

**Alley Construction Company, Inc. and Highway Construction Workers Local No. 78, affiliated with the Christian Labor Association of the United States of America, Petitioner, and International Union of Operating Engineers, Local No. 49, AFL-CIO, Petitioner.** Cases 18-RC-9631 and 18-RC-9644

May 29, 1974

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

**BY MEMBERS JENKINS, KENNEDY, AND PENELLO**

Pursuant to a Stipulation for Certification Upon Consent Election executed on July 23, 1973, elections by secret ballot were conducted on August 16, 1973, under the direction and supervision of the Regional Director for Region 18 among the employees in the appropriate unit. Upon the conclusion of the elections, tallies of ballots were furnished the parties in accordance with the Rules and Regulations of the Board.

The tally of ballots in voting group 1 shows that there were approximately 39 eligible voters and that 44 ballots were cast, of which 10 were for the International Union of Operating Engineers, Local No. 49, AFL-CIO, 26 were for Highway Construction Workers Local No. 78, affiliated with the Christian Labor Association of the United States of America, 1 was against the participating labor organizations, and 7 were challenged.

The tally of ballots in voting group 2 shows that there were approximately 54 eligible voters and that 54 ballots were cast, of which 32 were for Highway Construction Workers Local No. 78, 10 were for International Union of Operating Engineers, Local No. 49, AFL-CIO, 5 were against the participating labor organizations, and 7 were challenged.

In the Stipulation for Certification Upon Consent Election the unit was divided into voting group 1 and voting group 2, and provided that, *inter alia*, in the event that a majority in voting group 1 does not vote for the labor organization seeking to represent them in a separate unit, such group will be combined in a single unit with voting group 2, and the ballots in that group will be pooled with those in voting group 2. Thereafter, International Union of Operating Engineers, Local No. 49, AFL-CIO, herein called Local 49, filed timely objections to conduct affecting the results of the elections.

<sup>1</sup> Local 49's exceptions, in our opinion, raise no material or substantial issue of fact or law which would warrant reversal of the Regional Director's findings and recommendations, or require the holding of a hearing. Contrary to our dissenting colleague, we are of the view that the

In accordance with the National Labor Relations Board Rules and Regulations, the Regional Director conducted an investigation and, on December 17, 1973, issued and duly served upon the parties his Report on Objections, attached hereto, in which he recommended that Local 49's objections be overruled in their entirety. Thereafter, Local 49 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 case, 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 Petitioners are labor organizations 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 9(c)(1) and Section 2(6) and (7) of the Act.
4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*Voting Group 1:* All operators, mechanics, oilers, and greasers employed by the Employer, but excluding laborers and truckdrivers and office clerical employees, guards and supervisors as defined in the Act.

*Voting Group 2:* All employees of the Employer; but excluding employees in voting group 1, office clerical employees, guards and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report, and Local 49's exceptions thereto, and hereby adopts the Regional Director's findings, conclusions, and recommendations.<sup>1</sup>

Accordingly, as the tally shows that the Petitioner Highway Construction Workers Local No. 78, affiliated with the Christian Labor Association of the United States of America, has obtained a majority of the valid ballots cast, we shall certify it as the exclusive bargaining representative of all employees in the following unit which the Board has found under such circumstances to be appropriate:

All employees of the Employer; but excluding

Employer's letter was merely pointing out that based upon a reading of both contracts, the possibility of more employment existed under the CLA contract because of its flexibility

office clerical employees, guards and supervisors as defined in the Act.

### CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Highway Construction Workers Local No. 78, affiliated with the Christian Labor Association of the United States of America 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.

MEMBER JENKINS, dissenting:

Unlike my colleagues, I would direct a new election on the basis of the evidence adduced by the Regional Director in connection with his investigation of Objection 9. This evidence establishes that during the election campaign in which Local 49<sup>2</sup> and the CLA<sup>3</sup> were competing for the right to represent the employees of this Employer, a letter was sent to all employees by the Employer which contained the following statement:

I wish to go on record that I favor the Christian Labor Association, and ask you to vote for it. I believe the contract they have with other construction companies in Minnesota is better all around for both employees and employers than the Local No. 49 contract. It has excellent fringe benefits and provides the company the flexibility we need to be sure that we can keep our employees fully employed.

