4. Respondent has not engaged in conduct interfering with its employees' freedom of choice in selecting their bargaining agent in the election conducted on January 31 and February 1, 1963.

RECOMMENDED ORDER

It is recommended that the complaint in Case No. 13–CA–5455 be dismissed in its entirety and that the objections in Case No. 13–RC–8923 be overruled and that the results of the election be certified.

Milk Drivers and Dairy Employees' Local 680, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Ind. *and* Durling Dairy Distributors d/b/a Woolley's Dairy. *Case No. 22–CC–197. June 17, 1964*

SUPPLEMENTAL DECISION AND AMENDED ORDER

On November 21, 1963, the Board issued a Decision and Order [1] finding that Respondent Union had engaged in consumer picketing at secondary establishments. Relying on *Fruit & Vegetable Packers & Warehousemen, Local 760, et al. (Tree Fruits Labor Relations Committee, Inc.)* 132 NLRB 1172, 1177, the Board concluded that Respondent had thereby violated Section 8(b)(4)(ii)(B) of the Act. On April 20, 1964, the Supreme Court rejected the Board's holding in that case. *N.L.R.B.* v. *Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58.

Upon reconsideration of this case in light of the Court's aforementioned decision, we find that Respondent Union did not violate the Act as alleged and we shall dismiss the complaint.

[The Board [2] dismissed the complaint.]

[1] 145 NLRB 165.

[2] 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 [Members Leedom, Fanning, and Brown].

Ralston Purina Company *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO and its Local Union No. 1119, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, Petitioner. *Case No. 25–RC–2542. June 17, 1964*

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a stipulation for certification upon consent election executed on December 12, 1963, an election was conducted on January 3,

1964, under the direction and supervision of the Regional Director for the Twenty-fifth Region, in the agreed-upon unit. At the conclusion of the election, the parties were furnished a tally of ballots which showed that of 34 eligible voters, 17 cast valid ballots for, and 17 against, the Petitioner. Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and on March 31, 1964, issued and duly served upon the parties his report on objections in which he recommended that objection No. I be sustained, that the election be set aside and a new election directed, and that the remaining objections be overruled. The Employer filed timely exceptions to the 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 [Members Leedom, Fanning, and Brown].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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

3. A question affecting commerce exists concerning the representation of the 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, as stipulated by the parties, 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 of the Employer at its Richmond, Indiana, plant, including leadmen and truckdrivers, but excluding all office clerical employees, all plant clerical employees, all professional employees, guards, and supervisors as defined in the Act.

5. The Board has considered the Petitioner's objections, the Regional Director's report, and the Employer's exceptions thereto, and makes the following findings:[1]

In objection No. I the Petitioner alleges that, in certain letters and charts sent to its employees, the Employer misquoted the wages of other companies which it used as a basis of comparison with its own wages. The Regional Director found that the chart, when read together with the Employer's statements in the accompanying letter—that the employees of Divco and Johns-Manville would be "better off" and "receiving more money" working at Purina—clearly implied

[1] The Regional Director recommended that objection No. II be overruled, and concluded that other allegations of interference were without merit. In the absence of exceptions, his recommendations as to these matters are adopted.

that all figures set forth in the chart reflected total earnings[2] of employees rather than straight hourly rates and that on such basis Purina employees were not receiving more money. The Regional Director, relying on *Hollywood Ceramics*,[3] therefore found that the Employer's chart and the letter materially misrepresented hourly earnings at the two plants, and that such misrepresentation, made at a time when the Petitioner had no effective opportunity to reply prior to the election, may reasonably be expected to have had a significant impact upon the election.

