

**Lach-Simkins Dental Laboratories, Inc., Employer-Petitioner and Local 286, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America**

**Lach-Simkins Dental Laboratories, Inc. Employer and Local 286, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America Petitioner. Cases 22-RM-339 and 22-RC-4634**

November 19, 1970

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

BY CHAIRMAN MILLER AND MEMBERS FANNING AND JENKINS

Pursuant to a Stipulation for Certification Upon Consent Election, an election by secret ballot was conducted on April 30, 1970, under the direction and supervision of the Regional Director for Region 22, among the employees in the unit described below. At the conclusion of the election the parties were furnished with a tally of ballots which showed that of approximately 44 eligible voters, 43 cast ballots, of which 23 were for, and 18 against, the Petitioner, with 2 challenged ballots. The challenges were insufficient in number to affect the results of the election. Thereafter, the Employer-Petitioner filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and, on June 16, 1970, issued and duly served upon the parties his Report of Objections in which he recommended the objections be overruled. Thereafter, the Employer filed timely exceptions to the Regional Director's Report on Objections and a supporting brief.

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 policies of the Act to assert jurisdiction herein.
2. The Petitioner-Union 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 the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees including laboratory technicians, laboratory technician apprentices, shipping and receiving employees and drivers, employed by the Employer at its Paterson, New Jersey, location excluding all office clerical employees, salesmen, professional employees, confidential employees, guards and supervisors as defined in the Act.

5. The Board has considered the Regional Director's Report, the Employer's exceptions and briefs, and the entire record in this case, and hereby makes the following findings.

In its Objections 2 and 4(c) Employer alleges that a luncheon conducted by the Union before and during the time the polls were open interfered with the election. The election was conducted in the Paterson, New Jersey, YMCA building between 12:30 and 2 p.m. It was held in a room known as the George Williams Room which is located approximately 15 feet from the main entrance to the building. Approximately 5 feet beyond the voting room is a stairway which leads to the basement of the building and the cafeteria. According to the Employer, the distance from the top of the stairs to the basement is 26 feet. Both prior to and during the time the polls were open the Union conducted a luncheon, consisting of sandwiches and soft drinks, for the employees. The luncheon was attended by at least 15 or 20 employees.

Only one employee, Izak Lajnwand gave a statement as to what happened at the luncheon. He states that he entered the YMCA building with two other employees and was told by an unidentified person to go downstairs. He stated Lou Duva, president of the Petitioner-Union, was present. Duva requested him to vote for the Union. A few moments later he left the room and went outside where he remained until the polls opened. He states that he was not forced to attend the luncheon, nor threatened in any manner during the few minutes he spent at the luncheon.

In our opinion the holding of this luncheon did not interfere with the election. The luncheon was held outside of the polling area. Employees were not compelled to attend.<sup>1</sup> Those who chose to attend had to go out of their way, past the entrance to the polling area to the floor below, in order to do so. Under these circumstances we conclude that the luncheon was not

evidence to support these allegations

<sup>1</sup> Although Employer contends in his objection that employees were deceived into attending or physically compelled to attend, there is no

held so close to the polling area that it interfered with the election.<sup>2</sup> Nor, in our opinion, was the value of the sandwiches and soft drinks sufficient to interfere with the election. Although apparently conceding this to be the case, our dissenting colleague suggests that we should extend our holding in *Milchem*<sup>3</sup> and find that any luncheon of this type, held while the polls are open, interferes with the election. He states that by doing so we will thereby avoid any future difficulties in drawing the line as to what is permissible and what is not. We do not believe that such a holding is necessary or desirable. We are constantly faced with the problem of drawing fine lines<sup>4</sup> and believe that it is better to treat each situation as it arises on its own merits. We do not believe that luncheons of this type have such a potential for distraction or last minute pressure that they must be absolutely prohibited.

The Employer's remaining exceptions, in our opinion, raise no material or substantial issue of fact or law which would warrant reversal of the Regional Director's remaining findings, conclusions, and recommendations. Accordingly, we hereby adopt the Regional Director's findings, conclusions, and recommendations.

As the tally of ballots shows that the Petitioner has received a majority of the valid votes cast, we shall certify it as the representative of the employees in the appropriate unit.

#### CERTIFICATION OF REPRESENTATIVE

It is hereby certified that Local 286, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, has been selected by a majority of the employees of the Employer in the unit found appropriate herein as their representative for the purpose of collective bargaining and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is 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.

CHAIRMAN MILLER, dissenting:

I would set aside the election. As described more fully in the majority opinion, immediately prior to and at all times that the polls were open, the Union held a luncheon for members of the voting unit in the basement of the YMCA, the building in which the

election was being held. Sandwiches and soft drinks were offered to prospective voters who chose to attend. At least some campaigning took place during the luncheon.

In *Milchem, Inc.*, 170 NLRB No. 46 (1968), the board dealt with the question of whether sustained conversations with prospective voters waiting to cast their ballots constituted conduct necessitating a rerun election. While I agree that is not the same issue presented here, the rationale of that decision has bearing on the instant issue. As the Board stated in *Milchem*, "Careful consideration of the problem now convinces us that the potential of distraction, last-minute electioneering or pressure, and unfair advantage . . . is of sufficient concern to warrant a strict rule against such conduct. . . . The final minutes before an employee casts his vote should be his own, as free from interference as possible." The same principle underlies the Board's longstanding *Peerless Plywood* rule.<sup>5</sup>

The providing of a free lunch by either party at the very time the voting is occurring constitutes, in my view, that kind of potential for distraction, last minute pressure, and unfair advantage which we condemned in *Milchem*. While, admittedly, the type of fare provided can hardly be said to have been munificent, I would not care to invite future litigation of such issues as to whether it would be permissible for one party or the other to provide a thick steak or an egg salad sandwich during polling hours, or at what point in between or on either side of those possible menus we would draw the line. Rather, in the interest of insuring both the integrity of the election process and the wholly unimpaired freedom of employees from last minute pressures, I would find that the providing of free refreshments by any party during and immediately surrounding the polling times and in this close proximity to the polling place is a sufficient invasion of laboratory conditions to require setting aside the election.

It can hardly be said to be a serious limitation on the parties' permissible campaign activities to so hold.

As we said in *Milchem*, "In our view, the restriction here established gives every promise of having a salutary effect on the conduct of elections and offers no likelihood of abridging the rights of the parties concerned."

Accordingly, I would sustain Employer's Objection 2.

*Concrete Works*, 132 NLRB 184; *General Cable Corporation*, 170 NLRB No. 172; *Wagner Electric Corporation*, 167 NLRB 532.

<sup>5</sup> *Peerless Plywood Company*, 107 NLRB 427.

<sup>2</sup> *Harold W. Moore & Son*, 173 NLRB No. 191.

<sup>3</sup> 170 NLRB No. 46.

<sup>4</sup> See e.g. *Buzza-Cordoza*, 177 NLRB No. 38; *Hollywood Plastics*, 177 NLRB No. 40; *Elgin Butler Brick Company*, 147 NLRB 1624; *Austin*