

Anheuser-Busch, Inc. and Locals 925, 925A, 925B, and 925C of the International Union of Operating Engineers, AFL-CIO, Petitioner

Anheuser-Busch, Inc. and American Federation of Labor-Congress of Industrial Organizations and International Union of United Brewery Workers, Local 169; International Association of Machinists; International Brotherhood of Electrical Workers, Local 108; United Brotherhood of Carpenters, and Joiners, Millwrights Local 1510, Joint Petitioners

Anheuser-Busch, Inc. and Brewery Workers, Bottlers, Drivers and Helpers, Soft Drink Workers, Drivers, and Helpers, Local Union No. 388, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Cases Nos. 12-RC-567, 12-RC-590, and 12-RC-592. December 2, 1959

ORDER AND DIRECTION OF SECOND ELECTION

On August 19, 1959, the Board issued a Decision and Direction of Elections,¹ wherein separate elections were ordered in voting groups of (a) maintenance employees sought by the Engineers and (b) production employees sought separately by the Teamsters, with provision for pooling as the AFL-CIO Joint Petitioners sought an overall production and maintenance unit.

The results of the voting in the production group were as follows:

Approximate number of eligible voters.....	97
Void ballots.....	0
Votes cast for AFL-CIO Joint Petitioners.....	39
Votes cast for Teamsters.....	57
Votes cast against participating labor organizations.....	0
Challenged ballots.....	0
Valid votes counted plus challenged ballots.....	96

The tally of ballots in the maintenance group showed:

Approximate number of eligible voters.....	24
Void ballots.....	0
Votes cast for Engineers.....	9
Votes cast for AFL-CIO Joint Petitioners.....	14
Votes cast against participating labor organizations.....	0
Challenged ballots.....	0
Valid votes counted plus challenged ballots.....	23

As a majority of the employees in the maintenance group did not vote for the Engineers, their ballots were pooled with the ballots of the production employees in accordance with the Board's Decision. The tally in the pooled group showed:

¹ 124 NLRB 601.

125 NLRB No. 72.

Approximate number of eligible voters-----	121
Void ballots-----	0
Votes cast for AFL-CIO Joint Petitioners-----	53
Votes cast for Engineers-----	9
Votes cast for Teamsters-----	57
Votes cast against participating labor organizations-----	0
Challenged ballots-----	0
Valid votes counted plus challenged ballots-----	119

Thus no labor organization received a majority of the votes in the pooled group.

On August 31, 1959, the Teamsters filed a motion requesting that the Board issue a certification of representatives to the Teamsters as the bargaining representative of the production employees or, in the alternative, that the Regional Director be authorized to do so. On September 4, 1959, the AFL-CIO Joint Petitioners, filed an opposition to the Teamsters' motion, together with a cross-motion requesting that a runoff election be conducted in an overall unit, joining the maintenance and the production employees, and providing for a ballot choice only between the AFL-CIO Joint Petitioners and "No Union."² The Teamsters has filed a reply in opposition to the AFL-CIO Joint Petitioners, and the Employer has filed a statement of its petition, requesting reconsideration of the Board's Decision and that new elections be held in separate units of (a) maintenance, and (b) production employees. The Employer opposes the AFL-CIO Joint Petitioners' request for a "Runoff."

The Board, having duly considered the matter, is of the opinion that the motion for certification of separate production and maintenance units should be denied. The elections conducted in the two voting groups disclose that the certification of such units would be inconsistent with the terms of the Board's original Decision and Direction of Election. However, as the elections conducted in the two voting groups, under the procedure established, failed to resolve the question concerning representation existing among the employees in the production and maintenance unit, the Board is of the opinion that its investigation thereof is incomplete, and that an election should be held among the employees in that unit. As the Teamsters, as well as the Joint Petitioners, have a continuing interest in resolving this question concerning representation we shall also place the Teamsters on the ballot in the election hereinafter directed.

