

instrument mechanics A, and all professional employees, guards, and supervisors as defined in the Act, may, if they so desire, constitute an appropriate unit. We shall not, however, make a final unit determination at this time, but shall direct that the question concerning representation which exists be resolved by an election by secret ballot among the employees in such voting group. If a majority vote for the Petitioner, they will be taken to have indicated their desire to constitute a separate appropriate unit, and the Regional Director conducting the election directed herein is instructed to issue a certification of representatives to the Petitioner for such unit, which the Board, under such circumstances, finds to be appropriate for purposes of collective bargaining. In the event a majority do not vote for the Petitioner, these employees shall remain a part of the existing unit and the Regional Director will issue a certification of results of election to such effect.

[Text of Direction of Election omitted from publication.]

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**Reflector Hardware Corp. and Machinery, Scrap Iron, Metal & Steel Chauffeurs, Warehousemen Handlers, Helpers & Alloy Fabricators Union Local 741, I. B. of T.** *Case No 13-RM-388*  
*October 27, 1958*

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

Pursuant to the Board's Decision and Direction of Election,<sup>1</sup> dated May 28, 1958, an election by secret ballot was conducted on June 5, 1958, under the direction and supervision of the Regional Director for the Thirteenth Region among the employees in the unit found appropriate by the Board. At the close of the election, the parties were furnished a tally of ballots which showed that of the approximately 299 eligible voters 278 cast valid ballots, 180 were against, and 98 were for, the Union. No ballots were void or challenged.

Thereafter, the Union filed timely objections to the conduct of the election and to conduct affecting the results of the election. Thereafter on June 28, 1958, the Union filed supplemental objections, which the Regional Director properly rejected as untimely. In accordance with the Rules and Regulations of the Board the Regional Director investigated the objections and on July 10, 1958, issued and served on the parties his report on objections, in which he recommended that they be overruled in their entirety. Thereafter the Union filed timely exceptions to the Regional Director's report.

<sup>1</sup> Unpublished.

The Board <sup>2</sup> has considered the objections, the exceptions, and the entire record in this case.

1. The Union filed the following objections to the election:

(a) The notice of election was posted less than 1 day prior to election day.

(b) Agents of the Board sought out and conferred with representatives of the Employer relative to the time, place and mechanics of the election without consulting with the Union.

(c) Agents of the Board, after conferring with representatives of the Employer, refused to give the Union a list of employees' names from which to make challenges.

(d) Lack of Notice of Election to Union, thereby depriving it of an opportunity to select observers from employees.

(e) Refusal by agents of the Board, after conferring with representatives of the Employer, to allow a representative of the Union to act as an observer where the lack of Notice to the Union had effectively prevented it from obtaining observers from employees.

2. (a) The Board and its agents failed to accord the Union due process of law in giving it only one day's Notice of the representation hearing.

(b) The Board and its agents failed to accord the Union due process of law in denying a continuance to the Union to adequately investigate and prepare for the representation hearing.

(c) The Board and its agents failed to accord the Union due process of law in issuing its Decision and Direction of Election within the period of time provided for the Union to file its briefs in support of its position.

(d) Agents of the Board arbitrarily and capriciously dismissed an unfair labor practice charge relating to coercive, unlawful conduct of the Employer in order to conduct an election *post haste*, even though the illegal effect of said conduct had not been remedied.

(e) The Board and its agents engaged in arbitrary, extraordinary conduct inconsistent with previous policy and in abuse of its discretion in the following respects:

(1) By reason of the matters set forth in paragraph 2 (a) to (e) inclusive, above.

(2) By reason of holding an election within seven days after receipt of the Direction of Election.

(3) By reason of continuous consultation with representatives of the Employer as to policy, procedure and action to

<sup>2</sup> 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].

be taken by the agents of the Board in matters pending before the Board, involving the Employer and the Union.

(f) Interference by representatives of the Employer with the free choice of its employees in the selection of a representative and their right to self-organization in the following respects:

(1) Threats to employees of loss of employment prior to and subsequent to the Direction of Election.

(2) Interrogation of individual employees in the shop as to Union affiliation or sympathy, and threats of loss of employment prior to and subsequent to the Direction of Election.

(3) Calling of individual employees into the office of representatives of the Employer and their interrogating them as to Union affiliation or sympathy prior to and subsequent to the Direction of Election.

(4) Coercive "captive audience" speeches to employees prior to Direction of Election.

(5) Interrogation of individual employees as to their attendance at meetings with representatives of the Union prior to and subsequent to the Direction of Election.

