

Allstate Insurance Company and General Sales Drivers & Allied Employers Union, Local No. 198, an affiliate of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Petitioner. Case 12-RC-2792¹

May 21, 1969

DECISION ON REVIEW, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

Following the election held in this case on May 22, 1968,² a tally of ballots issued showing that of approximately 75 eligible voters, 36 cast valid ballots for, and 34 against, the Petitioner, and 5 cast challenged ballots. The Petitioner filed timely objections to conduct affecting the results of the election. The Regional Director, in his Supplemental Decision on Challenges and Objections, referred to in footnote 1, overruled the 5 challenges and directed their opening and counting, sustained Objection 1, overruled the other objections, and directed a second election in the event the Petitioner did not receive a majority under the revised tally to be prepared. Thereafter, the Employer, in accordance with the National Labor Relations Board Rules and Regulations, filed a timely request for review in which it asserted, *inter alia*, that issues of fact were present as to the Regional Director's disposition of Objection 1 which required a hearing.

On November 26, 1968, the National Labor Relations Board issued an Order in which it granted the Employer's request for review, directed the Regional Director, in accordance with his Supplemental Decision, to open and count the challenged ballots and to prepare a revised tally, and, in the event the Petitioner did not receive a majority according to the revised tally, ordered him to conduct a hearing to resolve issues raised by the Petitioner's Objection 1. The Regional Director issued a revised tally which showed that 36 votes were for, and 39 against, the Petitioner. Therefore, on December 19, 1968, he issued an order scheduling hearing.³

Thereafter, a hearing was held before Thaddeus R. Sobieski, a Hearing Officer of the Board. In the

¹The instant case was previously consolidated with Cases 12-RC-2886, 12-RC-2889, and 12-RC-2897. However, in the Regional Director's Supplemental Decision on Challenges and Objections, he certified the results of elections directed in those three cases and no request for review was filed with respect thereto.

²The appropriate unit thereof was described in the Regional Director's Decision and Direction of Elections as "All State Insurance Agents within District I, District II, and District III of Division 1, excluding..."

³Thereafter, on December 30, 1968, the Employer filed a motion for clarification of the Board's Order. The Regional Director, on December 31, 1968, issued a Statement on Employer's motion for clarification. The Board by telegraphic order dated January 3, 1969, denied the motion, but in order to remove ambiguity as to the scope of the hearing, made clear that it should include issues raised as to all findings relied upon by the Regional Director to support his decision to sustain Objection 1

course of the hearing, the parties entered into a stipulation, substantially as follows:

1. The unit in which the election in this case was held on May 22, 1968, was thereafter reorganized.

2. The reorganized unit comprised insurance agents within Districts I, II, III, and IV of Division 1.

a. The District IV in which the election in Case 12-RC-2889 was held (which comprised the Fort Lauderdale (901 Federal Highway) Retail Sales Location, the Boynton Beach Retail Sales Location, and the Boca Raton Retail Sales Location) under the reorganization, was eliminated.

b. The Fort Lauderdale Retail Sales Location, formerly in the Old District IV, was made part of District III.

c. The new District IV was made up of three locations formerly part of Districts I or II, plus a newly established location.

d. A newly created location was added to District I.

e. Other location transfers did not change the composition of the unit.

3. The parties agree that a new election may be ordered in this case for "All insurance agents within District I, District II, District III, and District IV of Division 1, excluding all claim adjusters, clerical workers and supervisors, and all other employees as provided under the Act", including "in such direction of election a finding by the Board from the record herein as to a disagreement between Petitioner and Employer as follows:"

a. Petitioner contends that those employees assigned to the Fort Lauderdale Retail Sales Location, above referred to, should not and the Employer contends they should be allowed to vote in the new election.

4. Subject to the Board's clarification of the unit with regard to the above-stated issue, the Employer waived its rights to a hearing on Objection 1.

5. The parties reserved their rights to contest the Board's determination of the appropriate unit for the new election.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has considered the stipulation of the parties, and the entire record in this case, and makes the following findings:

In support of its contentions that employees assigned to the Fort Lauderdale Retail Sales Location should not be allowed to vote in the new election, the Petitioner argues that the provisions of Section 9(c)(3) bar their voting in the reorganized unit because they comprised a subdivision of the unit in which an election was held in Case 12-RC-2889 on May 22, 1968, less than 12 months ago. We find no merit in this argument. These employees are within the scope of the unit agreed to

by the parties, and as the election directed herein is not in the unit or subdivision in which the election in Case 12-RC-2889 was held they are not precluded by Section 9(c)(3) from participating in the new election.⁴

Accordingly, we shall set aside the first election and direct a new election in the following unit which we find to be appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All insurance agents within District I, District II, District III and and District IV of Division I of the Employer's operations in the State of Florida, excluding all claims adjusters, clerical workers and supervisors and all other employees as provided under the Act.

ORDER

IT IS HEREBY ORDERED that the election conducted

herein on May 22, 1968, be, and it hereby is, set aside.

[Direction of Second Election⁵ omitted from publication.]

⁴*Thokol Chemical Corporation, Redstone Division*, 123 NLRB 888, and cases cited therein. The case of *Rockland Light and Power Company*, 105 NLRB 365, on which Petitioner relies, is clearly distinguishable on its facts.

⁵In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear Inc.*, 156 NLRB 1236; *N.L.R.B v Wyman-Gordon Company*, 394 U.S. 759. Accordingly, it is hereby directed that 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 12 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.