

**A. Brandt Company, Inc. and Chauffeurs, Teamsters and Helpers Local Union No. 47, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Cross-Petitioner. Case 16-RC-5850**

September 29, 1972

**DECISION ON REVIEW AND  
CERTIFICATION OF REPRESENTATIVE**

BY CHAIRMAN MILLER AND MEMBERS FANNING AND  
PENELLO

On April 21, 1972, the Regional Director for Region 16 issued a Second Supplemental Decision and Order in the above-entitled proceeding, in which he bypassed Objections 1 and 2, sustained Objection 3, set aside the election hereinbefore conducted, and directed that a second election be held.<sup>1</sup> Thereafter, in accordance with the National Labor Relations Board Rules and Regulations, the Cross-Petitioner filed a timely request for review of the Regional Director's Second Supplemental Decision and Order on the ground that in sustaining Objection 3 he departed from precedent; and the Employer filed a request for review on the ground that he should have ruled on Objections 1 and 2.

By telegraphic order dated May 19, 1972, the National Labor Relations Board granted the Cross-Petitioner's request for review and remanded the case to the Regional Director, directing that he investigate and rule on Objections 1 and 2.

On June 15, 1972, the Regional Director issued a Third Supplemental Decision in which he overruled Objections 1 and 2. Thereafter, the Employer filed a timely request for review thereof on the grounds that in overruling the objections the Regional Director departed from precedent.

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

The Board concluded that the Employer's request for review of the Regional Director's Third Supplemental Decision raises no substantial issues warranting review. It is, accordingly, hereby denied.<sup>2</sup> The Board has considered the entire record in this case with respect to the issues relating to Objection 3,

<sup>1</sup> The tally of ballots for the election held on March 14, 1972, showed that of approximately 536 eligible voters, 522 cast valid ballots, of which 304 were for and 193 against the Cross-Petitioner. There were 2 void ballots and 25 challenged ballots, a number insufficient to affect the results.

<sup>2</sup> Chairman Miller dissented from denial of review of Objection 2, involving the injection of racial appeals during the election campaign, and accordingly dissents from the certification of the Petitioner. However he joins his colleagues in overruling Objection 3.

under review, and makes the following findings:

Objection 3 alleged that the Cross-Petitioner interfered with the election by reproducing the Regional Director's Supplemental Decision and Order and publishing untruthful notations thereon creating the impression that the Board favored and supported the Cross-Petitioner.

The Regional Director found that Joe Allgood, an organizer for the Cross-Petitioner, a week before the election distributed to employees a reproduction of the Regional Director's Supplemental Decision and Order containing considerable underlining and marginal comment.<sup>3</sup> With respect to the comment on page 3 of the attached reproduction, that "The Government would not have ordered this election if it had not been for the Teamsters Union! *Vote Yes,*" the Regional Director stated that it was susceptible of various interpretations, one of which was that the "Government" is for "the Teamsters Union"; and he concluded that the insertion of such partisan message on a reproduction of his decision was analogous to the use of a portion of the Board's official notice of election for partisan messages, found objectionable in *Rebmar, Inc.*, 173 NLRB 1434.

The Cross-Petitioner contends that *Rebmar* is distinguishable as here, unlike the situation in that case, the underlinings of portions of the reproduced decision and the marginal comments were obviously not part of the decision itself. We agree.

In our opinion, the marginal comments and underlinings on the copy of the Regional Director's Supplemental Decision distributed by Allgood could not reasonably be construed by the employees as part of the Regional Director's decision but were readily identifiable by them as partisan comment emanating from the Cross-Petitioner as to the import of that decision in relation to the election campaign. Moreover, to the extent that the Cross-Petitioner's comments may have misrepresented the facts, inasmuch as the document was circulated among employees a week before the election, the Employer had ample time to respond. In the circumstances, we conclude that the disputed propaganda did not impair the voters' free choice in the election.<sup>4</sup> Objection 3 is therefore hereby overruled.