In my judgment, this statement goes far beyond any legitimate comparison of the Unions' anticipated contractual demands, as evidenced by their respective collective-bargaining agreements. The statement is not only a flat endorsement by the Employer of one of the two competing Unions, but this endorsement is coupled with the dire predication that a vote for the CLA offers the guaranty of continued job security. Of course, such a statement by its very nature leaves the implication that the employees would be endangering their jobs by voting for Local 49, and it thereby destroys the true freedom of choice we both expect and require in our election process. Accordingly, I would find that the Employer's July 27 letter to employees constituted an impermissible interference with the employees' freedom of choice in the election and direct that a new election be conducted.<sup>4</sup>

<sup>3</sup> Highway Construction Workers Local No. 78, affiliated with the Christian Labor Association of the United States of America

<sup>4</sup> The Regional Director's findings and conclusions with respect to certain other of the objections are of a somewhat dubious nature. However, in view of my conclusions with respect to Objection 9, any discussion of the remaining objections would be superfluous.

### REPORT ON OBJECTIONS AND RECOMMENDATION THAT CERTIFICATION OF REPRESENTATIVE ISSUE

Pursuant to petitions filed on July 2, 1973, in Case 18-RC-9631, and on July 9, 1973, in Case 18-RC-9644, and the provisions of a Stipulation for Certification Upon Consent Election approved by the Acting Regional Director on July 23, 1973, an election by secret ballot was conducted under the direction and supervision of the Regional Director on August 16, 1973, among certain employees of the Employer.<sup>1</sup> The results of the election are set forth in

<sup>1</sup> The Stipulation for Certification Upon Consent Election describes the appropriate unit as follows.

*Voting Group 1* All operators, mechanics, oilers, and greasers employed by the Employer, but excluding laborers and truck drivers and office clerical employees, guards and supervisors as defined in the Act

*Voting Group 2* All employees of the Employer; but excluding employees in Voting Group One, office clerical employees, guards and supervisors as defined in the Act.

If a majority of the employees in Voting Group One select the Operating Engineers, the employees in that group shall be taken to have indicated their desire to constitute a separate bargaining unit and a certification of representative will be issued to such labor organization for said unit.

If a majority in Voting Group One does not vote for the labor organization seeking to represent them in a separate unit, such group will be combined in a single unit with Voting Group Two, and the ballots in that group will be pooled with those in Voting Group Two. If the votes are pooled, they are to be tallied in the following manner. The votes for the labor organization seeking a separate unit in Group One shall be counted as valid votes, but neither for nor against the labor organization seeking to represent the more comprehensive unit. All other votes are to be accorded their face value whether for representation by the labor organization seeking the comprehensive group or for no union.

<sup>2</sup> International Union of Operating Engineers, Local No. 49, AFL-CIO.

the tallies of ballots served on the parties on August 17, 1973.<sup>2</sup> The challenged ballots were not sufficient in number to affect the results of the election.

On August 23, 1973, the International Union of Operating Engineers, Local No. 49, AFL-CIO, herein called Local 49, filed timely objections to conduct affecting the results of the election, copies of which were served upon the Employer and Highway Construction Workers Local No. 78, affiliated with the Christian Labor Association of the United States of America, herein called the CLA.

