

Petitioner's contention at the hearing, we find, in agreement with the Intervenor, that the technique of pooling votes is inappropriate in a situation such as this where it is sought to add a previously unrepresented group to an existing unit.<sup>5</sup>

If the Intervenor wins in group 1, or if the Petitioner wins in group 1 or 2 alone, then the employees in group 1 or 2, as the case may be, will be taken to have indicated their desire to constitute a separate unit, and the Regional Director conducting the elections directed herein is instructed to issue a certification of representatives to the bargaining agent so selected for such separate unit or units, which the Board, in the circumstances, finds to be appropriate for purposes of collective bargaining.

If, however, the Petitioner wins the elections in both groups, the employees in these groups will be taken to have indicated their desire to constitute a single combined unit, and the Regional Director is instructed to issue a certification of representatives to the Petitioner for such combined unit, which the Board, in the circumstances, finds to be appropriate.

5. The Employer contends that no election should be conducted among terminal employees in Miami, St. Petersburg, and Pensacola because it plans to subcontract operations at these terminals and the status of these employees is therefore transitory. The record shows that the Employer's plans in this respect are dependent upon its obtaining satisfactory new terminal facilities and operating arrangements, which is at present uncertain. Moreover, the requested ticket and express agents and porters are currently employed by the Employer, and a substantial and representative number will continue to be employed for an indefinite period in the future. We therefore perceive no reason to deprive them of an opportunity to select a collective-bargaining representative at this time.<sup>6</sup>

[Text of Direction of Elections omitted from publication.]

<sup>5</sup> *Adams Coal Company, Inc.*, 118 NLRB 1493, footnote 3

<sup>6</sup> See *General Electric Company*, 101 NLRB 1341, 1344.

---

**The Cross Company and Chris. M. Youngjohn, Agent and Attorney, Petitioner and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO, Local 155. Cases Nos. 7-RD-272 and 7-RD-275. June 4, 1959**

## DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted on November 12, 1958, 123 NLRB No. 168

under the direction and the supervision of the Regional Director for the Seventh Region, among the employees in the appropriate unit. Following the election, the Regional Director served upon the parties a tally of ballots which showed that of approximately 296 eligible voters, 150 cast valid ballots for, and 134 cast valid ballots against, the Union. There were five challenged ballots.

On November 17, 1958, the Petitioner and the Employer filed timely objections to the election. In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation and on March 16, 1959, issued and duly served upon the parties his report on objections, in which he recommended that the objections be overruled and that the Union be certified as the bargaining representative of the employees in the appropriate unit. Both the Petitioner and the Employer 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].

The Board has reviewed the stipulation of the parties, the objections, the Regional Director's report on objections, and the Petitioner's and the Employer's exceptions. 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 organization here 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, including truckdrivers, leaders, timekeepers, and shipping and receiving employees employed by the Employer at 17801 East 14 Mile Road, Fraser, Michigan, but excluding office clerical employees, draftsmen, engineers, designers, professional employees, expeditors, servicemen, guards, and supervisors as defined by the Act.

5. In their objections both the Petitioner and the Employer contend that the Union exceeded the bounds of legitimate campaign propaganda by making certain false statements on the day of the election which neither party had an opportunity to refute. The Petitioner also objected to certain activities of the Union during the polling period, which it alleges interfered with the proper conduct of the election.

The Regional Director's investigation revealed that on the day of the election the Union circulated a handbill to employees in the above voting group which contained, *inter alia*, the following statements:

**REMEMBER 1949?**

That was when the Cross Company laid off over 100 workers—and recalled only three of them!

Cross says that if the union is decertified it will respect *seniority* and all other rights won by the union. That's not true. Right now—in 1958—engineers are being laid off *out of seniority!*

Guard your rights, vote "yes" to retain the UAW.

**DON'T LET IT HAPPEN IN '58!**

The best insurance you have is your membership in the UAW and the protection of a contract. Don't let the company talk you into throwing away these rights for vague promises that can be broken at any time.

Here's a sample of your benefits under the UAW contract: Under the company SUB plan, a typical payment was the \$8.29 received by a foreman recently. Compare this with \$1,156 collected by one man under the union severance plan after 11 years at Cross.

The investigation further disclosed that the Union's reference to the 1949 layoff was unfounded and had little relationship to the true facts. The layoff in 1949 involved 29 employees, of whom 8 were recalled in 1949 and 18 at various times thereafter. Only eight, however, availed themselves of the recall privileges. In 1949, the Union was not the bargaining agent for the employees in the above unit and most of the employees currently working were not employed by the Employer at that time. The Regional Director also found that the Union first circulated a statement concerning the 1949 layoff around the middle of September 1958 in a leaflet mailed to employees and distributed to some employees at the plant. The Employer in a letter distributed to its employees around October 30, 1958, also discussed the subject of seniority and job security, but made no reference to the Union's propaganda. In a circular distributed to employees around the first week in November 1958, the "Decertification Committee," which was opposing the Union, discussed job security and made reference to the Union's propaganda regarding layoffs. Although the circular did not specifically challenge the accuracy of the Union's assertion concerning the 1949 layoffs, it was calculated to neutralize whatever appeal it might have had on the question of better job security through the Union by pointing out that during the Union's incumbency for the past year there had been 250 layoffs and 150 had not as yet been recalled.

