

Arlen-Burk, a Partnership, d/b/a Arlen House and Arlen House West and Service Employees International Union, Local 362, AFL-CIO, Petitioner.
Case 12-RC-3548

January 22, 1971

DECISION AND DIRECTION

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND BROWN

Pursuant to a Stipulation for Certification Upon Consent Election, approved by the Regional Director for Region 12 of the National Labor Relations Board on April 28, 1970, an election by secret ballot was conducted on June 5, 1970, under the direction and supervision of the Regional Director among employees in the stipulated unit described below. At the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately 73 eligible voters, 52 cast valid ballots of which 30 were for the Petitioner, 1 was for the Intervenor (Highrise Employees Union Local 255, affiliated with Hotel and Restaurant Employees and Bartenders International Union, AFL-CIO), and 21 were against participating labor organizations. Fourteen voters cast challenged ballots. The challenged ballots are sufficient in number to affect the results of the election. Thereafter, the Employer and the Intervenor filed timely objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and, on August 21, 1970, issued and duly served on the parties his Report on Challenged Ballots and Objections, in which he recommended that the Board overrule the challenges in their entirety and direct him to open and count said ballots and issue a revised tally. The Regional Director also recommended that the Board overrule the Intervenor's objection.¹ The Regional Director further recommended that the Board sustain the Employer's Objection 4 and, in the event the Petitioner secures a majority upon the opening and counting of the challenged ballots, that it set aside the election of June 5, 1970, and direct a second election. Thereafter, the Petitioner filed timely exceptions to the Regional Director's report and the Employer filed an answering 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 purposes of the Act to assert jurisdiction herein.
2. The Petitioner and the Intervenor are labor organizations 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 employees employed by the Employer in its North Miami Beach facilities, including engineering and maintenance department employees, including engineers, maintenance men, painters and carpenters; housekeeping department employees, including porters, maids, janitorial employees and gardeners; pool department employees; service department employees, including bell men, doormen-runners and chauffeurs, telephone operators and all other service employees, *excluding* all office clerical employees including, but not limited to front desk clerks and auditors, sales and rental agents, and guards and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report, the Petitioner's exceptions, the Employer's answering brief, and the entire record in this case, and makes the following findings:

The Challenges

Fourteen employees voted subject to challenge in the election held herein. The Petitioner excepts to the Regional Director's conclusion that 12 of the challenged voters, who are employed as "front door" personnel (bellmen, doormen-runners, and chauffeurs) in the Employer's service department, have a sufficient community of interest to warrant their inclusion in the unit as previously stipulated by the parties.² Specifically, the Petitioner claims that after entering into the aforementioned stipulation, it learned that front door personnel were employees of a separate concessionaire called Adams Parking Concessions, Inc. In support of this claim, the Petitioner alleges that "payroll has always been handled separately" and that "employees take their orders

and accordingly are entitled to vote in the election. Therefore, we adopt *pro forma* his recommendation and shall direct that their challenged ballots be opened and counted.

¹ In the absence of exceptions, we adopt, *pro forma*, this recommendation of the Regional Director

² No exception was taken to the Regional Director's conclusion that pool department employees Reich and Zang are nonsupervisory employees

from the 'Front Door Supervisor' and not from the Employer's general manager." Accordingly, the Petitioner argues that the Employer herein does not exercise that type or degree of control which warrants the inclusion of front door personnel in the stipulated unit. In the alternative, the Petitioner requests that a hearing be held to allow the Petitioner to demonstrate that the unit, as previously stipulated, is inappropriate.³

