Allis-Chalmers Manufacturing Company *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW, Petitioner. Case 10-RC-7575

June 11, 1969

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND ZAGORIA

Pursuant to the provisions of a Stipulation for Certification upon Consent Election, executed on November 13, 1968, an election by secret ballot was conducted on December 3, 1968, under the direction and supervision of the Regional Director for Region 10, among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately 24 eligible voters, 23 cast valid ballots, of which 14 were for, and 9 against, the Petitioner, and 2 ballots were challenged. Thereafter, the Employer filed a timely objection to conduct affecting the results of the election.

In accordance with Section 102.69 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and, on February 5, 1969, issued and duly served upon the parties his Report on Objections, in which he recommended that the objection be overruled in its entirety, and that an appropriate certification of representative issue. Thereafter, the Employer filed timely exceptions to the Regional Director's recommendation that the objection should be overruled, asserting that the election should be set aside and that the Board should direct a second 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 Regional Director's Report, the Employer's exceptions thereto, and the entire record in this case, and makes the following findings:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes 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 following employees, as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All inspectors, testers and shop clerks in the Material Control, shipping and receiving departments at the Employer's Gadsden, Alabama, plant, but excluding professional, technical, confidential, other clerical and supervisory employees and guards as defined in the Act, and all other employees.

5. On November 26, 1968, the Employer distributed a letter to its employees in the voting unit which listed nine benefits enjoyed by them. On or about November 29, in response to the Employer's letter, the Petitioner mailed a reply letter to the employees, which was received by them on or before December 2, 1968. The Employer's operations were closed from November 28 through December 1 in conjunction with the Thanksgiving holiday and ensuing weekend, and the contents of the Petitioner's letter did not come to the attention of the Employer until the morning of December 3, the date of the election. The Petitioner's letter to the employees contained, *inter alia*, the following paragraph:

> The company tells you about the benefits they have in effect for you, example, S.U.B., Pensions, Insurance, Vacations, Holidays, and all the other reasons they tell you why you do not need a union. Remember all of these benefits were first negotiated by the union and won at the bargaining table and the benefits the company wants to put in effect for you they do but they do not have to and they can take them away from you just as quick. . . .

Upon investigation, the Regional Director found that five of the nine listed benefits were enjoyed by the salaried employees in some form prior to the advent of the Petitioner as the collective-bargaining representative of the Employer's production and maintenance employees in November 1948. In addition, the Regional Director found that two of the nine listed benefits are not mentioned in the Petitioner's contract and do not apply to the production and maintenance force, and that the scope and coverage of several of the listed benefits for salaried personnel are more favorable than their counterparts applicable to the employees covered by the Petitioner's contract. Accordingly, the Regional Director found, and we agree, that the Petitioner's assertion that all the listed benefits were first negotiated by the Union and won at the bargaining table, was patently false.

Notwithstanding his finding as to the untruth of the Petitioner's assertion, the Regional Director concluded that the subject of the misrepresentation was generally susceptible to employee evaluation as to its truth, significance, and import. To buttress this conclusion the Regional Director found that the employees were aware that they had not been represented by the Petitioner in the past; that in the past the Employer had made available several

brochures and pamphlets explaining various aspects of the salaried benefit program; that the salaried personnel *presumably* had access to copies of the Petitioner's contract; and that on or about November 18, 1968, the Employer disseminated to its salaried personnel a handbill which touted the superiority of salaried employee benefits over those provided in the Petitioner's contract and gave specific examples of four areas where benefits to salaried employees were superior to those provided to employees covered by the contract. In the opinion of the Regional Director these factors required the conclusion that the salaried employees were apprised of most of the superior aspects of their benefit program as compared with the Petitioner's contract benefits.

We disagree with the Regional Director's conclusion. The Petitioner's assertion was a substantial departure from the truth as to a matter of the utmost concern to the salaried employees, and it was distributed at a time which precluded the Employer from making an effective reply. The misrepresentation concerned a matter within the intimate and exclusive knowledge of the Petitioner. Contrary to the Regional Director, the record does not warrant the conclusion that the salaried employees possessed sufficient independent knowledge to assess the lack of truth in the Petitioner's assertion. There is no evidence in the record to support the presumption that salaried employees had access to the Petitioner's contract, but even if the presumption were supported, a review of the contents of the contract would not serve to rebut the Petitioner's assertion that *all* the benefits enjoyed by the salaried employees were *first* negotiated by the Petitioner and won at the bargaining table. Similarly, the access of the employees to the pamphlets previously distributed by the Employer and to the contents of the Employer's letter of November 18, which concerned only four rather than all the benefits enjoyed by the salaried employees, would not place the employees in a position adequately to assess the Petitioner's claim that all of the benefits they enjoyed originated, *ab initio*, through the collective-bargaining efforts of the Petitioner. Accordingly, we shall set the election aside and direct that a new election be held.

ORDER

It is hereby ordered that the election previously conducted herein on December 3, 1968, be, and it hereby is, set aside.

[Direction of Election[1] omitted from publication.]

[1] In 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, decided April 23, 1969 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 10 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