

**Paradise Bowl-O-Mat, Inc. and Union de Trabajadores de la Industria Gastronomica de Puerto Rico, Local 610, Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO, Petitioner.** Case 24-RC-3761

January 13, 1970

## DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND JENKINS

Pursuant to a stipulation for certification upon consent election executed on May 14, 1969, an election by secret ballot was held on June 12, 1969, under the direction and supervision of the Regional Director for Region 24, to determine whether or not certain employees of the Employer desired to be represented for purposes of collective bargaining by the Union de Trabajadores de la Industria Gastronomica de Puerto Rico, Local 610, affiliated with the Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO, and hereinafter referred to as Petitioner.

Upon conclusion of the election, a tally of ballots was furnished the parties in accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended. The tally showed that there were approximately 15 eligible voters and that 11 ballots were cast, of which 5 were for Petitioner, 5 were against the Petitioner, and 1 was void.

On June 13, 1969, the Petitioner timely filed objections to the conduct of the election. The Regional Director, pursuant to the stipulation for certification upon consent election, and in conformity with Section 102.69 of the Board's Rules and Regulations, caused an investigation of the issues raised by the objections to be made, and, thereafter, on September 16, 1969, issued and served on the parties his report on objections. In his report, the Regional Director recommended to the Board that the objections filed by Petitioner be sustained, the election set aside, and a second election directed. Thereafter, on October 6, 1969, the Employer filed timely exceptions to the Regional Director's report and recommendation on objections, and a brief and affidavits in support thereof.

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.

In essential agreement with the position taken by the Employer, we find that the Employer's conduct did not interfere with the election held herein. On the basis of the evidence revealed by his investigation, the Regional Director found that on May 5, 1969, two employees solicited wage increases

from the Employer's manager. This solicitation occurred 5 days after the petition was filed on April 30, 1969. The manager agreed to take up their request with the stateside parent corporation and did so by letter dated May 7, 1969, with his recommendation as to the amount of each increase. The same letter was returned on or about the last week in May 1969, with an "approved" endorsement.

Before the return of the letter the two employees inquired as to the status of their increase, and were advised that no reply had been received. After the letter was returned they again made inquiry about their increases, and were told by the manager that a reply had been received but that his attorney had advised him that he couldn't do anything about their raises until after the election, scheduled for June 12, was settled.<sup>1</sup>

On these facts we cannot agree with the Regional Director that the withholding of wage increases for these two employees interfered with the election and requires that it be set aside. On the contrary, it appears from all the facts that the Employer properly tried to avoid any appearance of attempting to influence the employees' decision concerning their representation for purposes of collective bargaining.<sup>2</sup> We note in particular that the initiative in soliciting the wage increase came from the employees themselves and took place within the critical period between the filing of the petition and the holding of the election.

Accordingly, as the tally of ballots shows that the Petitioner has not received a majority of the valid ballots cast and as the objections of Petitioner do not warrant a setting it aside, we shall certify the results of the election.

## CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots has not been cast for the labor organization appearing on the ballot, and that such organization

<sup>1</sup>The Employer does not dispute the fact findings of the Regional Director up to this point. However, the Regional Director additionally found that these two employees again inquired about their raises after the election but were told again by the manager that because of the tie vote nothing could be done until it was decided whether a new election would be held. The Employer submitted an affidavit executed by Virgilio Valencia, manager of the Paradise Bowl-O-Mat, denying that the two employees inquired about their raises after the June 12 election, and further denying that either he or the assistant manager made any statements relating to these raises after that election. As to this disputed conversation, found by the Regional Director to have been had after the election, it is clear that nothing said at the time could have influenced the outcome of the election. We, therefore, do not pass on any of the issues which this latter conversation might raise.

<sup>2</sup>See *Sutherland Lumber Company, Inc.*, 176 NLRB No 143. See also *J. C. Penney Company, Inc.*, 160 NLRB 279, and *Engineers & Fabricators, Inc.*, 156 NLRB 919, enforcement denied on other grounds 376 F.2d 482 (C.A. 5).

is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.