

articulated reasons for the decisions in and distinctions among the cases" involving unit determinations in the insurance industry. Thereafter, the Board, on February 11, 1966, issued a Supplemental Decision and Order in the *Metropolitan* case,⁴ explicating the rationale underlying its original unit determination as well as its general policy for determining appropriate bargaining units in the insurance industry.

On April 19, 1965, the United States Court of Appeals for the Fourth Circuit entered an order remanding the instant case to the Board for further proceedings consistent with the Supreme Court's opinion in the *Metropolitan* case, *supra*. On September 14, 1966, the Board issued an order granting leave to the parties to file briefs directed to the unit finding, which the Board had decided to reconsider. Thereafter, Respondent filed a brief which has been duly considered by the Board.

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.

Respondent argues that the Board's unit determination in this case and the underlying representation proceeding were controlled by the extent of the Union's organization and that, therefore, the unit is invalid under Section 9(c)(5) of the Act. In light of Respondent's argument, we have reexamined the original unit determination made by the Board's Regional Director and the entire record in this case and the representation proceeding in Case 5-RC-3974, and for the reasons heretofore set forth in the Board's Supplemental Decision and Order in *Western & Southern Life Insurance Company*, 163 NLRB 138, and in *Metropolitan Life Insurance Company (Woonsocket, R.I.)*, 156 NLRB 1408, we find no merit in this argument. Accordingly, we reaffirm our earlier unit finding and the Decision and Order heretofore issued in this case.

⁴ *Metropolitan Life Insurance Company (Woonsocket, R.I.)*, 156 NLRB 1408.

Program Aids Company, Inc., Employer-Petitioner and Toy and Novelty Workers of America, Local 223, Affl. with International Union of Dolls, Toys, Playthings, Novelties and Allied Products of U.S. and Canada, AFL-CIO. Case 2-RM-1495.

February 24, 1967

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was

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conducted on September 21, 1966, under the direction and supervision of the Regional Director for Region 2, among the employees in the unit described below. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 50 eligible voters, 50 ballots were cast, of which 4 were for, and 41 against, the Union, with 3 challenged and 2 void ballots. The challenged ballots were not sufficient in number to affect the results of the election. Thereafter, the Union filed timely objections to conduct affecting the results of the election.

On November 22, 1966, the Regional Director issued and duly served on the parties his report on objections, recommending that the Union's Objection 1 be sustained and that the Board set aside the election. Thereafter, on December 15, 1966, the Employer-Petitioner filed timely exceptions to the report, insofar as it recommended that the election be set aside on the basis of Objection 1, and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

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

1. The Employer-Petitioner is engaged in commerce within the meaning of the National Labor Relations Act, as amended, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Union 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-Petitioner within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees of the Employer-Petitioner 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 employed at 1696 Boone Avenue, Bronx, New York, and 550 Garden Avenue, Mount Vernon, New York, excluding all office employees, guards, watchmen, and supervisors as defined in the Act.

5. The Board has considered the objection, the Regional Director's report, and the Employer-Petitioner's exceptions and brief and hereby adopts the Regional Director's report as modified herein.¹

The Union argues in its Objection 1 that the election should be set aside under the *Excelsior* rule,² because the Employer-Petitioner failed to furnish the list of the names and addresses of its

¹ In the absence of exception, we adopt *pro forma* the Regional Director's recommendation that the Union's second, third, and fourth objections be overruled.

² *Excelsior Underwear Inc.*, 156 NLRB 1236.

employees within 7 days after the Regional Director's approval of the stipulation for consent election agreement. While the Employer-Petitioner does not deny that the list was filed on September 11, 1966, 4 days after the prescribed filing time, it contends first that the parties, with the approval of the Board agent, agreed that the list would be filed on September 11 at a preelection conference, and, secondly, that even if the agreement were not effective, its substantial compliance with *Excelsior* rule is sufficient so as not to warrant the setting aside of the election.

Like the Regional Director, we find it unnecessary to determine whether the parties reached an agreement providing for a later filing date. However, unlike the Regional Director, we find nothing in our Decision in *Excelsior* which would require the rule stated therein to be mechanically applied. The principle underlying rationale of *Excelsior*, requiring the employer to disclose the names and addresses of eligible voters to the union, is to provide the union with an opportunity to inform the employees of its position so that they, the employees, will be able to vote intelligently. Here, the unit is relatively small; the list was submitted 4 days late; and the Union had the list in its possession for a period of 10 days prior to the election. In these circumstances, we find that the Union was afforded sufficient opportunity to communicate with employees prior to the election and therefore that the Employer-Petitioner has substantially complied with the requirements of the *Excelsior* rule. We shall therefore overrule the Union's Objection 1.

As the tally of ballots shows that the Union has not received a majority of the valid votes cast in the election, and as the challenged ballots are insufficient in number to affect the results of the election, we shall certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

IT IS HEREBY CERTIFIED that a majority of the valid votes have not been cast for Toy and Novelty Workers of America, Local 223, Affiliated with International Union of Dolls, Toys, Playthings, Novelties and Allied Products of U.S. and Canada, AFL-CIO, in the election held herein, and that said Union is not the exclusive representative of the employees in the unit found appropriate within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

Decorel Corporation; Reliance-Illinois Corporation; and Ridgcraft Corporation and Upholsterers International Union, AFL-CIO,—Acting through its Agent Picture Frame Workers, Molding Workers & Furniture Handlers, Local 18-B. Case 13-CA-7047.

February 27, 1967

DECISION AND ORDER

BY CHAIRMAN McCULLOCH AND MEMBERS JENKINS AND ZAGORIA

On July 5, 1966, Trial Examiner George A. Downing issued his Decision in the above-entitled proceeding, finding that Respondents had engaged in certain unfair labor practices and recommending that they cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondents filed exceptions to the Trial Examiner's Decision and supporting briefs, and the General Counsel filed cross-exceptions and supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions, the briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following additions and modifications.¹

We agree with the Trial Examiner's findings that Respondents violated Section 8(a)(5) and (1) of the Act. However, in adopting the Trial Examiner's finding of an 8(a)(5) violation we rely on the following rationale.

For many years Respondents and the Union have

¹ Respondents have excepted to the Trial Examiner's statement that they did not file a brief with him. Apparently as a result of misunderstanding, Respondents filed the brief intended for the Trial Examiner with the Regional Director who did not forward it to the Trial Examiner. Section 102.42 of the Board Rules and Regulations places on the party desiring to file a brief the responsibility for filing with the Trial Examiner, with copies served on the other parties. Respondents have attached to their brief to the Board copies of the brief intended for the Trial Examiner. We have considered both briefs.