

2. The labor organization involved claims to represent certain employees of the Employer.

3. A 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.

4. In agreement with the stipulation of the parties, 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 new and used-car salesmen at the Employer's 6001 Cass Avenue, 3180 East Jefferson, and 15474 Gratiot Avenue, Detroit, Michigan, plants, excluding all office clerical employees, plant clerical employees, the service and the parts department employees, guards, sales managers, assistant sales managers, sales promotion managers, foremen, and other supervisors as defined in the Act.

5. The Employer's objections and exceptions do not raise material or substantial issues respecting the results of the election. We therefore adopt the findings and recommendations of the Regional Director.² Accordingly as the tally of ballots shows that the Petitioner has received a majority of the valid votes cast in the election, we shall certify the Petitioner as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified Local No. 376, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, (Ind.) as the designated and collective-bargaining representative of the employees in the agreed appropriate unit.]

² We find no merit in the Employer's contention that the Petitioner's statement to the employees that "there would be devastating consequences" in the event of the Petitioner's loss of the election, referred to reprisals that the Petitioner intended to take. As fully set forth in the Regional Director's report, it is clear from the context that this remark had reference to what the Employer might do to those who had signed union cards in the event of the Petitioner's defeat.

Fisher Radio Corporation, Petitioner and Fisher Employees Welfare Association and Local 431, International Union of Electrical, Radio & Machine Workers, AFL-CIO. Case No. 2-RM-890. April 24, 1959

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Direction of Election issued by the Board on October 31, 1958,¹ an election by secret ballot was conducted on November 20, 1958, under the direction and supervision of the

¹ Unpublished.

Regional Director for the Second Region, among the employees in the unit found appropriate by the Board. At the close of the election, the parties were furnished with a tally of ballots, which showed that of approximately 272 eligible voters, 242 cast valid ballots, of which 161 were for Fisher Employees Welfare Association (FEWA), 77 were for Local 431, International Union of Electrical, Radio & Machine Workers, AFL-CIO (IUE), and 4 were against participating labor organizations. There were 24 challenged ballots, a number insufficient to affect the results of the election.

On November 26, 1958, IUE filed timely objections to the election, and to conduct affecting the results of the election. The Regional Director investigated the objections and, on February 3, 1959, issued and served upon the parties his report on objections, finding the objections to be without merit and recommending they be overruled. Thereafter, IUE filed timely exceptions to the Regional Director's report.

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

In objection 1, IUE alleged that a large sign containing the words "Vote for FEWA" was posted inside the plant the day before the election, in violation of the Employer's rule against solicitation and electioneering on company premises.

Objections 2 through 6 concerned letters from the Employer dated November 17 and 18, and circulated among employees 1 or 2 days prior to the election. These letters contained, in substance, the following statements:

(1) That a vote for IUE, the "outsiders," would "destroy the good will that has always existed between employees and employer at Fisher Radio." (IUE states that this "good will" was spelled out as the Employer's willingness to help employees in emergencies, and referred to its past "paternalistic" practices.)

(2) That IUE stalled the election for 9 months. (IUE contends that any delay was the result of pending unfair labor practice charges, and normal Board processes.)

(3) That IUE refused to show its Bogen-Presto contract to employees; that Fisher pays higher rates than any other hi-fi shop in the New York area. (IUE contends these statements are untrue.)

(4) That the purpose of IUE was to stir up "hatred, jealousy and confusion."

Objections 7 to 9 concerned an election letter dated November 14 and signed by the Employer's personnel manager. This letter alleg-

edly contained statements similar to those referred to in objections 2 to 6;² the letter also spoke of Fisher's present seniority system, whereas, following the discharge of 100 workers in the spring of 1958, Fisher asserted that seniority rights had been rightfully withdrawn following a settlement agreement disposing of alleged unfair labor practice charges.³

Objections 11, 12, and 15 concerned leaflets distributed by FEWA shortly before the election. These leaflets stated, in substance, that FEWA had won for employees a contract with numerous benefits, while IUE had given nothing but promises, and by its tactics "prevented the negotiation of a wage increase last July 1."⁴

Objection 13 refers to an anonymous letter to employees, expressing eternal gratitude to the Employer. The IUE contends this letter reveals the "stooge" character of the FEWA.

Objection 14 relates to a statement by FEWA, to the effect that IUE's efforts to have certain categories of employees declared ineligible to vote "were overruled by the Board."⁵

In objection 16, IUE contends that, in a leaflet distributed to employees, FEWA stated "Your Association obtained the Company's consent to pay for the time loss in voting. To be sure you are paid for lost time, punch in at the plant *before* voting. You will then be permitted to go to vote." The IUE contends that this statement was true, and that a subsequent disclaimer by the Employer was inadequate.

Objection 17 alleges that the election was improperly held, as unfair labor practice charges and appeals from dismissals of such charges were pending.

The Regional Director found that, as to objection 1, there was no evidence that the Employer authorized or sponsored the sign, and that in any event it was promptly removed by the personnel manager after he was notified of its presence.⁶

² For example, objection 9 referred to the personnel manager's statement that "we would like to maintain the privilege of dealing with you in the future as we have in the past and trust that you will continue to meet the challenge of outside unionism in the future, as you have up to now."

