Bud Radio, Inc. *and* Opal Casare, Petitioner, *and* Architectural Metal Workers Local No. 51 (Division of International Molders and Allied Workers Union, AFL–CIO). Case 8–RD–387.

June 7, 1967

DECISION AND CERTIFICATION OF REPRESENTATIVE

Pursuant to a Stipulation for Certification upon Consent Election, an election by secret ballot was conducted on September 8, 1966, under the direction and supervision of the Regional Director for Region 8, among the employees in the stipulated unit. At the conclusion of the balloting the parties were furnished a tally of ballots which showed that of approximately 120 eligible voters, 101 cast valid ballots, of which 52 were for, and 45 were against, the Union, and 4 ballots were challenged. The challenged ballots were insufficient in number to affect the results of the election. Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election.

The Regional Director investigated the objections and on October 20, 1966, issued his report on objections, in which he found merit in Petitioner's Objection 4 and recommended that the election be set aside and a new election be held. He also recommended that Objections 2 and 3 be overruled.[1] Thereafter, the Employer filed timely exceptions to the Regional Director's report, and a brief.[2]

Upon the entire record in this case, the National Labor Relations Board finds:

1. The Employer 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 employees of the Employer 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 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 by the Employer at its Willoughby, Ohio, plant, excluding office clerical employees, technical employees, professional employees, guards, and supervisors as defined in the Act.

5. The Union has represented the Employer's approximately 125 production and maintenance employees for 10 years. Negotiations began in May 1966 for a new collective-bargaining agreement to replace a current agreement with an expiration date of June 11, 1966. Bargaining sessions in early June were conducted with the assistance of a Federal Mediation and Conciliation Service Commissioner. On June 7 the Employer and the Union's negotiating committee reached full agreement on all the terms of a new contract.

Employee Opal Casare had been chairman of this committee. On June 11 and 18, unit employees voted to reject the June 7 agreement, and on June 27 employee Casare filed the decertification petition herein. On June 29, the Employer and the Union signed a memorandum of agreement which reduced to writing their agreement of June 7.

About July 15, the Employer posted a bulletin indicating to its employees that the new contract would be effective retroactively, should the instant proceeding result in certification of the Union. About this same time the Employer reclassified certain employees pursuant to an agreement made during negotiations. The ultimate effect of the reclassifications would be to increase the earnings of the employees involved, and the Employer took this action apparently to induce certain employees, who would be difficult to replace, to remain in its employ. On September 1, the Union sent each employee a copy of the memorandum of agreement, and on September 5 sent each a letter, which appealed for their vote and reminded them that decertification could operate to deprive employees of representation for a year and perhaps even jeopardize all contract benefits.

Petitioner's Objection 4 alleged that the Employer's bulletin misled employees about the consequences of the forthcoming election. In sustaining this objection, the Regional Director found that the execution of the June 29 memorandum of agreement and the subsequent publication to employees of the contract benefits interfered with the conduct of the election by conferring additional prestige upon the Union.

We reject the Regional Director's finding that the above conduct was objectionable.

In our opinion, the Employer's bulletin and the Union's letter are neither misleading nor coercive on their face. The Employer and the negotiating committee had reached agreement as to the terms of a new contract on June 7, well before the filing of the petition herein. We view the June 29 memorandum as merely a formal acknowledgment by the parties of the terms agreed upon.[3] We find no basis for construing the June 29 memorandum, or the

[1] The Regional Director found it unnecessary to make a determination with respect to Objection 1, in view of his recommendation that the election be set aside on the basis of Objection 4

[2] In the absence of exceptions we adopt *pro forma* the Regional Director's recommendation that Objections 2 and 3 be overruled

[3] The June 7 agreement did not in any event constitute a bar to an election, as it was not reduced to writing before the filing of the petition herein

publication of its terms, as objectionable conduct.

Accordingly, we overrule Objection 4.[4]

The Regional Director found it unnecessary to resolve Objection 1, which alleges that the employee reclassifications mentioned above constituted objectionable conduct. The Employer, while requesting that Objection 4 be overruled and the present election sustained, raises the question that Objection 1 should also be overruled. We note that the employee reclassifications were made almost 2 months prior to the election, and that they were discussed by the parties during the contract negotiations which took place before the critical period. At that time the union negotiating committee headed by the Petitioner took the position that there would be no objection to reclassifications provided they were not considered a part of the general wage increase that was being negotiated. The Union and Petitioner in our opinion thereby acquiesced in the reclassifications which the Employer later made, relying upon their assurances that they would not object. Further the reclassifications apparently were made for a sound business reason, that is to retain employees difficult to replace. Under the above circumstances, we hereby also overrule Objection 1.

We shall issue an appropriate certification of representative in this proceeding in view of our findings, since the tally shows that the Union received a majority of the valid votes cast in the decertification election.

CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that Architectural Metal Workers Local No. 51 (Division of International Molders and Allied Workers Union, AFL–CIO), has been designated and selected by a majority of the employees in the unit found appropriate herein as their representative for the purposes of collective bargaining and that, pursuant to Section 9(a) of the Act, the said labor organization is the exclusive representative of all employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

[4] The cases relied on by the Regional Director deal with factual situations essentially different from the one before us Thus in *Electric Auto-Lite Company*, 116 NLRB 788, contract negotiations between the employer and incumbent union, as well as publication of contract benefits, occurred within the critical preelection period and the agreement to the contract was reached during that interval Essentially the same considerations distinguish *Kiekhaefer Corporation*, 120 NLRB 95, and *Krambo Food Stores, Inc*, 120 NLRB 1391, from the situation before us, which is one where contract negotiations transpired and were fully consummated prior to the beginning of the critical period In the remaining case cited by the Regional Director, *Air Control Products, Inc*, 147 NLRB 1229, negotiations were not completed before the critical period, as they were in the instant case We note, moreover, that the aforecited cases each involved a situation where a question concerning representation had been raised prior to the time the new benefits were negotiated with the incumbent union by a petition filed by a rival labor organization Because of the basis on which we decide this case, we deem it unnecessary to reach the question whether the principle of those cases would in any event be applicable in a situation such as the instant one where the question concerning representation has been raised by a petition for decertification of the incumbent union, which remained entitled to recognition until decertified Cf *Perry Rubber Company*, 133 NLRB 225, *Wabana, Inc*, 146 NLRB 1162, 1171, 1172