

**Star Expansion Industries Corporation, Petitioner
and Local 1968, International Brotherhood of
Electrical Workers, AFL-CIO-CLC. Case
2-RM-1521¹**

March 14, 1968

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

**BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING, JENKINS, AND ZAGORIA**

On October 31, 1967, the Regional Director for Region 2 issued a Supplemental Decision, Report on Objections, and Certification of Representative in the above-entitled proceeding,² in which he overruled the IBT's objections and certified the IBEW. Thereafter, the IBT filed "exceptions" which the Board treated as a request for review of the Regional Director's Supplemental Decision on the ground that he erred in overruling objections 3, 4, 5, and 6. Both the Employer and the IBEW filed opposition to the request for review.

On December 27, 1967, the National Labor Relations Board by telegraphic order granted the IBT's request for review as it related to objections 4 and 5 and denied the request in all other respects. Thereafter, all parties filed briefs on review.

The Board has considered the entire record in this case with respect to the issues under review, including the briefs on review, and makes the following findings:³

Objections 4 and 5, which were treated together, allege as follows:

4. The Employer knowingly permitted James Singleton a business agent of [the IBEW] to solicit votes for [the IBEW] on the day of the election during his regularly scheduled working time, for which Singleton was paid full wages.

5. During the period which the polls were open, Singleton, during his regularly scheduled work time, was permitted to remain in the polling area and to unlawfully solicit votes for [the IBEW], despite the fact that his presence was called to the attention of a company super-

visor and the Board Agent conducting the election.

As found by the Regional Director, the Designation of Observer form submitted by the IBEW set forth James Singleton⁴ as chief observer and three other employees as additional observers. However, the parties agreed that they would be limited to two observers each in attendance at the polls during the voting period. Pursuant to such agreement, Singleton designated two employees other than himself from the IBEW observer list to act as such. Singleton was advised by the Board agent in charge that he could not remain in the voting area while he was not functioning as one of the two allotted IBEW observers.

The polls were located in the plant cafeteria and were open from 1:30 to 4 p.m. The cafeteria entrance used by the voters was midway along its width. Parallel to the cafeteria, to either side of the entrance, was one corridor, and running perpendicular to the entrance was another corridor, to either side of which were work areas. The checking table, before which eligible voters formed a line, was within the cafeteria about 30 feet across from the entrance, and the three observers seated at the checking table had an unobstructed view down the corridor perpendicular to the entrance. Two voting booths, the closest about 25 feet from the entrance, were along the left side wall of the cafeteria. The ballot box was placed on an oblong table 5 feet to the left of the entrance. Three other observers were seated at this table. At no time were there more than 20 employees waiting in line to vote, and at no time did the waiting line extend outside the cafeteria into the corridors.

Singleton did not enter the cafeteria at any time during the polling period, except when he cast his ballot. However, the he Board agent on two occasions saw him standing near the entrance and instructed him to leave, which he did. Thereafter, upon being informed by an IBT observer that Singleton was standing outside the entrance speaking to employees, the Board agent approached Singleton, who was then about 15 feet from the entrance, and admonished him that he could not electioneer within 50 feet of the polls. Numerous em-

¹ Referred to herein as the IBEW.

² The tally of ballots showed that of approximately 355 eligible voters, 337 cast ballots, of which 170 were for the IBEW, 156 were for Local 445, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (referred to herein as the IBT), 8 were against the participating labor organizations, and 3 were challenged.

³ We find no merit in the IBT's contention in its brief on review that the Board erroneously treated its "exceptions" as a request for review. It is clear that the Regional Director, pursuant to Section 102.69(c) of the Board Rules and Regulations, issued a decision with respect to the IBT's objections and that the parties' rights to contest such decision were governed by Section 102.67 to the extent consistent with Section 102.69.

The Board, therefore, properly treated the IBT's exceptions as a request for review.

