriate.]

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### **R. K. Baking Corp. and Max Winzelberg**

**Bakery & Pastry Drivers and Helpers Union, Local No. 802, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America<sup>1</sup> and Max Winzelberg and R. K. Baking Corp., Party to the Contract. Cases Nos. 2-CA-2067 and 2-CB-578. May 6, 1958**

### SUPPLEMENTAL DECISION AND ORDER

On March 3, 1953, the National Labor Relations Board issued a Decision and Order in the above-entitled cases,<sup>2</sup> finding, *inter alia*, that R. K. Baking Corp., hereinafter referred to as R. K., had discriminatorily denied employment to Max Winzelberg, and that Bakery & Pastry Drivers and Helpers Union, Local 802, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter referred to as the Union, had unlawfully caused such discrimination. The Board's order, *inter alia*, required R. K. to offer Winzelberg employment as a route salesman, and required R. K. and the Union jointly and severally to make Winzelberg whole for any loss of pay he may have suffered as a result of the discrimination against him, in the manner set forth in the Intermediate Report, dated November 13, 1952, in the section entitled "The Remedy." R. K. and the Union having failed to comply with the order of the Board, on May 17, 1954, the Court of Appeals for the Second Circuit entered a decree approving the Board's finding that the Union had unlawfully caused R. K. to discriminate against Winzelberg, and remanding the proceeding to the Board for the purpose of "hearing and determining the matter of the respondents' specific obligations under the 'reinstatement' and back pay provisions of its order." Such a hearing was subsequently held before Trial Examiner Lloyd Buchanan, and on April 11, 1955, he issued a Supple-

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<sup>1</sup> The Board having been notified by the AFL-CIO that it deems the Teamsters' certificate of affiliation revoked by convention action, the identification of the Respondent Union is hereby amended.

<sup>2</sup> *Gottfried Baking Company, et al.*, 103 NLRB 227.