

**Austill Waxed Paper Company and Jacksonville Printing Pressmen and Assistants' Union, Local 97, subordinate to International Printing Pressmen and Assistants' Union of North America, AFL-CIO. Case 12-RC-2842**

February 29, 1968

**DECISION, ORDER AND DIRECTION OF  
SECOND ELECTION**

**BY MEMBERS JENKINS, ZAGORIA, AND BROWN**

Pursuant to a Stipulation for Certification Upon Consent Election, an election by secret ballot was conducted on August 18, 1967, under the direction and supervision of the Regional Director for Region 12 among the employees in the appropriate unit. At the conclusion of the balloting, the parties were furnished with a tally of ballots<sup>1</sup> which showed that of approximately 19 eligible voters, 17 ballots were cast, of which 5 were for, and 7 against, the Petitioner, and 5 ballots were challenged. The challenges were sufficient in number to affect the results of the election. Thereafter, the Petitioner and Employer filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, the Regional Director conducted an investigation and, on November 8, 1967, duly served upon the parties his report on challenged ballots and objections to election and recommendations to the Board, in which he recommended that the challenge to the ballot of John Thompson be sustained; that the challenges to the ballots of Harold Stovall and Donald Gromer be overruled and that their ballots be opened and counted; that, in the event the ballots of Stovall and Gromer are not determinative of the election, then a hearing be held on the challenge to the ballot of Ruth Halgren; and that, if the ballot of Paul Toler could still be determinative of the election, the challenge to his ballot be resolved by a Trial Examiner in the hearing on the complaint in Case 12-CA-3900. The Regional Director further recommended that the Employer's objections be overruled in their entirety and that Petitioner's objections numbered 1, 3, 4, and 5 be overruled, and that if, upon the sustaining of Thompson's ballot and the opening and counting of the ballots of Stovall and Gromer, the remaining two challenges are no longer determinative and the Petitioner shall not thereby have secured a majority, Petitioner's Objection 2 be sustained, the election of August 18,

1967, be set aside, and a second election directed. Thereafter, the Employer and Petitioner filed exceptions to the Regional Director's report on objections and challenges.

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 Petitioner is a labor organization claiming 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 parties stipulated, and we find, that all production and maintenance employees, including engraving employees, employed by the Employer at Jacksonville, Florida, excluding office clericals, salesmen, 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 Regional Director's Report and the entire record in the case, including the exceptions, and hereby adopts the Regional Director's findings and recommendations to the extent consistent herewith.

Under the particular facts of this case, we do not agree with the Regional Director's conclusion that Employer's Objection 2, which raises the issue of the ballot box being left unsealed and unattended for from 2 to 5 minutes, should be overruled. This objection, which goes to the very heart of the conduct of an election—maintaining the integrity of the ballot box—is not, in our opinion, the proper subject for litigation on an *ad hoc* basis. We do not believe that we should speculate on whether something did or did not occur while the ballot box was left wholly unattended.<sup>2</sup> The Board, through its entire history, has gone to great lengths to establish and maintain the highest standards possible to avoid any taint of the balloting process; and where a situation exists, which, from its very nature, casts a doubt or cloud over the integrity of the ballot box itself, the practice has been, without hesitation, to set aside the election.<sup>3</sup>

It is our belief that the leaving of the ballot box unsealed and unattended for possibly as much as 5

<sup>1</sup> The union representative refused to permit his observer to sign the certification on conduct of election and to sign the tally of ballots or to accept copies of either of these documents. Copies of these documents were sent by certified mail to the Union.

<sup>2</sup> The ballot box became unattended when an altercation which

developed during the voting period outside the polling place drew the attending officials away from it.

<sup>3</sup> *New York Telephone Co.*, 109 NLRB 788, 790; *Tidelands Marine Services, Inc.*, 116 NLRB 1222, 1223

minutes is a condition that relates directly to the integrity of the ballot box. It is the Board's responsibility to certify to the validity of its own balloting procedures, and, if it cannot, as here, we believe that in the interest of maintaining our high standards, there is no alternative but to set the election aside and direct a second election.<sup>4</sup>

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<sup>4</sup> As we are directing a second election, we deem it unnecessary to pass upon the other objections filed by both the Employer and Petitioner.

<sup>5</sup> An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 12 within 7 days after the date of issuance of the

## ORDER

It is hereby ordered that the election conducted herein on August 18, 1967, be, and it hereby is, set aside.

[Direction of Election<sup>5</sup> omitted from publication.]

Notice of Second Election by the Regional Director. The Regional Director shall make the list available to all parties to the election. No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *Excelsior Underwear Inc.*, 156 NLRB 1236.