⁴ The Regional Director had earlier found, in conjunction with objection 3, that Singleton was employed by the Employer as a turret lathe machine operator and served as a member of the IBEW's organizing committee at the plant involved. He also made reference to the fact that the July 1967 issue of "The Electrical Workers Journal," an official publication of the IBEW, described Singleton as a business agent, but that Singleton stated he was not an IBEW business agent and his designation as such was erroneous. He also found that Singleton distributed literature on behalf of the IBEW at the plant entrance during nonworking hours and wore an "IBEW" button on many occasions.

ployees voting at varying times averred that they observed Singleton within several feet of the entrance. Many noticed him apparently conversing with employees on their way to vote. Several heard him say, "Make sure you vote right," and "Do the right thing." One employee, whose work station was about 20 feet from the entrance and whose shift ended at 3:30 p.m., stated he saw Singleton in the immediate vicinity of the entrance "nearly the entire time" until at least 3:30 p.m. "walking around in the area but most of time [standing] right at the entrance to the cafeteria." He observed Singleton speak to voters, pat some on the back, and by gestures describe the ballot and point to the left hand corner where the IBEW choice was positioned, as well as return to the entrance after moving 10 or 15 feet therefrom on occasions when the Board agent spoke to him.

On one occasion, the Employer's general foreman, Delesky, saw Singleton about 10 feet from the entrance, asked what he was doing there, and left without further comment when Singleton replied that he was an observer.⁵

Singleton denied that the Board agent ever asked him to leave the entrance area or that he spoke to any employees as they approached the entrance or electioneered near the polls in any way, conceding only that he remained about 15 or 20 feet from the entrance at intermittent intervals—the longest of which was about 15 minutes—for a total of about 1 hour during the voting period. The Regional Director, in view of the overwhelming evidence to the contrary, discredited Singleton's denials.

The Regional Director found no evidence that the Employer knew of the above-described electioneering activities of Singleton. Although finding

that Singleton electioneered near the polls for a substantial part of the voting period, the Regional Director concluded that his electioneering activities had no persuasive or coercive effect upon the voters and did not form a basis for setting aside the election. We disagree.

As was stated in *Claussen Baking Company*, 134 NLRB 111, it is the province of the Board to safeguard its elections from conduct which inhibits the free choice of the voters, and the Board is especially zealous in preventing intrusions upon the actual conduct of its election.⁶ In furtherance of this responsibility, the Board prohibits electioneering at or near the polls.⁷

In the instant case, Singleton, acting on behalf of the IBEW,⁸ was engaged in electioneering activities in close proximity to the polls during a substantial part of the voting period,⁹ notwithstanding the Board agent's instructions, on three separate occasions, that he leave the area and the admonition that he could not electioneer within 50 feet of the polls. We view such conduct by one acting as an agent for a party as a serious breach of our rule against electioneering at or near the polls, and, in the circumstances, sufficient to warrant the inference that it interfered with the free choice of the voters.¹⁰ Accordingly, we shall set aside the election and direct that a new election be conducted.

ORDER

It is hereby ordered that the election conducted on August 31, 1967, be, and it hereby is, set aside.

[Direction of Second Election¹¹ omitted from publication.]

⁵ Delesky had just previously ordered back to his work station an employee who appeared to be loitering about 25 feet from the entrance.

⁶ See *Milchem, Inc.*, 170 NLRB 661, issued this day.

⁷ The Board's election notices specifically enjoin such conduct.

⁸ Without resolving the conflicting evidence as to whether or not Singleton was in fact a business agent of the IBEW, we find, on the basis of the undisputed facts as set forth above, that he was an agent of the IBEW for the limited purposes of distributing campaign literature and electioneering on its behalf.

⁹ Although the Regional Director sought to minimize the persuasiveness of Singleton's activities, above described, it is clear that they were electioneering in character. The IBEW in its brief on review does not dispute the Regional Director's findings as to the content of such electioneering activities.

¹⁰ Cf. *Milchem, Inc.*, *supra*. The case of *Sewanee Coal Operators' Association, Inc.*, 146 NLRB 1145, and *Intertype Company*, 164 NLRB 770, relied on by the Regional Director, are factually distinguishable. In *Sewanee*,

among other things, there was no specification by the Board agent of a "no electioneering" area; in *Intertype*, the electioneering consisted of but one isolated remark to an employee at the end of the voting line.

In the circumstances of this case, we reject the Employer's request that we give weight to the fact that, subsequent to the election, the Employer and the IBEW executed a collective-bargaining agreement which had been ratified by a majority of the employees in the unit.

¹¹ 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 2 within 7 days after the date of issuance of the 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.