

**Champion Farm Division of Koehring Company,
Employer-Petitioner and International Union,
United Automobile, Aerospace and Agricultural
Implement Workers of America (UAW). Case
16-RM-419**

October 4, 1971

DECISION AND DIRECTION

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND JENKINS

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties and approved by the Regional Director for Region 16 on May 27, 1970, an election by secret ballot was conducted in the above case on June 9, 1970. Upon the conclusion of the election a tally of ballots was furnished the parties in accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended. The tally of ballots shows that 27 ballots were cast, of which 11 were against, and 9 were for, the Union, and 7 were challenged. The challenged ballots were sufficient in number to affect the outcome of the election. Thereafter, the Union filed timely objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, the Acting Regional Director conducted an investigation and thereafter, on November 4, 1970, issued his Report on Challenged Ballots and Objections to Election in which he recommended that the objections be overruled and that challenges to the ballots of Letizie, Sharpnack, and Flynn be sustained and that the challenges of Anderson, Collier, Nelson, and Durkee be overruled. Thereafter, the Union filed timely exceptions to the Acting Regional Director's report and a supporting brief. Subsequently, the Board, on January 25, 1971, issued an unpublished Order directing Hearing on the Union's Objection 1 and the issues pertaining to the seven challenged ballots.

Following such hearing before Hearing Officer Thomas P. Sheridan, the Hearing Officer issued his Report on Objections and Challenges on May 18, 1971, in which he approved the parties' stipulation agreeing to the withdrawal of the Union's objection and its challenge to Collier, as well as the parties' agreement that Anderson was ineligible and that the challenge to his ballot should be sustained. The Hearing Officer further recommended that the challenge to the ballot of Letizie be sustained and that the challenges to the ballots of Durkee, Flynn,

Nelson, and Sharpnack be overruled. The Employer thereafter filed exceptions, limited to the eligibility of Flynn and Sharpnack, predicated on the list of 1971.

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 reviewed the rulings of the Hearing Officer made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. On the entire record in this case, the Board finds:

1. The Employer-Petitioner 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 Union 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. In accordance with the stipulation of the parties, 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 of the Employer's Koehring Farm Division, Champion Operations plant, Sand Springs, Oklahoma, excluding office clerical employees, guards, watchmen and supervisors, as defined in the Act.

The Board has considered the Hearing Officer's report, the Employer's exceptions, and the entire record in this case and hereby adopts the findings, conclusions, and recommendations of the Hearing Officer.¹ Contrary to our dissenting colleague and in agreement with the hearing officer, we find that employees Flynn and Sharpnack had a reasonable expectancy of future employment on the date of the election, June 9, 1970. These employees were allegedly discharged by the Employer in violation of Section 8(a)(3). Pursuant to an informal settlement agreement of May 27, 1970, Flynn was placed 10th and Sharpnack 14th on a preferential hiring list. The Employer's next busy season was between January and April 1971. We believe Flynn and Sharpnack could reasonably have expected to be recalled during this period. While the fact of Flynn's actual recall in February is not probative of his chances in May, given his legal right to preferential treatment, normal

Hearing Officer's findings that Floyd Durkee and Terry Nelson are eligible, and Carmine Letizie ineligible, to vote

¹ We accept the parties' stipulation that Union's Objection 1 be withdrawn and that Gary Collier is eligible, and John Anderson ineligible, to vote. We also adopt *pro forma*, in the absence of exceptions thereto, the

turnover, and production needs, no great skill in prophecy is required to fairly predict this result.

Accordingly, we shall direct that the Regional Director for Region 16 open and count the ballots of Collier, Durkee, Nelson, Flynn, and Sharpnack.

DIRECTION

It is hereby directed that the Regional Director for Region 16 shall, pursuant to the Rules and Regulations of the Board, within 10 days from the date of this Direction, open and count the ballots of Collier, Durkee, Nelson, Flynn, and Sharpnack.

CHAIRMAN MILLER, dissenting in part:

I dissent from my colleagues' findings that employees Flynn and Sharpnack were eligible voters. The Acting Regional Director properly found, in his original decision, that they had no reasonable expectancy of recall in the near future as of the election date since they were number 10 and 14, respectively, on the welders' seniority recall list, and

the Company's business situation at that time indicated no probability of a need for more than two welders.

The hearing (which, in my view, was improvidently directed herein) has adduced no facts requiring a different decision. The fact that one of the two employees was recalled 8 months after the election when six employees with more seniority refused recall is clearly a fortuitous circumstance which could not reasonably have been foreseen at the relevant time for a determination herein. If we are to review eligibility determinations on the basis of this kind of wisdom inspired by hindsight, we will need to have Regional Directors and Board Members with far greater prophetic talents than I, at least, possess. We are also, in my view, thus inviting protracted postelection procedures in all of these proceedings, so that a party challenging the "reasonable expectancy" ruling of a Regional Director may have the opportunity to see whether subsequent unforeseeable events may prove his determination, however reasonable at the time, to have inaccurately read the future.