

**Wiley Manufacturing Company and Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, Petitioner. Case 5-RC-6441**

January 21, 1969

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

BY MEMBERS FANNING, JENKINS, AND ZAGORIA

Pursuant to a Stipulation for Certification upon Consent Election, an election by secret ballot was conducted on July 31, 1968, under the direction and supervision of the Regional Director for Region 5, 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 362 eligible voters, 333 cast ballots, of which 183 were for, and 145 against, the Petitioner, with 5 challenged ballots. The challenges were not sufficient in number to affect the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, the Regional Director conducted an investigation and, on October 11, 1968, issued and duly served upon the parties his Report on Objections in which he recommended that the objections be dismissed. 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 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 at the Employer's Port Deposit, Maryland, facility,

including production schedulers, field service employees, timekeepers, loftsmen, receiving and shipping clerks, janitors, the local driver and the mail boy; but excluding project engineers, engineers, design draftsmen, draftsmen, over-the-road drivers, office clerical employees, guards, working leaders and other supervisors within the meaning of the Act as amended.

5. The Board has considered the objections, the Regional Director's Report, the Employer's exceptions and brief, and hereby adopts the Regional Director's findings,<sup>1</sup> conclusions, and recommendations.<sup>2</sup>

Accordingly, as the tally of the ballots shows that 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 Industrial Union of Marine and Shipbuilding Workers of America, AFL-CIO, has been designated and selected by a majority of the employees of the Employer in the unit found appropriate herein 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 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.

<sup>1</sup>The Employer excepts to the Regional Director's finding that a misstatement in a leaflet distributed on the morning of the day of the election did not constitute a material misrepresentation.

On the morning of the day of the election Petitioner distributed a leaflet in which it announced that it had just completed negotiations with two named ship yards on the west coast. In that leaflet Petitioner overstated the amount of the settlement by 2 cents per hour for the second year, listing it as 22 cents per hour when it was actually 20 cents per hour, and understated the settlement for the third year by 2 cents per hour, listing it as 15 cents per hour when it was actually 17 cents per hour.

The Employer cites the following decisions by the United States Court of Appeals for the 4th Circuit as supporting its contention that the misstatement concerning the second year settlement constituted a material representation of fact *Collins & Aikman v. NLRB*, 383 F.2d 722; *NLRB v. Bata Shoe Co.*, 377 F.2d 821; *Schneider Mills, Inc.*, 390 F.2d 375; *NLRB v. Schapiro and Whitehouse, Inc.*, 356 F.2d 675. However, these cases are distinguishable from the instant case. The first three involve, in the Court's view, substantial misrepresentations unlike the minor discrepancy present herein, and the fourth involves what the Court regarded as an appeal to racial pride or prejudice. We agree with the Regional Director that this minor misstatement does not constitute a material misrepresentation of fact.

<sup>2</sup>The Employer's exceptions, in our opinion, raise no material or substantial issues of fact or law which would warrant reversal of the Regional Director's findings and recommendations.