

**Western Health Facilities, Inc. and Retail Clerks  
Union Local No. 240, chartered by Retail Clerks  
International Association, AFL-CIO, Petitioner.  
Case 19-RC-6679**

January 2, 1974

**DECISION ON REVIEW, ORDER, AND  
DIRECTION OF SECOND ELECTION**

**BY CHAIRMAN MILLER AND MEMBERS  
FANNING AND KENNEDY**

Pursuant to a Decision and Direction of Election issued by the Regional Director for Region 19 on June 14, 1973, an election by secret ballot was conducted on July 20, 1973, under his direction and supervision, among the employees in the unit found appropriate. Upon conclusion of the balloting, the parties were furnished with a tally of ballots which showed that, of approximately 27 eligible voters, 30 cast ballots, of which 18 were for, and 9 against, the Petitioner, and 3 were challenged. The challenged ballots were insufficient in number to affect the results of the election. Thereafter, the Employer timely filed 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 August 21, 1973, issued his Supplemental Decision and Certification of Representative in which he overruled all the objections. Thereafter, pursuant to Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review and the Petitioner filed a statement in opposition thereto.

On September 24, 1973, the Board, by telegraphic order, granted the request for review. Thereafter, the Employer filed a supporting brief and the Petitioner filed a brief in support of the Regional Director's decision.

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 has considered the entire record in this case with respect to the issues under review, together with the briefs of the parties, and makes the following findings:

The objections relate solely to the contents of the Petitioner's campaign letter with attachment which was mailed to employees on July 9, 1973, as to which the Regional Director found as follows:

The above letter asserts that the attachment thereto is a page from a collective-bargaining

agreement between another nursing home facility and another local of the Retail Clerks. However, the investigation has disclosed that such "page" is, in fact, a synopsis apparently prepared by the President of the Petitioner from the wage schedule of a Retail Clerks standard-form agreement effective in the Minneapolis, Minnesota area. Moreover, examination of the wage rates set forth in the actual agreement from which the synopsis was reproduced reveals that the synopsis contains rather substantial variances from the actual contract rates. While those rates for the first 3 months set forth under "Effective September 1, 1973" in the attachment are accurate, the rates appearing under "2nd-3 months" are actually the rates for an employee who has been employed for a year. Likewise, those rates under "2nd-6 months" are actually the rates after 2 years and the rates listed under "JOURNEYMAN" are the rates for an employee who has been employed for 3 years. Several intervening rates in the actual contract do not appear in the attachment. Additionally, the actual contract has no wage rates "Effective September 1, 1974." The rates set forth in the attachment under that heading appear to be contrived.

The Regional Director concluded that Petitioner's letter with the attachment "had a significant impact on the employees involved, particularly since the contract referred to presumably was within the special knowledge of the Petitioner . . ." In addition, the Regional Director found that the attachment to the letter was a "substantial misstatement of fact" and that, in effect, the actual wage scale had been altered "significantly upward." Moreover, he found the letter was also misleading in identifying the contract wage rates as being from a contract "in another area" when actually from the "distant State of Minnesota."

Notwithstanding the above finding, the Regional Director refused to set aside the election because he concluded that the Employer had sufficient time to make an effective reply and did, in fact, make such a response.

The Employer contends in its request for review that because of the nature of the Petitioner's misstatements of fact and its misleading reference to a facility "in another area," as found by the Regional Director, it did not have adequate time before the election to make an effective reply to the Petitioner's material misrepresentations. In the circumstances herein, we agree. Thus, the Employer became aware of Petitioner's letter on July 13, 1973, but was unable to obtain a copy of the letter until July 16, 4 days prior to the election. On that date, the Employer

mailed a letter to its employees advising them that the convalescent facility named by Petitioner did not exist in the State of Washington and, further, that the alleged wage chart appeared to be typed on the Petitioner's typewriter.

Although the Employer's July 16 response to Petitioner's letter and attachment suggested some possible impropriety by Petitioner, such a response without specific knowledge of the extent of the material misrepresentations reflected in Petitioner's attachment precluded an effective reply to the serious misrepresentations here. The Employer asserts it did not discover until after the election that the "contract" referred to by Petitioner was located in the State of Minnesota. Moreover, as found by the Regional Director, the purported contract page was no more than a synopsis containing "substantial variances" of a standard-form agreement.

In these circumstances, where the Petitioner's distribution, as in *Hollywood Ceramics Company, Inc.*,<sup>1</sup> concerned an erroneous statement of wage rates, a subject of "utmost concern to the employ-

ees," and where the location of the facility referred to by Petitioner was not disclosed, and where the wage attachment was falsely made to appear as a copy of an existing contract, there was little, if any, possibility that the Employer or the employees could have determined the falsity of Petitioner's distribution prior to the election so as to properly evaluate it and thus neutralize its impact on the election. Therefore, we find that there was not ample time prior to the election for the Employer effectively to reply to the Petitioner's misrepresentation.<sup>2</sup>

Accordingly, we hereby overrule the decision of the Regional Director and set aside the election, and we shall direct that a second election be conducted.

#### ORDER

It is hereby ordered that the election conducted herein on July 20, 1973, be, and it hereby is, set aside. [Direction of Election and *Excelsior* footnote omitted from publication.]

<sup>1</sup> 140 NLRB 221.

<sup>2</sup> *Zarn, Inc.*, 170 NLRB 1135.