

Westinghouse Appliance Sales & Service Co., a division of Westinghouse Electric Corporation and International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local Union #680, Joint Petitioners Case-12-RC-3399

May 15, 1970

DECISION AND CERTIFICATION OF REPRESENTATIVES

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND BROWN

Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director for Region 12 on October 16, 1969, an election was conducted on November 7, 1969, among the employees in the stipulated appropriate unit. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 59 eligible voters, 56 cast ballots, of which 33 were for, and 19 against, the Petitioners, with 4 challenged ballots. The challenges were not sufficient in number to affect the results of the election.

Thereafter, the Employer filed timely objections to Election. In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and, on January 2, 1970, issued and duly served on the parties his report on objections to election and recommendations to the Board, in which he recommended that the objections be overruled. Thereafter, the Employer filed timely exceptions to the Regional Director's report and a supporting brief.

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.

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 policies of the Act to assert jurisdiction herein.

2 The Petitioners are labor organizations claiming to represent certain employees of the Employer.

3 A question affecting commerce exists concerning the representation of 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 the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All service men, countermen, warehousemen, call takers, dispatchers, service cashier, service stock ledger coordinator, employed by the Employer at its 3400 N W 31st Street, Miami, Florida location and its 213 N E 9th Street, Ft Lauderdale, Florida location, excluding all office clerical employees, sales employees, professional employees, Senior Service Clerk, guards and supervisors as defined in the Act.

5 The Board, having considered the Regional Director's report and the Employer's exceptions thereto and supporting brief, hereby adopts the Regional Director's finding and recommendations.¹

Accordingly, as we have overruled the Employer's objections and the tally shows that the Petitioners received a majority of the valid ballots cast, we shall certify them jointly as the exclusive bargaining representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVES

It is hereby certified that International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, and its Local Union #680, have been designated and selected by a majority of the employees of the Employer in the appropriate unit described herein as their representative for the purposes of collective bargaining and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organizations are the exclusive representative of all employees in such unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

¹ In adopting the Regional Director's recommendation that Objections 1 and 2 be overruled we find in agreement with the Regional Director that the mere fact that the Employer had only one observer available to it at the election while the Petitioners had two is not sufficient grounds for setting aside the election. We find that this imbalance in the number of observers did not create the impression that the Board favored the Petitioners over the Employer or otherwise prejudice the election. Furthermore we note that the Board agent specifically advised the Employer of its right to an equal number of observers which is entirely consistent with the provision in the Stipulation for Certification that each party would be allowed an equal number of observers. Lastly to the extent that it may have constituted a variation from what the Employer alleges was a prior oral understanding that only one observer would represent each party we find that the variation was immaterial and in no way compromised the fairness of the election. *NLRB v Mattison Machine Works* 365 U.S. 123 Cf. *Bremen Steel Company* 115 NLRB 247. We also adopt the Regional Director's recommendation that Objections 3 through 5 be overruled as even if the facts alleged by the Employer are true they would not constitute conduct which affected the results of the election. *Harold W Moore d/b/a/ Harold W Moore & Son* 173 NLRB No 191. The exceptions and brief raise no issues of fact or law which warrant reversal of the Regional Director's findings and recommendations or a hearing.