

**Nebraska Consolidated Mills, Inc. and Sindicato de Trabajadores Packinghouse, Food and Allied Workers, District 9 of Puerto Rico, AFL-CIO, Petitioner.** Case 24-RC-2891.

June 19, 1967

**SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE**

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND BROWN

Pursuant to a stipulation for certification upon consent election executed on May 6, 1966, an election by secret ballot was held on May 18, 1966, under the direction and supervision of the Regional Director for Region 24, among the employees of the Employer in an appropriate unit. Following the election, a tally of ballots was furnished the parties, which showed that of the 12 votes cast in the election, 7 were for and 5 against the participating labor organization. Thereafter, the Employer filed timely objections to conduct affecting the results of the election.

On July 11, 1966, the Regional Director issued and duly served on the parties his Report and Recommendation on Objections, in which he recommended to the National Labor Relations Board that the objections be overruled in their entirety and that the Petitioner be certified as the collective-bargaining representative of the employees in the appropriate unit. Thereafter, the Employer filed timely exceptions to the Regional Director's Report and Recommendation. On October 25, 1966, the Board, having duly considered the matter, found that the Employer's Objection 2 raised issues of a sufficiently serious nature to warrant a hearing, and accordingly directed that a hearing be held before a Hearing Officer to resolve the issues raised by the Employer's Objection 2. On November 21, 1966, a hearing was held before Hearing Officer Donald R. Klenk. At the hearing, the Employer and Petitioner were represented and were afforded full and complete opportunity to be heard, to examine and cross-examine witnesses, and to present evidence pertinent to the issues. On February 2, 1967, the Hearing Officer issued his Report and Recommendation on Objections, in which he recommended that Objection 2 be overruled and that the Petitioner be certified as the collective-bargaining representative of the employees in the appropriate unit.

The Employer filed timely exceptions to the Hearing Officer's conclusions and recommendations.

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 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 certain 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 all construction employees employed by the Employer in its business located at Barrio Sabana, Catano, Puerto Rico, excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
5. The Board has considered the Hearing Officer's report, the Employer's exceptions thereto, and the entire record in this case. The record shows that on the day of the election, a group of employees, while on their lunch hour, assembled together to talk with the Petitioner's representatives who were then on the premises for purposes unrelated to the forthcoming election. During the course of this meeting, the employees were advised as to when and where to vote, and, in addition, in response to various inquiries from the employees themselves, the union representatives discussed benefits they claimed the employees would receive if the Union were selected as their collective-bargaining representative. The Employer contends that all of the employees were present, and that, in the course of the discussion, campaign promises were made to the employees less than 3 hours before the election on company time in violation of the *Peerless Plywood* rule.<sup>1</sup>

From the record, it is clear that the speech or discussion started on the employees' own time, was extemporaneous in that it was not planned or scheduled ahead of time, was voluntarily attended with no member of management present, and, at best, ran over into company time for no more than approximately 5 minutes. In our opinion, this conduct, although it did in fact occur, is not such conduct as would require the setting aside of the election. The *Peerless Plywood* rule does not prohibit employers or unions from making campaign speeches on or off company premises during the 24-hour period preceding an election if employee attendance is voluntary and on the employee's own time.<sup>2</sup> Additionally, we believe that the instant facts are more closely related to the facts in *Wate, Inc.*, 123 NLRB 301, and *Granite State Veneer, Inc.*, 123

<sup>1</sup> *Peerless Plywood Co.*, 107 NLRB 427

<sup>2</sup> *Id.* at 430.

NLRB 1497, cited and relied on by the Hearing Officer, wherein the Board on both occasions refused to apply the *Peerless Plywood* rule when accidental and inconsequential extensions of speeches and discussions into the 24-hour period on company time occurred. Accordingly, we adopt the Hearing Officer's recommendation that the Employer's Objection 2 to the election be overruled. In addition, the Board is also of the opinion that the Employer's exceptions to the Regional Director's Report overruling the Employer's other objections raise no issues of fact or law which would warrant reversal of the Regional Director's recommendations. Accordingly, the Board hereby adopts the Regional Director's findings and recommendations as to the Employer's remaining objections.

Accordingly, since the tally shows that the Petitioner has been selected by a majority of the

employees in the unit found appropriate herein we shall certify it as the exclusive collective-bargaining representative.

#### CERTIFICATION OF REPRESENTATIVE

IT IS HEREBY CERTIFIED that Sindicato de Trabajadores Packinghouse, Food and Allied Workers, District 9 of Puerto Rico, AFL-CIO, has been designated and selected by a majority of the employees employed by the Employer in the appropriate unit as their representative for the purpose of collective bargaining, and that, pursuant to Section 9(a) of the Act, the said organization is the exclusive representative of all such employees for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.