

**Zarn, Inc. and Textile Workers Union of America,
AFL-CIO, CLC, Petitioner.** Case 11-RC-2394

April 5, 1968

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

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

Pursuant to a Decision and Direction of Election by the Regional Director for Region 11, an election by secret ballot was conducted on August 26, 1966. At the conclusion of the balloting, the parties were furnished a tally of ballots which showed that, of approximately 130 eligible voters, 65 cast votes for, and 50 against, the Petitioner, and 4 ballots were challenged. The challenged ballots are insufficient in number to affect the results of the election. Thereafter, the Employer filed five timely objections to conduct affecting the results of the election.

On November 7, 1966, the Regional Director issued a Supplemental Decision and Certification of Representative in which he overruled the Employer's objections and certified the Petitioner as the collective-bargaining representative of the employees involved. On November 25, the Employer filed a Request for Review and Motion for Stay of Regional Director's Decision, and, on December 1, a Supplemental Memorandum. On January 26, 1967, the National Labor Relations Board denied the Employer's request for review with respect to Objections 1, 2, 3, and 5, granted review with respect to Objection 4, directed a hearing "for the purpose of receiving evidence on the matters . . . relating to objection 4, especially concerning Exhibits G and I attached to the Regional Director's Supplemental Decision," granted the Employer's motion to stay, and stayed the Certification of Representative pending the Board's final determination in the matter. Thereafter, a hearing was held before Hearing Officer Louis Aronin on February 27 and March 30. All parties were represented and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence on the issues.

On May 15, 1967, the Hearing Officer issued his Report on Objections in which he recommended that Objection 4 be overruled and that the Petitioner be certified. Thereafter, the Employer filed

timely exceptions to the Hearing Officer's report and a brief in support of its exceptions.

The Board¹ has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed. The Board has considered the Hearing Officer's Report, the Employer's exceptions and brief, and the entire record in this case, and hereby adopts the Hearing Officer's findings, conclusions, and recommendations only to the extent that they are consistent herewith.

The Hearing Officer found that the letter dated August 22, 1966, which the Petitioner wrote to the Employer, and which was posted on the same date in the Employer's Reidsville, North Carolina, plant and distributed to the employees on August 23 (Exh. G), and the handbill which the Petitioner distributed to the employees on August 23 and 24 (Exh. I) contained a number of statements which constituted misrepresentations relating to material issues in the election. Although we agree that some of these statements were material misrepresentations, we do not agree with the Hearing Officer's conclusion that the Employer had ample time to reply thereto and to his further conclusion that the employees could be presumed to have had access to the facts regarding such statements.

Petitioner's letter of August 22 concerned benefits obtained by the Petitioner in contracts with American Viscose (F. C. M. Corporation) at eight plants located in Pennsylvania, Virginia, and West Virginia. This was the first mention by the Petitioner of these contracts during the preelection campaign. Prior to the election, the Employer whose plant is in Reidsville, North Carolina, unsuccessfully attempted to obtain copies of these contracts from an employer association. In view of the number of contracts involved, the absence of any relationship between the Employer and American Viscose, and the geographical separation of the Employer from the American Viscose plants, we do not agree with the Hearing Officer that the Employer's failure to visit or telephone the American Viscose plants evidenced a lack of proper diligence. Nor could the Employer reasonably have expected the Petitioner to honor a request that it furnish copies of the contracts it had misquoted, in view of the Petitioner's prior refusal to comply with a similar request for a copy of another one of Petitioner's contracts with a third employer. In our opinion, because of the timing of the Petitioner's letter, and the circumstances set forth above, there

¹ Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel

would not have been time, in any event, for the Employer to obtain copies of the contracts and make an effective reply before the election.

The handbill, the Hearing Officer found, was received by the Employer on August 24, and contained misrepresentations with respect to a contract recently negotiated between the International Brotherhood of Electrical Workers and the Sylvania Electric Company, covering employees of its new plant in Reidsville, and conveyed the erroneous impression that the contract had been negotiated by the Petitioner. When the Employer, on the day of the election, attempted to obtain a copy of the contract from Sylvania, according to the uncontradicted testimony of the Employer's president, it was told that the contract "was in New York for signature." Moreover, the evidence does not support the Hearing Officer's presumption that the Employer's officials were familiar with the local management of Sylvania. We therefore do not agree that the Employer was in no way impeded from obtaining information and informing its employees about the Sylvania contract prior to the election. Nor does the record support the Hearing Officer's finding that the Employer's employees were in a position to ascertain the facts with respect

to the provisions of the Sylvania contract in the brief time available.

In all the circumstances, we find, in disagreement with the Hearing Officer, that there was not ample time prior to the August 26 election for the Employer to ascertain the facts with respect to the Petitioner's statements and to make an adequate reply to the material misrepresentations contained therein, and that the Employer's employees were not in a position to determine for themselves what the facts were. Therefore, we conclude that there is merit in the Employer's Objection 4 and that it should be sustained.²

Accordingly, we shall order that the election be set aside, and direct that a second election be held.

ORDER

It is hereby ordered that the election conducted herein on August 26, 1966, be, and it hereby is, set aside, and that the Certification of Representative heretofore issued by the Regional Director be, and it hereby is, vacated.

[Direction of Second Election³ omitted from publication.]

² See *Hollywood Ceramics Company, Inc.*, 140 NLRB 221. As we have sustained Objection 4, we find it unnecessary to rule on the Employer's exceptions to the Hearing Officer's refusal to find additional material misrepresentations in the Petitioner's campaign literature.

³ 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 11 within 7 days after the date of this Decision and Direction of

Election. 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.