

**B & B Better Baked Foods, Inc. and Amalgamated Meatcutters and Butcher Workmen of North America, Local 34, AFL-CIO, Petitioner.** Case 3-RC-5810

January 17, 1974

DECISION, ORDER, AND DIRECTION  
OF SECOND ELECTION

BY CHAIRMAN MILLER AND MEMBERS JENKINS  
AND KENNEDY

Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director for Region 3 on September 4, 1973, an election by secret ballot was conducted on September 11, 1973, among the employees in the unit described below. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 70 eligible voters, 50 cast ballots, of which 20 were for the Petitioner, 19 were against, and 11 were challenged. The challenged ballots were sufficient in number to affect the results of the election. Thereafter, the Petitioner filed timely objections to the conduct of the election and 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 October 30, 1973, issued and duly served on the parties his Report on Objections and Challenges. The Petitioner filed timely exceptions 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. 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 Sections 9(c)(1) and 2(6) and (7) of the Act.
4. The parties stipulated, and we find, that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of the Act:

All production and maintenance employees employed by the Employer at 124 West Main Street,

Sherman, New York, excluding all office clerical employees, professional employees, drivers, guards and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report and the Petitioner's exceptions thereto, and finds merit in certain of the Petitioner's exceptions.

There were two voting sessions scheduled on the day of election at the Employer's plant. The first voting session was to begin at 7 a.m., following a preelection conference at 6:30 a.m., and end at 8 a.m., and the second voting session was to begin at 3:30 p.m. and end at 4 p.m. The Regional Director found that the Board agent charged with conducting the voting sessions arrived at 7:40 a.m., so late as to possibly disenfranchise at least two employees whose shifts ended at 7 a.m. The Regional Director therefore recommended that if the ballots of those employees proved determinative after counting the ballots to which challenges were overruled, the election should be set aside and a rerun election held. The Petitioner contends that the late arrival of the Board agent so disturbed the laboratory conditions necessary for the conduct of the election as to require that the election be set aside and a second election directed. We agree.

As we noted in *Kerona Plastics Extrusion Company*, 196 NLRB 1120, it is frequently impossible to determine to what extent a substantial departure by the Board agent from scheduled election voting hours has affected the outcome of the ensuing election. In this case, the votes of those possibly excluded from voting could have been determinative. Moreover, the ensuing votes may have been affected by the conduct of the Board agent. To preclude such occurrences as this, which cast doubt on the results of elections which we are responsible for certifying, and to carry out our responsibility for assuring properly conducted elections<sup>1</sup> and maintaining our own standards, we see no alternative but to set aside this election and direct a second election. *Kerona Plastics, supra*.

In view of our disposition as to this objection, we need not reach the merits of the Petitioner's remaining exceptions to the Regional Director's report.

ORDER

It is hereby ordered that the election held on September 11, 1973, be, and it hereby is, set aside. [Direction of Second Election and *Excelsior* footnote omitted from publication.]

<sup>1</sup> *New York Telephone Co.*, 109 NLRB 788, 790