As to the comparison made between the Employer's SUB plan and the Union's severance plan, the Employer's records showed that the average payment under its plan was approximately \$200 and the payment referred to in the Union's pamphlet was atypical. The Regional Director concluded that the information concerning the 1949 layoff was not within the special knowledge of the Union and that the employees themselves were capable of evaluating its truth or falsity so that there was no requirement for the objecting parties to be given an opportunity to answer the pamphlet. He also concluded that the statement regarding the SUB and the Union's severance plan was at worst an exaggeration and, like the 1949 layoff allegation, was not so misleading as to exceed the bounds of election campaigning. Similarly, he found no merit in the Petitioner's objections regarding the Union's conduct during the election. Accordingly, the Regional Director recommended that the objections be overruled.

The Board has numerous times stated that mere falsity does not alone constitute campaign trickery which warrants setting aside an election. It is only when one of the parties deliberately misstates material facts which are within its special knowledge and where the employees are unable properly to evaluate the misstatement, that the Board will set aside the election.<sup>1</sup> Applying these principles to the instant case it is clear that the misstatement regarding the 1949 layoff was not within the special knowledge of the Union. Indeed, it is not unlikely that the employees had as much information as the Union with respect to the Employer's seniority and recall policies. Although neither of the objecting parties answered the Union's misstatements before the election, it appears that both circulated statements regarding seniority and job security prior to the day of the instant election. The employees thus had full opportunity to discuss and seek more information on the issues raised by the Union and those who were employed in 1949 were in a position to know and disseminate the true facts. In agreement with the Regional Director we find, therefore, that the employees were themselves capable of making a proper evaluation of the Union's misstatements regarding the Employer's recall and seniority policy.<sup>2</sup> Similarly, we agree with the Regional Director that its statement comparing the Employer's SUB plan and the Union's severance plan was at most an exaggeration and

<sup>1</sup> See, e.g., *Barber Colman Company*, 116 NLRB 24, 26-27; *Wheelerweld Division, C. H. Wheeler Manufacturing Company*, 118 NLRB 698, 701, 702; *Celanese Corporation of America*, 121 NLRB 303.

<sup>2</sup> See *General Electric Co.*, 119 NLRB 944, 945-946. The Petitioner in its exceptions presented several affidavits from employees in the voting unit who testified that they were influenced by the Union's misstatements and would have voted differently if they had known the true facts. We find that these statements do not raise material issues. It is well established that postelection statements regarding intent or change in mind cannot be used as basis for upsetting an election which has been otherwise fairly conducted. See *Necco Sales Corporation*, 119 NLRB 155, 156.

not so misleading as to justify setting aside the election.<sup>3</sup> As to the contentions of the parties that they had no opportunity to answer the Union's misstatements, the Board has frequently held that the Employer does not have a last opportunity to reply to union propaganda as a matter of right.<sup>4</sup>

Having found the Employer's and the Petitioner's objections to be without merit,<sup>5</sup> and as the Union has received a majority of the valid ballots cast in the election, we shall certify it as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, Local 155, as the designated collective-bargaining representative of the employees in the unit herein found appropriate.]

<sup>3</sup> See *Horder's, Incorporated*, 114 NLRB 751, 753.

<sup>4</sup> *Celanese Corporation of America, supra*. Moreover, as indicated above, it appears that prior to the election the Petitioner had knowledge of the Union's statements concerning the 1949 layoff, and had ample opportunity to answer them.

<sup>5</sup> The Petitioner's exceptions raise no material issue of fact concerning the Regional Director's recommendation that its objection relating to the conduct of the Union during the following period be overruled. We accordingly adopt his recommendation and overrule this objection. Similarly, we find no merit in the other objections for the reasons stated by the Regional Director.

**Local No. 611, International Chemical Workers Union, AFL-CIO; and International Chemical Workers Union, AFL-CIO and Purex Corporation, Limited.** *Case No. 14-CB-649. June 5, 1959*

DECISION AND ORDER

On January 19, 1959, Trial Examiner George A. Downing issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had engaged in and were engaging in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent Local Union and the Respondent International Union filed exceptions and the latter filed a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications.

We agree with the Trial Examiner that on and after May 23, 1958, the Respondent Unions refused to bargain with the Employer in vio-