

**McCormick Lumber Co., Inc. and Coal, Ice, Building Material, Supply Drivers, Riggers, Heavy Haulers, Warehousemen and Helpers, Local Union No. 716, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner.** Case 25-RC-5238

October 10, 1973

DECISION, ORDER, AND DIRECTION

BY CHAIRMAN MILLER AND MEMBERS FANNING  
AND PENELLO

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted in the above-entitled proceeding on February 28, 1973, under the direction and supervision of the Regional Director for Region 25 of the National Labor Relations Board. Upon the conclusion of the election, a tally of ballots was furnished the parties in accordance with the Board's Rules and Regulations, Series 8, as amended.

The tally of ballots shows that there were approximately 23 eligible voters and that 21 ballots were cast, of which 10 were for Petitioner' 10 against the Petitioner, and 1 ballot was challenged. On March 5, 1973, the Petitioner filed timely objections to the conduct of the election.

Inasmuch as the challenged ballot is sufficient to affect the results of the election, the Acting Regional Director, in accordance with the Board's Rules and Regulations, as amended, conducted an investigation of the challenged ballot. The Acting Regional Director also investigated the Petitioner's objection and, thereafter, on March 16, 1973, issued and served on the parties his report on objections to conduct of election, challenged ballot and recommendations to the Board. In his report, the Acting Regional Director concluded and recommended that the challenge to the ballot of Kelly Van Arsdale be overruled and that his ballot should be opened and counted. The Acting Regional Director also found merit in the Petitioner's objection and recommended that one of the "No" ballots which was otherwise blank should be voided and that the tally of ballots should be accordingly revised. Thereafter, the Employer filed exceptions to the Acting 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 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 labor organization involved 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 parties have 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 in the Employer's Industrial Division at its 702 North Tibbs Avenue, Indianapolis, Indiana, establishment, including all truck drivers and group leaders; *but excluding* all office clerical employees, professional employees, guards, and supervisors as defined in the Act, and all other employees.

5. The Board has considered the Acting Regional Director's report, the Employer's exceptions thereto, and the entire record in this case, and hereby adopts the Acting Regional Director's findings, conclusions, and recommendations with the modifications set forth below.

We agree with the Acting Regional Director's finding that Kelly Van Arsdale was an eligible voter and his recommendation that the challenge to Van Arsdale's ballot be overruled and his vote counted. We also agree with the Acting Regional Director's determination that the blank "No" ballot should not have been counted as a valid vote by the Board agent. Such ballots are deemed void under our established policy.<sup>1</sup>

Although we accept the Acting Regional Director's disposition of the two ballots in issue, we do not agree with his conclusion that there is no justification for the holding of a second election. In our opinion, the effects which flow from our determination that the blank ballot is void may, in the circumstances of this case, require that the election be set aside and a new election conducted. Thus, the revised tally of ballots in the election now shows that 10 votes have been cast for, and 9 votes have been cast against, the Petitioner, with 1 yet to be tallied. If this latter vote should be against the Petitioner, the result would be a 10-10 tie vote and our ruling on the blank ballot would be the decisive factor in determining the outcome of the election. At the same time, we are cognizant of the fact that the evidence in this case indicates that the blank

<sup>1</sup> *Knapp-Sherrill Company*, 171 NLRB 1547.

ballot was inadvertently handed to the voter by the Board agent and, hence, it would appear that the disenfranchisement of the voter was through no fault of his own. In such circumstances, we believe it would be unjust to permit the election to stand if its outcome would be affected by the disenfranchisement of an eligible voter.

Accordingly, we shall direct that the challenged ballot be opened and counted and if the Petitioner then has a majority of the valid votes cast, and the blank ballot is not determinative, that Petitioner be certified as the bargaining representative for the employees in the unit found appropriate herein. However, if the revised tally of ballots shows that the Petitioner has not received a majority of the valid votes cast, or if the blank ballot is determinative, we shall order that the election be set aside and direct that a new election be conducted.

## ORDER

It is hereby ordered that the Regional Director for Region 25 shall, pursuant to the Board's Rules and Regulations, within 10 days from the date of the Order, open and count the ballot of Kelly Van Arsdale and, thereafter, prepare and cause to be served on the parties a revised tally of ballots, including therein the count of said ballot. In the event that the revised tally of ballots shows that the Petitioner has received a majority of the valid ballots cast, the Regional Director shall issue the appropriate certification of representative. However, in the event the revised tally of ballots shows that the Petitioner has not received a majority of the valid ballots cast, the following shall be applicable.

IT IS FURTHER ORDERED that the election conducted herein on February 28, 1973, be, and it hereby is, set aside.

[Direction of second election and *Excelsior* footnote omitted from publication.]