The Regional Director's investigation, however, reveals specific facts which are not contradicted and which persuade us that the stipulated unit is appropriate for the purposes of collective bargaining. The Employer herein owns two apartment hotels known as Arlen House and Arlen House West. The operation and management of these buildings is entrusted to Arlen Properties, Inc., hereinafter API, which company manages other buildings of a similar nature in the Miami Beach area. API employs one Larry Fedder as the general supervisor of all front door personnel employed at each of the buildings managed, including those owned by the Employer. Fedder, in turn, is under the general supervision of the manager of each building, including the Employer's manager, Skiles. Fedder, as the general supervisor of the front door personnel here involved, hires them, subject to Skiles' approval, and plans, with Skiles, their required work schedules. Skiles, however, has the right to discharge any front door employee without consulting Fedder. Front door personnel wear uniforms purchased by the Employer, who establishes dress regulations.⁴ The Employer also furnishes the equipment used by front door personnel in the performance of their duties. These employees have frequent, daily contact with other employees in the stipulated unit and are subject to the same rules of conduct established by the Employer. The front door payroll is prepared by Fedder and submitted to the Employer for approval. The Employer then remits to Fedder the exact amount necessary to cover the payroll. Fedder subsequently issues paychecks drawn on the account of Adams Parking Concessions, Inc. According to Fedder, this procedure was established by API for recordkeeping purposes.

In view of the foregoing, and specifically because of the substantial degree of control both retained and exercised by Arlen-Burk over front door employees' wages, hours, and working conditions, we find, the employer status of Adams Parking notwithstanding, that Arlen-Burk must be considered to be an employer of the front door employees here involved.⁵

³ As there are no substantial questions of fact raised by the Petitioner's request for a hearing, said request is hereby denied.

⁴ Approximately 1 month before the election held herein, front door personnel were furnished shirts supplied by Fedder with the names "Arlen Properties, Inc" and "Adams Parking" lettered thereon.

Further, in view of the frequent and daily contact between front door personnel and the employees of the other departments involved and the common rules of conduct pertaining to all employees, we find that the former share sufficient interests with the latter to warrant their inclusion in the unit as stipulated. Accordingly, we find that the 12 front door employees are eligible to vote in the election held herein and we shall direct that the Regional Director open and count their challenged ballots.

The Objections

The Petitioner also excepts to the Regional Director's recommendation that the Employer's Objection 4 be sustained. With respect to this objection, it is uncontroverted that immediately before the election here in question, the Petitioner caused to be mailed and delivered to approximately 75 employees a letter urging them to vote for the Petitioner. Enclosed with this letter was a copy of the Board's official sample ballot, altered by the Petitioner by the insertion of an "X" in the box under the Petitioner's name.

The Board has long held that it will not permit the reproduction of *any* document purporting to be a copy of the Board's official ballot, other than one completely unaltered in form and content and clearly marked "sample" on its face, and that it *will*, upon objection validly filed, set aside the results of an election where the successful party has violated this rule.⁶

It is apparently the contention of the Petitioner that the placement of a "simple 'X' " in the box under its name on the Board's official sample ballot, unaccompanied by other language calculated to influence employees, does not constitute an objectionable alteration under the Board's rule. Such a contention is wholly without merit. The Petitioner's alteration was undertaken for campaign purposes and necessarily suggests that the material appearing thereon bears the Agency's approval. Such use of our official sample ballots is forbidden. Accordingly, we adopt the recommendation of the Regional Director and hereby sustain the Employer's Objection 4.⁷ Further, in the event the Petitioner secures a majority upon the opening and counting of the challenged ballots, we shall direct that the election of June 5, 1970, be set aside and that a second election be held.

DIRECTION

It is hereby directed that the Regional Director for

⁵ *The Greyhound Corporation*, 153 NLRB 1488

⁶ *Allied Electric Products, Inc.*, 109 NLRB 1270

⁷ In view of our Decision herein, we deem it unnecessary to pass upon the Employer's remaining objections

Region 12 shall, pursuant to the Rules and Regulations of the Board, within 10 days from the date of this Decision, open and count the ballots of Ted Buffington, Joe Cohane, Kenneth Wolf, Robert Pettett, Robert Stern, George Risley, Joseph Valerio, Dennis Fain, Henry Guttermuth, Antonino Mars, Hassan Toloo, John Van Dyke, Adolph Reich, and Tommy Zang and prepare and cause to be served on the parties a revised tally of ballots, including therein the count of the above-mentioned ballots, and, in the event the Petitioner does not secure a majority upon

the opening and counting of the challenged ballots, as directed above, issue a Certification of Results of Election.

It is further directed that, in the event the Petitioner does secure a majority upon the opening and counting of said ballots, the Regional Director shall set aside the election held on June 5, 1970, and direct that a second election be conducted among employees in the unit found appropriate at such time as he deems appropriate.