With respect to objections 1 (a) through 2 (e), the Regional Director's report and the record shows as follows:

The Employer on May 14, 1958, filed the instant petition. On May 19, the Union received a notice from the Regional Director, dated May 16, that the hearing would be on May 21. The Union appeared at the hearing and requested a continuance which was denied by the hearing officer.<sup>3</sup> At the close of the hearing the Union did not request any extension of time for filing briefs. As no briefs were received by the Board as of the close of business on May 28, the last day for filing briefs, the Board promptly issued its Decision and Direction of Election. On May 29, 1958, the Board agent conducting the election contacted both the Employer's and the Union's representatives and requested their suggestions concerning the time and place of the election. The Employer's representative suggested that the election be held on June 5, between 3 and 5:30 p. m. The union representative made no suggestion, but stated that he understood that the election would probably be held in about a week. On the same day, May 29, the Union filed unfair labor practice charges against the Employer. On June 3 the Regional Director dismissed the Union's charges<sup>4</sup> and mailed copies of the official notice that the election was scheduled for 3 p. m. on June 5. The Employer obtained notices of the election at

<sup>3</sup> The Board in its Decision and Direction of Election affirmed the hearing officer's ruling.

<sup>4</sup> The Union has appealed this decision to the General Counsel. But it is well settled that a representation proceeding will not be stayed during the pendency of such an appeal. See *Sylvania Electric Products, Inc.*, 119 NLRB 824.

the Board's Regional Office on June 3, and posted them by 1:30 p. m. that same day in conspicuous places about the plant. The Union received its notices on June 4, but had been previously advised that the eligibility list would be available for its inspection after June 2. About an hour before the election the union representative requested a copy of the eligibility list, which the Regional Director, in accord with Board policy, refused, stating that a copy of the payroll could only be obtained from the Employer.<sup>5</sup> The latter refused to supply a copy to the Union. Moreover, the Union's representative inspected the list and raised no question as to the eligibility of any employee on the list. Also in accordance with Board policy, the Regional Director refused to permit the Union to select a nonemployee as an observer at the election and the Union had no observer present. The election was conducted on June 5 as scheduled, and more than 90 percent of the eligible employees voted.

On these facts the Regional Director found these objections to be without merit.

The burden of the Union's position is that the Board and its agents acted arbitrarily and prejudicially to the Union in expediting the hearing, the Direction of Election, and the election. We agree that these matters were handled with dispatch, but fail to perceive any action which was arbitrary or prejudicial to the Union.<sup>6</sup> It had sufficient notice of the hearing and ensuing election. That the employees had adequate notice and an opportunity to vote is confirmed by the fact that more than 90 percent of the eligible voters participated. Likewise in our opinion, the Union had a reasonable length of time to avail itself of the opportunity to examine the eligibility list.<sup>7</sup> The Union does not contend that any ineligible employee was permitted to vote. Finally, we are satisfied that the Union had sufficient notice to exercise the privilege afforded it of having an employee observe at the election. Like the Regional Director, we accordingly, find objections 1 (a) through 2 (e) inclusive to be without merit.

With respect to objection 2 (f), the Regional Director reported that Union submitted probative evidence only in support of the captive speech specification number 2 (f) (4). As to the one speech made to the employees after the Direction of Election, it appears that this was made prior to the commencement of the 24-hour period immediately preceding the election. According to the Regional Director, this speech was not coercive or otherwise unlawful. Likewise, it appears that the ballot exhibited during the speech was merely a reproduction on enlarged form of the lower portion of the official ballot but did not purport to be a reproduction of the Board's official

<sup>5</sup> See *Wesco Manufacturing Company*, 97 NLRB 901.

<sup>6</sup> See *Arnold Stone Company of N C, Inc.*, 102 NLRB 1012.

<sup>7</sup> See *Wesco Manufacturing Co.*, *supra*.

ballot within the meaning of the rule in *Allied Electric Products, Inc.*, 109 NLRB 1270. Accordingly, we find, in agreement with the Regional Director, objection 2 (f) to be without merit.

In view of the foregoing, and the record as a whole, we find that the Union objections do not raise substantial or material issues affecting the results of the election. Accordingly, in agreement with the Regional Director's recommendation we hereby overrule the Union's objections and deny its request for a hearing of the objections. As the Union failed to receive a majority of the valid ballots cast, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for Machinery Scrap Iron, Metal & Steel Chauffeurs, Warehousemen, Handlers, Helpers, & Alloy Fabricators Union, Local 714, I. B. of T., and that said organization is not the exclusive representative of the Employer's employees in the unit found appropriate.]

**St. Louis Bakery Employers Labor Council<sup>1</sup> and Bakers Union No. 4 of Greater St. Louis, American Bakery and Confectionery Workers International Union, AFL-CIO and Local 4-A, Bakery and Confectionery Workers International Union of America, Petitioners.** *Cases Nos. 14-RC-3406 through 3411 and 14-RC-3435. October 27, 1958*

#### DECISION, ORDER, AND DIRECTION OF ELECTION:

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Walter Werner, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

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. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.<sup>2</sup>

<sup>1</sup> The Employer, whose designation appears as amended at the hearing, is an association representing six employers in collective-bargaining negotiations for their St. Louis, Missouri, plants. These employers are Continental Baking Co. (#1, #2, and Hostess Cake plants), Colonial Baking Company, American Baking Company (Taystee Bread and Grennan plants), Freund Baking Company, Midland Baking Company, and Ward Baking Company.

<sup>2</sup> Locals 4 and 4-A, Bakery and Confectionery Workers International Union of America (herein called BW) intervened in Cases Nos. 14-RC-3406 through 3411 on the basis of a