

Western Electric Company, Inc. and Communications Workers of America, AFL-CIO and International Brotherhood of Electrical Workers, AFL-CIO, CLC, Petitioners. Cases 15-RC-3747 and 15-RC-3749

JUNE 27, 1968

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS FANNING AND BROWN

Pursuant to a Stipulation for Certification Upon Consent Election, an election by secret ballot was conducted by the Regional Director for Region 15 of the National Labor Relations Board on October 17, 1967, among employees in the stipulated unit. After the election, the parties were furnished a tally of ballots which showed that of approximately 1,280 eligible voters, 1,199 cast ballots, of which 540 were for Communications Workers of America, AFL-CIO (CWA), Petitioner in Case 15-RC-3747, 619 were for International Brotherhood of Electrical Workers, AFL-CIO, CLC (IBEW), Petitioner in Case 15-RC-3749, 26 were against participating labor organizations, 10 ballots were challenged, and 4 were void. The challenges were not sufficient in number to affect the result of the election. Thereafter, CWA filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and, on December 13, 1967, issued and duly served upon the parties his Report on Objections. In his report, the Regional Director found that the allegations contained in the CWA's objections were without merit and recommended that they be overruled and that the IBEW be certified. Thereafter, the Petitioner, CWA, filed exceptions to the Regional Director's report and a supporting brief. The IBEW filed a brief in answer to the CWA's exceptions and 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 these cases to a three-member panel.

The Board has considered the Regional Director's Report on Objections, the CWA's exceptions and briefs, the IBEW's brief, and the entire record in these cases, and hereby adopts the Regional Director's conclusions and recommendations only to the extent that they are consistent with this Decision.

Upon the entire record in these cases, 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 Petitioners are labor organizations 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 Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The parties stipulated,¹ 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 hourly-rated production and maintenance employees employed in the Employer's Manufacturing Division in its Caddo Parish, Louisiana, operations; excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.

5. In its Objection 10 the CWA contends that commencing about 6:30 a.m., October 16, 1967, the day before the election, the IBEW distributed a handbill containing fraudulent misstatements of fact which were deliberately calculated to deceive the Employer's employees and thus render impossible the exercise of a free ballot by the employees. CWA further contends that it did not have sufficient time to reply adequately to these misrepresentations.

The handbill stated, in part, that 7-day coverage employees represented by the CWA at Western Electric's plants in Winston-Salem, North Carolina, and Buffalo, New York, are not given overtime pay for working on Saturdays and Sundays.² The CWA learned of the handbill later in the morning after distribution had started, and prepared and circulated a handbill in which it denied the truth of the IBEW statement about 7-day coverage employees.

The Regional Director found that there are no production employees under 7-day coverage at the Employer's Winston-Salem plant, and that the IBEW statement that such coverage prevailed at

¹ In view of the eligibility date established by our Direction of Second Election, we have deleted from the description of the unit the words "who were employed during the payroll period ending September 29, 1967."

² Seven-day coverage employees are those employees whose jobs require

seven-day coverage and thus these employees are required to rotate their five shifts each week in such manner that each employee is required to work on some Saturdays and Sundays

that plant constituted a substantial and material misstatement. He concluded however that the CWA had ample time to, and did, answer the misstatement, and therefore recommended that CWA's objections be overruled in their entirety. While we agree that the IBEW handbill constituted a substantial and material misrepresentation, we cannot agree with his conclusion that the CWA had ample opportunity to reply to such misrepresentation.

The Board has stated that it would set aside elections in cases where there was a material misrepresentation made at a time which prevents the other party from making an effective reply so that the misrepresentation may reasonably be expected to have a significant impact on the election.³ In the instant case the misrepresentation, which we have found, in agreement with the Regional Director, to be material, occurred less than 24 hours prior to the election. While we have found, under similar facts,⁴ that a period of 2 days afforded ample opportunity to reply to misrepresentation of wage rates at one of the employer's plants, the record in that case showed that the question of comparative wage rates was discussed by the employer and the union during a lengthy preelection campaign. We are not willing, in all the circumstances of this case, and particularly considering the seriousness of the misrepresentation and the short period of time available to the CWA, to find that the CWA had sufficient time in which to answer the misstatement. We see no reason for deciding differently because of the CWA's abortive

attempt to reply and circulate a handbill denying the IBEW's misrepresentation. Accordingly, we shall order the Regional Director to set aside the election and shall direct that a second election be held.

ORDER

It is hereby ordered that the election in these cases conducted on October 17, 1967, be, and it hereby is, set aside.

[Direction of Second Election⁵ omitted from publication.]

MEMBER BROWN, dissenting:

I do not agree with the Regional Director and the majority that the IBEW handbill amounted to a substantial and material misrepresentation, particularly since it was clear that the CWA did negotiate 7-day contracts at the Buffalo plant of the Employer. It follows that whether the CWA had an adequate opportunity to reply becomes irrelevant. I would for the reasons indicated adopt the Regional Director's ultimate findings and recommendation and certify the IBEW. However, if I were to find a substantial and material misrepresentation here, then I would agree with my colleagues that in the circumstances of this case the distribution of the handbill within 24 hours of the election did not afford an adequate opportunity to reply.

³ *Hollywood Ceramics Company, Inc.*, 140 NLRB 221

⁴ *General Electric Company, Specialty Control Department*, 162 NLRB 912, *enfd.* 383 F.2d 152 (C.A. 4).

⁵ 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 15 within 7 days after the date of issuance of the Notice of

Second 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 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