

and will exist whether or not he is permitted to vote in this election, as his interests continue to remain with his permanent job.

Contrary to our dissenting colleagues, the issue here is not the usual one of whether a guard may be included in a unit of nonguard employees. It is, rather, whether the temporary employment as a guard of any employee who will shortly return to his nonguard job in the unit renders him ineligible to vote in that unit. In giving limited recognition to the guard status of such an employee while he is temporarily out of the unit, we are satisfied we have not indulged in an inconsistency. We have, instead, recognized the obvious fact that the interests of such an employee continue to remain with his permanent job, and that he is therefore to be regarded, for purposes of voting eligibility, no differently from any other employee in temporarily laid-off status.

Under all the circumstances, we find that Akin, as an employee temporarily laid off from his job within the unit, is eligible to vote in the election. We therefore overrule the Regional Director's recommendation that the challenge to his ballot be sustained, and shall direct that his ballot be opened and counted.

[The Board directed that the Regional Director for the Seventh Region, shall, within ten (10) days from the date of this Direction, open and count the ballot of Gaylord Akin, and serve upon the parties a revised tally of ballots, including therein the count of this ballot.]

MEMBERS RODGERS and BEAN, dissenting:

The majority, as required by statute and by established precedent, has excluded Gaylord Akin from the bargaining unit because he is a guard. But having done so, it concludes that he is nonetheless eligible to vote in this same bargaining unit from which he has been excluded. Because we cannot subscribe to this inconsistency, we would sustain the Regional Director's challenge to Akin's ballot and would certify the Petitioner as the bargaining representative of the employees in the unit herein.

Allied Plywood Corp. and Local 25, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. *Case No. 1-RC-5363. January 15, 1959*

DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election executed on September 17, 1958, an election by secret ballot was conducted on September 25, 1958, under the direction and super-

vision of the Regional Director for the First Region of the National Labor Relations Board, among the employees in the stipulated unit. Following the election, the Regional Director issued and served on the parties a tally of ballots, which shows that all 6 eligible voters cast valid ballots, of which 4 were cast for, and 2 against, the Petitioner. There were no void or challenged ballots.

On October 1, 1958, the Employer filed timely objections to conduct which it alleged affected the results of the election. After an investigation, the Regional Director issued a report on objections in which he recommended that the objections be overruled. The Employer filed timely exceptions to the Regional Director's report, and a supporting memorandum, in which it requests that the election be set aside.

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

The Board has considered the exceptions, and the entire record in this case, and finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The Petitioner is a labor organization claiming 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 2(6) and (7) of the Act.

4. In agreement with the stipulation of the parties, the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act: All drivers, warehousemen, and helpers employed by the Employer at its Charleston, Massachusetts, place of business, excluding all office and plant clerical employees, salesmen, guards, professional employees, all other employees, and supervisors as defined in the Act.

5. In its objections to the election, the Employer relies upon the fact that Kenneth Feyler, an employee of another employer, repeated to several employees of the Employer on the day of the election statements that he had overheard to the effect that employees of the Employer would be discharged if the Petitioner lost the election. Feyler's account of the conversation to the employees included the facts that it was overheard in the men's room and that the voices he heard were not familiar to him. The Employer contends that Feyler's remarks created a general atmosphere of

confusion and fear of reprisal which rendered a free election impossible.¹

The Regional Director recommended that the objections be overruled: He concluded that Feyler's conduct was not of such an aggravated nature that it created a general atmosphere of fear of reprisal rendering a free expression of choice of a representative impossible.

The Employer, in its exceptions, contends that the findings of the Regional Director are not supported by the evidence. In support of its position, it refers to one of several affidavits which it submitted to the Regional Director purporting to show that four of the voting employees were intimidated by Feyler's remarks.

We find no merit in the contention of the Employer. In evaluating preelection conduct, the Board concerns itself with whether the specific act reasonably tends to interfere with a free choice of representatives, and not with the subjective reaction of employees to the alleged interference, and it accords less weight in this connection to conduct by a nonparty to the case than to conduct of the parties.² In the circumstances of this case, we find, contrary to the Employer, that Feyler's remarks did not engender an atmosphere of confusion or fear of reprisal which interfered with the election.³ Accordingly, we overrule the Employer's objections as recommended by the Regional Director.

As we have found that the Employer's objections do not raise material or substantial issues affecting the conduct of the election, we hereby overrule them. Because the Petitioner has obtained a majority of the valid votes cast, we shall certify it as the exclusive representative of the employees in the stipulated unit.

[The Board certified Local 25, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America as the designated collective-bargaining representative of the employees in the appropriate unit described in paragraph 4.]

¹ It is not contended that Feyler was an agent of either party to this proceeding.

² *Orleans Manufacturing Co.*, 120 NLRB 630; *Shovel Supply Company*, 118 NLRB 815.

³ The Employer requests a hearing if the Board finds that its exceptions raise substantial and material factual issues. We find that no such issues are raised by the exceptions.

Harry Coslett, E. W. Coslett and Edward W. Coslett, Jr., d/b/a
E. W. Coslett & Sons and Local 1332, International Long-
shoremen's Association (Independent). Case No. 4-RC-3685.
January 15, 1959

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Seymour X. Alsher,

122 NLRB No. 115.