

**Indiana Rock Wool Division Susquehanna Corp. and
Retail, Wholesale and Department Store Union,
AFL-CIO, Petitioner. Case 25-RC-5033**

January 9, 1973

**DECISION AND CERTIFICATION OF
REPRESENTATIVE**

BY CHAIRMAN MILLER AND MEMBERS
FANNING AND JENKINS

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties on June 8, 1972, an election by secret ballot was conducted on July 7, 1972, under the direction and supervision of the Regional Director for Region 25, among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 82 eligible voters, 45 cast valid ballots for, and 30 against, Petitioner, 1 cast a void ballot, and 2 ballots were challenged. Thereafter, the Employer filed timely objections to the election.

In accordance with Section 102.69, Series 8, as amended, of the National Labor Relations Board Rules and Regulations, the Regional Director caused an investigation to be conducted with regard to the objections and, on August 31, 1972, issued and duly served upon the parties his Report on Objections in which he recommended that the Employer's objections be overruled in their entirety and that an appropriate Certification of Representative be issued. Thereafter, the Employer filed exceptions combined with a brief to the Regional Director's report.

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.

Upon the entire record in this proceeding, the Board finds:

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. Petitioner is a labor organization 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 Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees of the Employer 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 employed by the Employer at its Alexandria, Indiana, facility including all assistant foremen, shipping and receiving employees, all construction employees, and all janitors, but excluding all office clerical employees, all professional employees, all guards, and all supervisors as defined in the Act.

5. The Board has considered the Employer's objections, the Regional Director's report, the Employer's exceptions and brief, and the entire record in this proceeding, and hereby adopts the Regional Director's findings and recommendations except as modified herein.

While we agree with the Regional Director's recommendations that the Employer's objections be overruled in their entirety, we do not agree with the grounds on which he relied in overruling Objection [A]. That objection alleges, in substance, that Petitioner campaigned on the basis of the untruthful statement that the Employer had discharged Ballard and Gear several months prior to the election because of their union activities, and then misrepresented that it had filed unfair labor practice charges with the Board in connection therewith when, in fact, it had not yet done so,¹ that the Employer was precluded from responding thereto because it did not learn thereof until the day of the election, and that such conduct "demonstrated a union animus so strong as to make any show of union sympathy or activities a basis for discharge . . . [and] obviously made a good case for the employees' need for protection."

The Employer sought to support this objection through seven employee witnesses, one of whom claimed that the alleged untruths pertaining to Ballard were stated by Petitioner's representative at a union meeting held 1 or 2 weeks prior to the election, that "There wasn't anything said about Ballard after that that I can remember," and that, in his opinion, Ballard nevertheless had been discharged because of absenteeism and not because of union activity. None of the remaining six witnesses, however, supported those accusations, and their statements are completely void of any mention of the alleged filing of unfair labor practice charges. A composite of their statements shows, instead, that while the *subject* of Ballard's termination may have been brought up at that meeting by Petitioner, which is questionable, the speculative *reasons* for his termination (union activity, drunkenness, absenteeism, poor work record) were brought up and discussed only by and among the employees, and that Petitioner's representative assured the employees that Petitioner would try to get

¹ The record shows that Petitioner filed 8(a)(3) charges in Case 25-CA-5053 on the day of the election, that it subsequently withdrew those

charges, and that the Regional Director approved the withdrawal on the day he issued his report.

Ballard reinstated if, indeed, he was discharged because of his union activity, adding that "this isn't the main issue right now." In addition, there is no evidence that the matter of, or the alleged reason for, Ballard's discharge was thereafter mentioned, pursued, or campaigned upon, by Petitioner. Further, there is not a scintilla of evidence from any source that the matter of, or the reason for, Gear's departure from the Employer ever was mentioned by Petitioner, or anyone else, during the preelection campaign.

Assuming *arguendo* that the alleged untruths are attributable to Petitioner, we cannot, on this record, consign to the employees the inability to recognize either that Petitioner was not in a position to make any factual statements regarding the reason for Ballard's termination, or that it was not thereby engaging in a type of campaign puffery which the employees were capable of evaluating. Nor can we find, further assuming that Petitioner misrepresented that it had filed unfair labor practice charges, that such assertion constitutes a material misrepresentation, whether considered separately or in conjunction with the alleged discharge statement. Such a remark would neither abuse the Board's processes nor enhance the employees "need for [Petitioner's] protection" since the protection of the Act is available to all, and anyone may file a charge. Moreover, such a remark could not conceivably interfere with the employees' free choice.

The Employer has presented no evidence to support its contention that the timing of Petitioner's

filing and withdrawal of the charges indicates that Petitioner thereby "used the Federal process, as a campaign gimmick." In addition, the Employer has presented no evidence whatsoever to sustain the innuendo contained in its exceptions to the effect that the Regional Director connived with Petitioner to subvert the Board's processes for Petitioner's advantage because, in the Employer's *underlined* words, "It is important that on [the day he issued his Report] the Regional Director accepted the Union's withdrawal of those charges and closed that case." Accordingly, we shall overrule the objections in their entirety.

Therefore, as the tally of ballots shows that Petitioner has received a majority of the valid votes cast, we shall certify it as the collective-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 Retail, Wholesale and Department Store Union, AFL-CIO, 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.