We find merit in the Employer's exceptions. We believe that the Regional Director erred in attributing to the Employer's letter and chart more than can be reasonably read into them. Contrary to the Regional Director, we find that the Employer's letter and chart attempted to do no more than compare only "hourly rates." It referred to the hourly rates of its own employees and compared them with the hourly rates of employees of other companies. In the facts as set out by the Regional Director there was no basis whatever to assume that the Employer was attempting to compare "hourly earnings" and that therefore it misrepresented the total earnings of the other employees by omitting reference to such items as overtime and shift premiums. Indeed, it must have been evident to the Employer's own employees that the Employer was not comparing hourly earnings since they had sufficient familiarity with the Employer's pay schedules to realize that the rates set forth in the Employer's chart did not reflect all of their own earnings since they did not include their own overtime and shift premiums.[4]

We find nothing in *Hollywood Ceramics* to alter our conclusion that there was no misrepresentation. For one thing, the Employer identified the companies with whom the comparison was being made thus providing employees with a further means of evaluating the information contained therein.[5] For another, the statements made by the Employer herein did not concern matters of which he could be pre-

[2] The Employer, unlike the other companies selected for comparison, does not operate on an incentive pay system. Thus, according to the Regional Director, the vice of the implication that the rates shown included such fringe factors as incentive, overtime, and shift premium earnings lies in the fact that it enabled the Employer to understate the average earnings of Divco and Johns Manville by 42 or 43 cents on the incentive factor alone, and that the grossly disproportionate wage rates resulting therefrom could have influenced voters.

[3] *Hollywood Ceramics Company, Inc.*, 140 NLRB 221.

[4] In this connection, the Employer points out that it had previously mailed to its employees a wage comparison involving five different companies which was similarly based on hourly rates, not hourly earnings, without objection from the Petitioner, and that there is no evidence to indicate that the employees had understood the figures stated to be anything but a comparison of basic hourly rates. Moreover, it is clear that had the Employer made a comparison of "hourly earnings," it still would have been justified in saying that the employees of Divco and Johns-Manville would be "receiving more money" working at Purina, for the hourly earnings of its employees, including overtime pay, would still have been in excess of that earned by the employees of the other companies.

[5] *Hollywood Ceramics Company, Inc., supra*, at 224. See also *Hook Drugs, Inc.*, 119 NLRB 1502, 1505.

sumed to have special knowledge. No such special knowledge existed here. The source of the Employer's representation with respect to the rates of the other companies came from the published contracts of the other companies, and indeed, the contracts were readily available to the Petitioner for possible refutation of the Employer's claims since the contracts had been negotiated by UAW locals.

Furthermore, we are of the opinion that the Petitioner had an effective opportunity to reply. The letter and chart were distributed on December 31, 1963, and the election was not held until January 3, 1964. Only 34 employees were involved in the election and all lived in the same small town. It would not have consumed much time for the Petitioner to have communicated with each employee, if it seriously believed that the Employer had materially misrepresented some matter of special significance in the preelection campaign, particularly as the Union's president also maintained an address in the same town as the 34 employees. Finally, we cannot view the Employer's statement as a material misrepresentation within the intent of *Hollywood Ceramics* even if the campaign literature were susceptible of the interpretation placed on it by the Regional Director, for it is clear that the employees knew enough about the Employer's rates to have realized that no such meaning was intended.

For the reasons hereinabove set forth we do not adopt the Regional Director's recommendation that objection No. I be sustained. Accordingly, as we have overruled objection No. I, as no other objections of the Petitioner were sustained by the Regional Director, and as the tally of ballots shows that the Petitioner failed to receive a majority of the votes cast, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, and its Local Union No. 1119, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO, and that this labor organization is not the exclusive representative of the employees employed by Ralston Purina Company, in the unit found appropriate.]

General Motors Corporation (Buick-Oldsmobile-Pontiac Assembly Division) *and* Eddie Adams

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO [General Motors Corporation] *and* Eddie Adams. *Cases Nos. 21–CA–5298 and 21–CB–2156. June 18, 1964*

DECISION AND ORDER

Upon charges and amended charges duly filed by Eddie Adams, the General Counsel of the National Labor Relations Board, by the Re-