The dissenters proceed on the erroneous premise that elections have been held in *units* established by the Board and that "no union won in either unit." The fact is that elections were conducted here in two separate voting groups rather than units and that, in each voting group, the employees favored representation by a union. The Board's

² On the same date the AFL-CIO Joint Petitioners filed objections which later were dismissed by the Regional Director. No exceptions were filed to the Regional Director's dismissal.

function of ascertaining the desires of the employees as to bargaining unit has, however, been complicated by the fact that the Joint Petitioners won in the maintenance group which they did not seek as a separate unit. As a consequence, the vote for the Teamsters in the voting group of production employees was a futility, as the employees could not, under the Board's decision, function as a separate unit. Indeed, the effect of the vote in the maintenance group was to make the representation issue one between the Joint Petitioners, which sought a production and maintenance unit, and the Teamsters, which sought a production unit. Under Board law the appropriate unit in such situations is the production and maintenance unit. As the Direction of Elections herein failed to provide for indicating the desires of the employees in this contingency, we are now endeavoring to complete the investigation of representatives by an election in the production and maintenance unit with the Joint Petitioners and the Teamsters on the ballot. This is clearly not a violation of Section 9(c) (3). Rather, it is the fulfillment of our obligation under the Act, under these special circumstances, to settle the still unresolved question concerning representation.

[The Board denied the motion.]

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

MEMBER FANNING, concurring:

Although I was not a member of the panel which issued the original Decision and Direction of Elections in this case, I have fully considered the issues raised by the motions now before the Board. For the reasons indicated below, I join Chairman Leedom and Member Bean in issuing the Orders and Direction set forth in the main opinion.

It is clear that denial of the Teamsters' motion for certification in a separate unit of production employees is required by the terms of the original Decision and Direction of Election in this case. That decision directed concurrent elections in two voting groups, one consisting of maintenance employees and one consisting of production employees. Those elections were directed and were conducted for the double purpose of determining whether the maintenance employees desired separate representation, and if not, whether a majority of the production and maintenance employees desired representation by the Joint Petitioners. Under the terms of the original decision the appropriateness of separate units turned on the desires of the maintenance employees. As they voted against the labor organization seeking to represent them separately, the election in the maintenance voting group thus decided the unit issue in favor of the appropriateness of the production and maintenance unit. Accordingly, as the separate

production unit for which the Teamsters seeks certification is inappropriate, I join in the denial of its motion.

Because the maintenance employees voted against separate representation, the original decision requires that the votes in both voting groups be pooled to determine *whether or not* a majority of the employees casting valid ballots in both voting groups desire representation by the Joint Petitioners. Under the pooling arrangement established, the ballots cast for the labor organization seeking separate representation rights, must be counted as valid ballots, *but cannot be counted as either for or against the Joint Petitioners, the only labor organization on the ballot in the production and maintenance unit election.* Tallying the ballots in the foregoing manner discloses that the elections in the two voting groups did not achieve the second purpose for which they were conducted.

The tally reveals that of the 119 valid ballots cast, 53 were cast for the Joint Petitioners and none for the "No Union" (the neither choice on the ballots in the two voting groups). The remaining 66 ballots were cast for the labor organizations seeking separate representation rights, and it is necessary to ascertain the desires of the employees casting those ballots, on the question concerning representation existing in the production and maintenance unit.³ For unlike the employees who were opposed to representation in separate units, those who favored such representation were not afforded an opportunity to vote on the question concerning representation in the larger unit because in order to declare for separate representation, an opportunity expressly granted to them to enable the Board to make the proper unit findings, they had to vote for the labor organization seeking such representation.⁴ Since they voted for separate representation, but did not prevail, they must now be given an opportunity to vote on the only question remaining for consideration, that of the identity of the labor organization, if any, which is to represent them for the purposes of collective bargaining. Since the elections conducted herein have failed to afford them that opportunity, the Board's investigation of the question concerning representation presented by the Joint Petitioners' petition is incomplete. The only way to complete such investigation is to conduct an election among all the employees in the production and maintenance unit, which is the only appropriate unit.⁵

³ The fact that a majority of the employees participating in the elections voted for separate representation but did not prevail, stems from the Board's policy of predicating the appropriateness of separate production units on the prior establishment of separate maintenance units.

⁴ The employees who opposed separate representation could indicate their opposition by voting either for the Joint Petitioners or for the "Neither" choice. Thus by casting one ballot they participated in the election in the voting group of which they were a member, as well as in an election in the overall production and maintenance unit.

