

Marvil International Security Service Inc. and Amalgamated Plant Guards, Local 112, United Plant Guard Workers of America, Petitioner. Case 24-RC-3354

December 13, 1968

DECISION AND CERTIFICATION  
OF REPRESENTATIVE

BY CHAIRMAN McCULLOCH AND MEMBERS  
BROWN AND ZAGORIA

Pursuant to a Stipulation for Certification upon Consent Election executed by the Parties on January 26, 1968, an election by secret ballot was held on January 26, 1968, among certain employees of the Employer employed as guards by the Employer in the Commonwealth of Puerto Rico. At the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately 180 eligible voters, 134 cast ballots, of which 95 were for the Petitioner, 33 against the Petitioner, 4 were challenged and 2 were void.<sup>1</sup> Thereafter, the Employer filed timely objections to conduct affecting the results of the election.

Pursuant to the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Regional Director conducted an investigation and, on May 6, 1968, issued and duly served upon the parties his Report on Objections in which he recommended that the objections be overruled in their entirety, and that the Petitioner be certified as bargaining representative of the employees involved. On May 27, 1968, the Employer filed timely 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 policies of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization which claims to represent certain employees of the Employer

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

All guards employed by the Employer in the Commonwealth of Puerto Rico, excluding all office clerical employees and supervisors as defined in the Act.

5. The Board has considered the objections, the Regional Director's Report, and the Employer's exceptions thereto, and hereby adopts the Regional Director's findings, conclusions, and recommendations

The Employer contended that statements ("remember the benefits we can get" or, as found by the Regional Director, "don't forget the benefits") made by Petitioner's representatives to employees as they entered the Employer's building to vote, should be found to be conduct which affected the results of the election under the rule established by the Board in *Milchem, Inc.*, 170 NLRB No 46. The Regional Director's investigation established that during the time the balloting was being conducted, two representatives of Petitioner alternated in positioning themselves at the foot of what was apparently an outside stairway, 10 feet in length, leading to the second floor of a two-story dwelling house that had been converted for office use. The conference room in which the polling area was located was 20 to 25 feet down a hallway from this second-floor entrance. The Regional Director found that the area outside this entrance, from the landing outside down to the ground, was beyond the "no-electioneering" area established by the Board agent.

We agree with the Regional Director's conclusions that this traditional form of electioneering did not violate the *Milchem* rule (since the conversations did not take place with voters while the latter were in the polling area or on line waiting to vote), and did not conflict with the holding of *Star Expansion Industries Corporation*, 170 NLRB No 47 (since the electioneering in the instant case occurred beyond the established no-electioneering area).<sup>2</sup> In this connection, the Employer contends that the no-electioneering area should be a minimum of 50 feet from the polls. We believe, however, that the establishment of an area in which electioneering is not permitted, must in the first instance be left to the informed judgment of the Regional Director and his agents conducting the election. They are on the scene and familiar with the physical circumstances surrounding the location of the polls. We cannot say that the no-electioneering area was improperly drawn in this case.

<sup>1</sup> Challenges are not sufficient in number to affect the results of the election.

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

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

#### CERTIFICATION OF REPRESENTATIVE

It is hereby certified that Amalgamated Plant Guards, Local 112, United Plant Guard Workers of

America, has been designated and selected by a majority of the employees in the unit found appropriate above, 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 organization is the exclusive representative for 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.