

**Ace Letter Service Co. and International Printing Pressmen and Assistants' Union of North America, AFL-CIO, Petitioner.** Case 12-RC-3649

December 30, 1970

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

BY CHAIRMAN MILLER AND MEMBERS  
FANNING AND JENKINS

Pursuant to a Stipulation for Certification Upon Consent Election, approved by the Acting Regional Director for Region 12 on August 12, 1970, an election by secret ballot was conducted on August 28, 1970, under the direction and supervision of the Acting Regional Director, among the employees in the stipulated unit. At the conclusion of the election the parties were furnished with a tally of ballots which showed that of approximately 22 eligible voters, 22 cast ballots, of which 10 were for, and 12 against, Petitioner.

Thereafter, Petitioner filed timely objections to conduct affecting the results of the election. The Regional Director conducted an investigation and on October 2, 1970, issued and served on the parties his Report on Objections and Recommendations to the Board. In his Report the Regional Director recommended that the objections be overruled and that certification of results of election issue. Thereafter, Petitioner filed exceptions to the Regional Director's Report.

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 purposes of the Act to assert jurisdiction herein.
2. Petitioner is a labor organization claiming to represent certain employees of the Employer.
3. A question affecting commerce exists concerning 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 following employees of the Employer, as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All pressmen, apprentice pressmen, assistant pressmen, feeder operators, cameramen, cutters,

strippers, plate makers and veritytypists employed by the Employer at its Miami, Florida, plant, excluding all office clerical employees and supervisors as defined in the Act.

5. Petitioner filed two separate objections which the Regional Director found lacked merit, and he recommended that the objections be overruled. As to Objection 1, we find that Petitioner's exceptions do not raise substantial or material issues of fact or law which would warrant reversing the Regional Director's findings, conclusions, and recommendations, and Objection 1 is accordingly overruled.

In Objection 2 Petitioner alleged that the Employer denied five employees the right to vote by denying them access to the plant premises where the polls were located. The reason given to Petitioner was that the men had been terminated for lack of work. Petitioner contended in its objection that the men were laid off and should have been permitted to vote challenged ballots.

The Regional Director found that the disputed employees' names were not on the eligibility list furnished by the Employer, that the Employer did not allow the employees on its premises, but that Petitioner had presented no evidence to show that the men were on layoff status as it contended, and therefore the objection lacked merit.

We do not agree.

The Board's challenge procedure generally guarantees the right to every individual who asserts other than a totally frivolous claim to employee status to appear at the polls and cast a ballot, even though his name may not appear on the eligibility list. The Employer erroneously assumed that its exclusion of these persons was proper because it believed that they were not entitled to vote. The issue of whether an employee is on layoff or has in fact been terminated is clearly one of those kinds of issues which is to be determined by the Board upon the employer's challenge to their ballots.<sup>1</sup> The Employer, by usurping the Board's authority to make that determination, interfered with our orderly election processes.<sup>2</sup> While we are reluctant to set aside an election in the absence of evidence demonstrating that the effect of such interference had a provable prejudicial effect, we nevertheless consider that the interference here was sufficiently irregular as to require that we sustain this objection of Petitioner, set aside the election results, and direct a new election.

**ORDER**

It is hereby ordered that the election previously

<sup>1</sup> National Labor Relations Board Statements of Procedure, Series 8, as amended, Sec. 101.19(2) and (4); and Rules and Regulations Sec. 102.69(a)-(c).

<sup>2</sup> *Neuhoff Brothers Packers, Inc. v. N.L.R.B.*, 362 F.2d 611, 613-614 (C.A. 5), enf. 154 NLRB 438. Rehearing denied November 16, 1966, rehearing denied *en banc* October 17, 1967, cert. denied 386 U.S. 956.

conducted herein on August 28, 1970, be, and it hereby is, set aside.

<sup>3</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236; *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed

[Direction of Second Election<sup>3</sup> omitted from publication.]

by the Employer with the Regional Director for Region 12 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.