⁵ Had a majority of employees voted for the Joint Petitioners (or for No Union) there would be no need for such an election. For then, the fact that employees who desired

As already indicated, I think such an election is made necessary because of the conditions imposed by the Board in the original decision. Thus a denial of the Joint Petitioners' motion would necessarily mean that ballots cast for the labor organizations seeking to represent the employees separately, are counted as votes against representation by the Joint Petitioners, in direct contravention of the pooling instructions laid down by the Board. But even assuming that a denial of the Joint Petitioners' motion can somehow be reconciled with the language of the original decision, it would be a highly improper action doing violence to the equities of the case. It would mean that though all employees who participated in the elections voted for union representation, the "No Union" choice is nevertheless declared to reflect their desires. Such a result is absurd.

Accordingly, for the foregoing reasons I join in the direction of election in the production and maintenance unit, the appropriateness of which has been determined, by the elections conducted in the two voting groups. As the Teamsters have indicated a continuing interest in the representation of such employees, I agree to the placement of its name on the ballot, unless the Teamsters indicate to the Regional Director that it does not wish to participate in the election. Under these conditions I grant the Joint Petitioners' motion.

MEMBERS RODGERS and JENKINS, dissenting:

The decision of the majority to direct a second election in this case is clearly inconsistent with the express language of the statute, with the express language of the Board's original decision, and constitutes a procedure completely unsupported by law or precedent. Accordingly, we must dissent from this action.

In the original decision in this case, the Board, following precedent, and accommodating the specific unit requests of two of the three unions involved, directed elections among two voting groups: production employees and maintenance employees. The prime purpose of so splitting the production from the maintenance employees was to ascertain whether the latter desired representation apart from the former.⁶ The separation of production and maintenance employees for representation purposes by the establishment of a separate maintenance unit is clearly the exception rather than the rule; it is permitted, as was expressly recognized in the original decision herein, only "in the absence of bargaining history on a broader scale."⁷

separate representation had been denied an opportunity to vote for or against the Joint Petitioners as representative of the production and maintenance unit, would have been immaterial, because their votes would not in such circumstances, be determinative of the results of the election, as they are now.

⁶ 124 NLRB 601.

⁷ *Ibid.* See, also, *Armstrong Cork Company*, 80 NLRB 1328, 1329; *Magma Copper Company*, 115 NLRB 1, 2-4; and *Dierks Paper Company*, 120 NLRB 290, 294.

Although the Board thus gave the maintenance employees the opportunity of achieving separate representation, the Board expressly provided that if the maintenance employees rejected the union seeking to represent them separately, the Engineers, the votes of both the maintenance and the production employees would be pooled to ascertain whether the union seeking to represent the overall group of production and maintenance employees, the Joint Petitioners, had received the support of the majority of the production and maintenance employees.⁸ This procedure is standard and has been followed in countless cases.

No party prior to the election protested the Board's decision. Nor would it have availed him anything if he had. It was not until after the ballots had been tallied, and it became apparent that the maintenance employees had voted against separate representation, and that the Joint Petitioners had failed to obtain a majority of the votes in the pooled production and maintenance unit, that any party sought a modification of the express provisions of the Board's decision.

The Board majority now yields to such request. It does so on the specious ground that the election "failed to resolve the question concerning representation existing among the employees in the production and maintenance unit." Of course, it is always possible in a free election that the employees will vote against union representation. *Indeed, the statute even goes so far as to permit it.* And clearly, the possibility that no union would achieve majority status was implicit in the direction of election. Now the majority is directing a second election solely because no union won in either unit. We have no knowledge of any other case wherein the Board has so manipulated its election procedures to overcome the union's loss of an election. This action clearly contravenes the statute.

Under the express terms of the Board's original decision a valid election was held on August 28, 1959. In now directing a second election some 3 months later, the majority is ignoring the express prohibition of Section 9(c)(3) of the Act that "No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve month period, a valid election shall have been held. . . ." For this reason, the election now being directed, whatever its results, will be a nullity within the Act's meaning. We cannot in good conscience participate in such a proceeding.

Accordingly, we would certify the results of the August 28, 1959 election, as was originally contemplated.

⁸ The Board expressly stated: ". . . However, if a majority of the employees in voting group (a) do not vote for the Operating Engineers, the votes of both groups will be pooled, and the Regional Director conducting the election is instructed to issue a certification of representatives to the Joint Petitioners, if this organization is selected by a majority of the employees in the pooled production and maintenance group, which the Board, in such circumstances, finds to be appropriate for the purpose of collective bargaining."