Accordingly, as the Employer's objections have

<sup>3</sup> Attached hereto as an Appendix is a copy of the Regional Director's Supplemental Decision indicating the parts which were underlined (herein italicized) in the copies distributed by Allgood. The text of the marginal comments, although typewritten and bracketed in the attached copy for ease of reproduction herein, was clearly discernible as hand printed in the copies distributed. Also, other aspects of the marginal comments, such as the variations in the size and position of the lettered comments, and the configuration of the arrows leading from some of the comments to underlined portions of the text of the decision, made it clear that they were added comment and not a part of the decision itself.

<sup>4</sup> See *Hollywood Ceramics Company, Inc.*, 140 NLRB 221; see also *Heintz Division, Kelsey-Hayes Company*, 126 NLRB 151.

been overruled, and as the tally of ballots shows that the Cross-Petitioner has received a majority of the valid ballots cast in the election, we shall certify it as the exclusive bargaining representative of the employees in the appropriate unit.

### CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Chauffeurs, Teamsters and Helpers Local Union No. 47, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit found appropriate herein for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

### APPENDIX

#### [HERE IS THE TRUTH!]

[Decision and Order sent to the Union and the Company. This proves the Company and George Brandt and Bill Burke have been lying to the employees.]

### SUPPLEMENTAL DECISION AND ORDER

On January 31, 1972, a Decision and Direction of Election was issued in the above matter. *Thereafter the Employer requested an investigation between the relationship of the Petitioner, International Skilled Workers of America, herein called Skilled Workers, and Chauffeurs, Teamsters and Helpers Local Union No. 47, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Cross Petitioner, [Company stops the employees election.] alleging in its letters of February 12 and 15, 1972, to the Regional Director that there was collusion and fraud being practiced between the Skilled Workers and the Cross Petitioner. An investigation was made. The Skilled Workers requested permission to withdraw from the ballot which request we are granting in this Order along with a dismissal of their name from future proceedings. The Skilled Workers openly announced [Proves Union has been truthful.] their support for the Cross Petitioner. The parties were then advised by a letter from the Regional Director on February 25, 1972, that the Intervenor had sought to become a Cross Petitioner and was*

being required to make a substantial showing of interest of 30% in order to qualify as a cross petitioner. We have made an investigation of the showing of interest and find that the Cross Petitioner has made an adequate showing of interest. *By letter of February 29, 1972, the Employer objected to our granting any additional time to the Cross [Proves Company has been lying.] Petitioner for the making of a showing of interest and to any cards improperly dated and refers to certain manual sections pertaining to showing of interest. We have now conducted our investigation to a point that we are satisfied that there is no collusion or fraud on [Proves Company has been lying.] the part of the Cross Petitioner from appearing on the Ballot. We are also satisfied that the Cross Petitioner has made an adequate showing of interest which matter is not a subject of litigation in this proceeding. O. D. Jennings & Company, 68 NLRB 516. The results of the Regional Director's investigation into the allegations of fraud will be answered administratively by letter. We are satisfied that the Cross Petitioner's showing of interest is substantial and is timely.*

Therefore, it is hereby ordered that International Skilled Workers of America be, and the same hereby is, dismissed from these proceedings with prejudice to said International Skilled Workers of America filing a new petition within six months unless good cause is shown why a new petition filed prior to the expiration of such period should be entertained; and it is further ordered that the name of International Skilled Workers of America be, and the same hereby is, removed from the ballot.

It is hereby ordered that the Cross Petitioner, Chauffeurs, Teamsters and Helpers Local Union No. 47, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America be, and the same hereby is, accepted as the Cross Petitioner in these proceedings.

It is finally ordered that the Decision and Direction of Election issued on January 31, 1972, be, and the same hereby is, implemented in all respects except as to the dismissal, amendment and changes made herein; that the election will be conducted by the undersigned Regional Director among the employees in the unit found appropriate in the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations; and that the Employer's motions to dismiss the petition be, and the same hereby are, denied.

[The Government would not have ordered this election if it had not been for the TEAMSTERS UNION!]

[VOTE YES]