³ The charges, in Cases Nos. 2-CA-5491, 2-CA-5553, 2-OB-2010, and 2-CB-2038, alleged violations of 8(a)(1), (2) and (3), and 8(b)(1) and (2).

⁴ A contract executed between FEWA and the Employer on July 1, 1957, was set aside by the settlement agreement, *supra*. IUE contends that the above statement refers to this contract, and as such "violated both the Act and the Settlement Agreement."

Objection 10 alleged that similar statements were made by the Employer in a letter dated November 12, which letter also stated that all unfair labor practice charges brought by IUE had been "thrown out."

⁵ This inaccurate statement was admittedly clarified by the Board agent over the Employer's public address system immediately prior to the election. IUE contends that the Board agent's clarification was inadequate.

⁶ The Regional Director also found that the 24-hour rule against speeches on company time to massed assemblies of employees, in *Peerless Plywood Company*, 107 NLRB 427, does not apply to sign posting. See *Doughboy Plastic Production, Inc.*, 122 NLRB 338.

As to objections 2 through 12, and objection 15, the Regional Director found that the statements referred to therein contained no threats of reprisal or other elements of coercion, and that the IUE was in a position to correct, prior to the election, any alleged misstatements of fact made by FEWA and the Company. Accordingly, he concluded that all statements referred to in those objections fell within the scope of legitimate campaign propaganda.⁷ Likewise, with respect to objection 13, the National Director found that the anonymous letter contained no threatening or coercive remarks, and therefore that its true "authorship" was immaterial.

With regard to objection 14, the Regional Director found, *inter alia*, that any confusion which might have resulted from the FEWA's statement was remedied by the Board agent's speech to employees immediately prior to the start of the election.

With respect to objection 17, the Regional Director found that there were no pending unfair labor practice charges relating to the instant case,⁸ but only appeals to the General Counsel from the Regional Director's dismissal of charges. In these circumstances, and in reliance upon established precedent,⁹ the Regional Director concluded that he had properly proceeded with the election.

With respect to objection 16, the Regional Director stated as follows:

In a leaflet issued by FEWA it claims that by itself it obtained the Employer's consent to pay for voting time during the election. The IUE claims this was not true. However, this gross exaggeration or misstatement could easily have been remedied inasmuch as it was issued on November 17 and that the IUE failed to correct this misstatement is hardly basis for setting aside the election.

While we agree with the Regional Director's conclusion regarding objection 16, we do not adopt his rationale, as stated above. IUE did not claim that FEWA's statement was untrue, but rather that it was true, and that it thereby revealed a violation by the Employer of the settlement agreement in recognizing and negotiating with FEWA.¹⁰ The IUE admits that the Employer issued a denial to the

⁷ *Merck & Co., Inc.*, 104 NLRB 891, 892; see also *Craft Manufacturing Co.*, 122 NLRB 341.

⁸ The pending charges cited by the IUE, in Cases Nos. 2-CA-5865 and 2-CB-2207, involved FEWA and Gotham Television Corp., and did not concern employees in the unit involved in the present proceeding.

⁹ See *Louisville Cap Co.*, 120 NLRB 769; *Sylvania Electric Products, Inc.*, 119 NLRB 824, 826.

¹⁰ Similar contentions, that the settlement agreement was violated, were made by the IUE in connection with certain other objections. However, violation of the settlement agreement, apart from the conduct alleged to interfere with the election, does not constitute a valid objection to the instant election, but merely raises issues relating to a prior proceeding. *Garner Aviation Service Corporation*, 114 NLRB 293. In any event, the Regional Director properly proceeded with the election after determining that the terms of the settlement agreement had been complied with.

employees of the truth of FEWA's statement. We have examined the contents of the Employer's denial,¹¹ and find that it sufficiently counteracted any possible adverse effect on employees. Accordingly, we overrule IUE's objection 16.

We have carefully considered all of the objections, the Regional Director's report, IUE's exceptions, and the entire record in the case, and find in agreement with the Regional Director that they present insufficient basis for setting aside the election. Accordingly, the objections are hereby overruled. As Fisher Employees Welfare Association has received a majority of the valid votes cast in the election, we shall certify it as representative of the employees in the appropriate unit.

[The Board certified Fisher Employees Welfare Association as the collective-bargaining representative of the employees in the unit heretofore found appropriate.]

¹¹ The Employer explained to employees that the arrangement for paid voting time was agreed upon at a joint conference at the Board's Regional Office on November 10. The Employer further stated that it had not bargained with either union about this matter or any other matter, and that any statement to the contrary was unfounded.

Waltham Screw Company and International Union, United Automobile, Aircraft, Agricultural Implement Workers of America (UAW) AFL-CIO, Petitioner. Case No. 1-RC-5411. April 24, 1959

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to the Employer's timely objections to conduct affecting the results of the election held herein, the Regional Director issued and duly served upon the parties his report on objections, a copy of which is attached hereto, in which he found that the Employer's objections did not raise substantial and material issues affecting the results of the election, and recommended that they be overruled and that the Petitioner be certified as the collective-bargaining representative of the employees in the unit. The Employer filed timely exceptions to the Regional Director's report.

The Board¹ has considered the Employer's objections, the Regional Director's report, and the Employer's exception thereto, and hereby adopts the findings and recommendations of the Regional Director. Accordingly, as the tally of ballots shows that the Petitioner has received a majority of the valid votes cast in the election, we shall

¹ 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 Fanning].