

which the issue arises and to all pending cases in whatever stage is traditional and, we believe, the wiser course to follow. Accordingly, we deny the Petitioner's request that any revised policy not be applied to the instant case.

In view of the foregoing, and particularly our finding that the petition was filed after the contract was amended, we find that the contract for the period January 10, 1958, to March 31, 1959, constitutes a bar to this proceeding. Therefore, we find that 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. Accordingly, we shall dismiss the petition filed herein.

[The Board dismissed the petition.]

Custom Molders of P. R. and Shaw-Harrison Corporation, Petitioner and United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO. Case No 24-RM-50 September 23, 1958

DECISION AND DIRECTION OF SECOND ELECTION

Pursuant to a stipulation for certification upon consent election entered into by the parties on March 20, 1958, an election by secret ballot was conducted on April 3, 1958, under the direction and supervision of the Regional Director for the Twenty-fourth Region, among employees in the appropriate unit as set forth in said stipulation. Upon the conclusion of the election, each of the parties was served with a tally of ballots which showed that of approximately 322 eligible voters, 291 cast ballots, of which 42 were for and 227 were against the Union. Nineteen ballots were challenged, a number insufficient to affect the results of the election. Three void ballots were cast.

On April 10, 1958, the Union filed timely objections to the conduct of the election. On July 2, 1958, the Regional Director, after investigation, issued his report and recommendations on objections to election, recommending that the objections be overruled, but that the election be set aside because of the Employer's violation of the Board's *Allied Electric Products* rule¹. On July 21, 1958, the Employer filed timely exceptions to the Regional Director's report.

The Board has considered the objections of the Union, the Regional Director's report,² the Employer's exceptions, and the entire record in the case, and finds

¹ *Allied Electric Products, Inc.*, 109 NLRB 1270

² As no exceptions have been taken to the Regional Director's recommendations overruling the Union's objections to the conduct of the election, those recommendations are hereby adopted.

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

2. The labor organization involved claims 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 production and maintenance employees excluding office, clerical, professional, executive, and administrative employees, watchmen, and supervisors as defined in the Act.

5. Pursuant to his investigation of the Union's objections to the conduct of the election, the Regional Director discovered that the Employer, prior to the election, had distributed handbills which contained an appeal to its employees to vote against the Union on the top half of the handbill and on the lower half, the reproduction of a sample ballot marked "X" in the "No" box. The ballot in question is not an exact replica of the Board's official ballot. It is found on the lower half of the handbill and is somewhat smaller. The word "sample" is not splashed across the face of the ballot, rather the very top of the ballot contains the words "SAMPLE OF THE BALLOT." The usual headnote "UNITED STATES OF AMERICA, NATIONAL LABOR RELATIONS BOARD, OFFICIAL SECRET BALLOT," is missing. Board instructions, however, addressed to the employees of the Employer, are retained word for word *including the directive to return the ballot to the Board agent if the ballot is spoiled*. On the basis of this reproduction, the Regional Director recommended that the election be set aside.

The Employer has entered five exceptions to this recommendation. The first involves the Regional Director's authority to set aside an election, and the remaining four concerned the application of the *Allied Electric Products* rule.

As to the authority of the Regional Director, the Board has consistently held that the scope of his investigation is not limited by the objections which initiated that investigation.³ Accordingly, this exception is overruled.

In *Allied Electric Products, supra*, the Board announced a clear and concise rule on the alteration of sample ballots as campaign propaganda. It stated that:

³ *Lockwood-Dutchess, Inc.*, 106 NLRB 1089 (and cases cited therein). The Employer's reliance on *Don Allen Midtown Chevrolet, Inc.*, 113 NLRB 879, and *Atlantic Mills Servicing Corporation, etc.*, 120 NLRB 1284, is without merit. Both cases deal with specificity of objections to the conduct of elections. They impose no restrictions upon the Regional Director's authority but rather look to the obligation of the objecting party to furnish such evidence as *requires* the Regional Director to pursue an investigation.

upon consideration, the Board has decided that in the future it will not permit the reproduction of any document purporting to be a copy of the Board's official ballot, other than one completely unaltered in form and content and clearly marked sample on its face. . . .

It was also made clear that violation of this rule would cause an election to be set aside. The Employer has excepted to the Regional Director's application of the rule here on the grounds that its ballot, without the official headnote, does not purport to be a copy of the Board's ballot. The *Allied Electric Products* rule, however, is not limited to exact reproductions, but is aimed at the reproduction of documents "purporting" to be a copy of the Board's ballot.⁴ The abuse which the rule is designed to eliminate is the possible implication of U. S. Government endorsement of any party to an election. The instant ballot, in literally stating the Board's instructions addressed to employees and, particularly, in making reference to the Board agent, contains the very danger the Board has proscribed,⁵ i. e., conveying an impression among employees that this Agency was not completely neutral in conducting the election. Thus, we find no merit to the Employer's contention that its ballot warrants an exception merely because of the deletion of the official headnote.

Accordingly, as we find that the ballot in the instant case is substantially a reproduction of a document purporting to be a Board ballot, and that it has been altered by marking "X" in the "No" box, we hold that, in accordance with the Regional Director's recommendation, the election should be set aside.⁶

[The Board set aside the election held on April 3, 1958.]

[Text of Direction of Second Election omitted from publication.]

CHAIRMAN LEEDOM took no part in the consideration of the above Decision and Direction of Second Election.

⁴ *Boro Wood Products Company, Inc.*, 113 NLRB 474 (where the defense that the sample ballot was not an exact copy was rejected); *Wallace & Tiernan, Incorporated*, 112 NLRB 1352 (where the election was set aside despite the sample ballot being printed on different colored paper); *Superior Knitting Corporation, et al.*, 112 NLRB 984 (where the sample ballot was an integral part of a larger campaign handbill).

⁵ The Employer urges that *Phelps-Dodge Copper Products Corporation*, 111 NLRB 950, and *The Kilborn-Sauer Company*, 120 NLRB 804, are controlling. Since both of these cases are concerned only with the reproduction of simple boxes which contain no possible implication of Board approval, they are inapplicable in the instant case. Also distinguishable are those cases in which the elections have been upheld because the sample ballots contain no reference to the United States Government, the Board, or Board agents. *Paula Shoe Co., Inc.*, 121 NLRB 673; *The Glidden Company*, 121 NLRB 752. The ballots in these cases, lacking reference to the Board, lack the implication of Board approval.

⁶ The Petitioner's request in the alternative for a hearing to determine to what extent voting employees were confused is denied. The *Allied Electric Products* rule is not dependent on whether the employees were in fact misled. *Superior Knitting Corporation, et al.*, 112 NLRB 984.