

H & L Distributing Company and Sales Drivers, Food Processors, Warehousemen and Helpers Union Local No. 952, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 21-RM-1588

September 25, 1973

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN MILLER AND MEMBERS FANNING AND KENNEDY

Pursuant to a Stipulation for Certification Upon Consent Election approved on April 18, 1973, an election by secret ballot was conducted on June 5, 1973, under the direction and supervision of the Regional Director for Region 21, among the employees in the stipulated unit. At the conclusions of the election, the parties were furnished with a tally of ballots which showed that of approximately 10 eligible voters, 10 cast ballots, of which 5 were for, and 5 against, the Petitioner. There were no challenged or void ballots. Thereafter, the Union filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations Series 8, as amended, the Regional Director conducted an investigation and, on July 13, 1973, issued and duly served upon the parties his Report on Objections, in which he recommended that objections be overruled and a Certification of Results of Election be issued. Thereafter, the Union filed timely exceptions limited solely to the Regional Director's findings and recommendation on Objection 1.

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 case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the pur-

poses of the Act to assert jurisdiction herein.

2. The Petitioner 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 8(c)(1) and Section 2(6) and (7) of the Act.

4. The parties agree, 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 salesmen and merchandisers, excluding all other employees employed by the Employer at its place of business at 8405 Artesia, Buena Park, California, including drivers, warehousemen, clerical employers, guards, professional employees and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report on objections, and the Union's exceptions thereto, and hereby adopts the Regional Director's findings and recommendations.¹

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots has not been cast for Sales Drivers, Food Processors, Warehousemen and Helpers Union Local No. 952, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and that said labor organization is not the exclusive representative of all the employees in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

¹ In the absence of an exception to the Regional Director's ruling on Objection 2, the Board adopts that ruling *pro forma*. With respect to Objection 1, the Regional Director ruled that the Union's inability to obtain an observer at the election was insufficient ground to empower the Board agent to cast challenges on the Union's behalf, and that his failure to do so was itself insufficient ground to warrant setting aside the election. We adopt the Regional Director's conclusion, but note there is no evidence that the Union, faced with an inability to obtain its own observer, presented facts to the Board agent sufficient to give him reason to believe that the prospective voters were, in fact, ineligible. Had the Union done so, the Board agent would not have been precluded from challenging these individuals and, indeed, may have been under a duty to do so.