

**Airpax Electronics, Inc. and International Union,  
United Automobile, Aerospace and Agricultural  
Implement Workers of America, UAW. Case  
5-RC-5809**

June 24, 1968

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

**BY CHAIRMAN McCULLOCH AND MEMBERS BROWN  
AND JENKINS**

Pursuant to a Supplemental Decision, Order, and Direction of Second Election issued by the National Labor Relations Board on December 18, 1967, a secret-ballot election was conducted under the supervision of the Regional Director for Region 5 on January 24, 1968. Upon the conclusion of the election, a tally of the ballots was furnished the parties which showed that of approximately 265 eligible voters, 262 cast ballots, of which 110 were for the Petitioner, 129 were against the participating labor organization, and 23 challenged. No party excepts to the Regional Director's finding that 4 challenges should be sustained, leaving only 19 challenged ballots, which would not be determinative of the election.

On January 30, 1968, the Petitioner 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 Regional Director conducted an investigation of the various issues raised by the objections and, on March 15, 1968, issued and duly served upon the parties his report on challenges and objections, in which he recommended that Objections 6 and 10 be sustained, that the election be set aside, and that a new election be directed. The Regional Director recommended also that certain other objections be overruled. Thereafter, the Petitioner and 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.

The Board has considered the Petitioner's objections, the Regional Director's report, the Petitioner's and the Employer's exceptions, and the entire record in this case, and shall, for the reasons set forth below, set aside the election herein and direct that a new election be held.

On September 29, 1967, a Hearing Officer recommended that the first election held in this proceeding be set aside because of the Employer's objectionable preelection conduct. On October 10, 1967, the Employer announced to its employees, for the first time, that a percentage increase in wages would take effect in January 1968, the amount of which would depend on performance and profits. This announcement was made during a "state of the business" speech by the Employer, and came immediately after a long discussion of the status of the first election, in which the Employer stated its disagreement with the recommendation of the Hearing Officer. The Regional Director found that this benefit injected a new element into the Employer's wage survey and adjustment program which had been underway since 1965. We agree, for it is apparent from the Employer's own statement that the original program had been designed, in part, to meet the Federal minimum wage increase of February 1, 1968, and the announced across-the-board increase would further benefit employees who would have already been elevated to the new minimum wage. The proposed increase also appears to have introduced new and previously unplanned increases for all other employees, whereas the original wage structure program was premised on individual adjustments of wages and classifications.

In a statement on December 15, 1967, and in a campaign letter distributed to all employees dated January 17, 1968 (7 days before the second election), the Employer reiterated its intentions to grant a still undetermined percentage increase in pay, rescheduled, however, to take effect in February, after the election. In view of the Employer's belief in October that it would be able to announce the amount of the increase by January, we find implausible its contention that, by December, when the Board's decision on the objections to the second election has still not been issued, it suddenly realized that it could not ascertain the increase until sometime in February. We note also that the January 17 letter stressed the impotence of a union when confronted with an adamant employer who is bargaining in good faith, and listed all of the benefits currently afforded the employer.

The Petitioner objected to this conduct of the Employer and the Regional Director sustained the objection, finding that by failing to specify the magnitude of the increase and capitalizing on the promised benefit in a campaign appeal, the Employer offered a benefit which in the eyes of the employees was contingent on the outcome of the

election. We are persuaded by the facts and circumstances of this case that the unspecified wage increase was formulated in order to, and in a manner calculated to, influence the employees to vote against the Union in the event that a second election should be held as recommended, on September 29, 1967, by the Hearing Officer. We affirm the finding that this conduct was objectionable and accordingly set aside the election and direct that a new election be held. In light of this determination, we find it unnecessary to pass upon the other objection of the Petitioner which was sustained by the

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<sup>1</sup> An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 5 within 7 days after the date of issuance of the Notice of Third 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

Regional Director or upon the other objections not sustained by the Regional Director, but herein urged by the Petitioner.

### ORDER

It is hereby ordered that the election conducted herein on January 24, 1968, be, and it hereby is, set aside.

[Direction of Third Election<sup>1</sup> omitted from publication.]

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. *Excelsior Underwear Inc*, 156 NLRB 1236