

Laars Engineers, Inc. *and* Van & Storage Drivers Local 389, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Petitioner. Case 31-RC-801

October 31, 1968

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND ZAGORIA

Pursuant to a Stipulation for Certification upon Consent Election approved April 25, 1968, an election by secret ballot was conducted on June 6, 1968, under the direction and supervision of the Regional Director for Region 31, among the employees in the stipulated unit described below. At the conclusion of the election, the Regional Director served upon the parties a tally of ballots, which showed that, of approximately 72 eligible voters, 68 cast ballots, of which 35 were for, and 32 against, the Petitioner, and 1 was challenged. The challenged ballot was insufficient to affect the results of the election. Thereafter, the Employer filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Acting Regional Director conducted an investigation and, on August 26, 1968, issued and duly served upon the parties his Report on Objections, in which he recommended that the Employer's objections be overruled in their entirety, and that the Petitioner be certified as the collective-bargaining representative of the employees in the stipulated unit. The Employer filed timely exceptions to the Regional Director's Report, and a brief 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.

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 is a labor organization 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. In accordance with the stipulation of the parties, we find that the following employees of the Employer 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, warehousemen, servicemen, shipping and receiving employees of the Employer's North Hollywood, California, operation; excluding office clerical employees and all professional employees, guards and supervisors as defined in the Act.

5. The Board has considered the Acting Regional Director's Report, and the Employer's exceptions and brief, and adopts the Acting Regional Director's findings, conclusions, and recommendations with the following modifications

Objection 1: We adopt the Acting Regional Director's finding that no evidence was furnished by the Employer, and none was disclosed by the investigation, to support the allegation that the Petitioner made any improper use of the list of names and addresses furnished by the Employer in accord with the Board's *Excelsior* rule.¹ We similarly adopt the finding of the Regional Director that it was not an improper exercise of the Board's authority to require the Employer to furnish the *Excelsior* list, and in so concluding, we expressly reject the Employer's principal argument that the Board's promulgation of the *Excelsior* rule violated the Administrative Procedure Act.

Objection 2: We adopt the Acting Regional Director's recommendation that the election should not be set aside because of the Regional Director's failure to provide bilingual ballots. We note that the Acting Regional Director's investigation disclosed that only 1 of the 68 employees could not read English, and it is clear that this employee comprehended and understood the significance of the ballot. Moreover, we deem it particularly appropriate to point out that the Employer was put on notice 10 days before the election that the ballots would be in English only, but that, nevertheless, no protest was filed by the Employer, or, in fact, by any other party to this proceeding. However, in affirming this finding of the Acting Regional Director, we do not adopt, and specifically delete, that portion thereof which states "*that the ballot of the one employee would not be sufficient to affect the result of the election.*"

Objection 3: The Acting Regional Director found that there was no persuasive evidence to the effect that the Petitioner threatened employees that if they did not vote for the Union, they would be blacklisted and unable to get a job in union-organized companies. The Employer contends, in its exceptions, that the Acting Regional Director refused to honor its request to present additional witnesses, or their affidavits, to

¹ *Excelsior Underwear Inc.*, 156 NLRB 1236.

support its "blacklisting" allegation. We find no merit in this contention since the Employer's exceptions fail to specify either the identity of the witnesses or the nature of the evidence it proposes to submit.²

Accordingly, as we have overruled the Employer's objections, and as the Petitioner has secured a majority of the valid ballots cast, we shall certify the Petitioner as the exclusive bargaining representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that Van & Storage Drivers Local 389, International Brotherhood of Teamsters,

Chauffeurs, Warehousemen & Helpers of America, has been designated and selected by a majority of the employees of the Employer in the unit found appropriate, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9(a) of the Act, the said labor organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

² The Employer did not except to the Acting Regional Director's finding with respect to objection 4