Pursuant to Section 102.69 of the Rules and Regulations of the National Labor Relations Board, Series 8, as amended, the Regional Director has investigated the objections and hereby reports and recommends as follows:

### Background

The Employer, Alley Construction Company, Inc., a Minnesota corporation with offices in Faribault, Minnesota, is engaged in business as a general contractor in highway and heavy construction. The Employer is owned by Henry Berghuis who is also president. Delwin Berghuis is vice president and secretary of the Employer, and Daryl Berghuis is the Employer's vice president, treasurer, and general manager. Henry and Delwin Berghuis are brothers who together as partners own Berghuis Construction Co., which is located in Alexandria, Minnesota. Daryl Berghuis, son of Henry, oversees the operations of the Employer, Alley Construction Company, Inc.<sup>3</sup>

Between 1956 and April 1972 the employees of Berghuis Construction Co. were represented by the CLA. Thereafter, these employees were represented by three unions jointly, one of which is Local 49.

Since at least 1969, Local 49 represented certain employees of the Employer. In late 1972 the Employer and Local 49 were unable to reach a new collective-bargaining agreement. Thereafter, at irregular intervals, representatives of Local 49 met with Berghuis and attempted to get Berghuis to sign the current Local 49 contract. On about May 30, 1973, Local 49 initiated an organizational drive which led

to its filing of the instant petition in Case 18-RC-9644. In the meantime, the CLA began an organizational drive among the employees of the Employer and filed the petition herein in Case 18-RC-9631.

### The Objections

*Objections 1, 2, 4, and 8:* In its first objection, Local 49 alleges that the Employer and the CLA made repeated promises to employees individually and in groups that if the CLA were selected by the employees there would be more overtime work but if Local 49 were selected there would be no overtime work. In its eighth objection, Local 49 alleges that the Employer promised employees benefits if they voted for the CLA including, but not limited to, promises of improved wages. In its fourth objection, Local 49 alleges that the Employer deliberately tried to confuse pro-Local 49 employees as to voting locations. In its second objection, Local 49 alleges that the Employer actively solicited and electro-neered for and on behalf of the CLA and against Local 49.

The Employer admits talking with employees prior to the election but denies engaging in objectionable conduct.

During the week of August 6 to August 11, 1973, Berghuis talked to most of the employees at their work locations individually or in groups about the election.

One employee states that just before the election Berghuis told him that if his machine broke down with Local 49 the employee would be sent home but with the CLA he would be assigned to another crew; that therefore the employee could make more money under the CLA; and that upon layoff CLA carries the insurance through but with Local 49 you have to continue to pay dues.

Another employee states that during the week before the election he was in the shop and Berghuis showed him the sample ballot. The employee thinks Berghuis pointed to the Local 49 square and remarked, whatever you do, don't vote for this. The employee pointed to the no-union choice and

#### *Voting Group 2*

Approximate number of eligible voters—54

Void ballots—None

Votes cast for Highway Construction Workers Local No 78—32

"Valid"—10

Votes cast against participating labor organization—5

Valid votes counted—47

Challenged ballots—7

Valid votes counted plus challenged ballots—54

<sup>3</sup> All references herein to Berghuis will be to Daryl Berghuis, unless otherwise identified

<sup>2</sup> *Voting Group 1*

Approximate number of eligible voters—39

Void ballots—None

Votes cast for International Union of Operating Engineers, Local No 49, AFL-CIO—10

Votes cast for Highway Construction Workers Local No 78—26

Votes cast against participating labor organizations—1

Valid votes counted—37

Challenged ballots—7

Valid votes counted plus challenged ballots—44

Berghuis said if the employees voted for that, it would come up again next year. The employee said he'd want to join a union because in case of layoff, a union could get him work. Berghuis told the employee not to worry; that the Employer had all kinds of work. Berghuis also told him that in the long run the employee would get more money under the CLA, explaining that the way it is now if a machine breaks down the operator could be assigned to something else; that this is the way it would be done under the CLA; but if the employee were represented by Local 49, if the machine broke down the employee would be sent home. Berghuis said under Local 49, he would have to pay mechanics top scale even during the winter and would close the shop first; and that during winter CLA scale is dropped. Finally, the employee states that Berghuis said that the CLA was better for all concerned.

A third employee reported that on or about August 10, 1973, Berghuis told him that it was easier to work under the CLA contract than under Local 49's contract; that under Local 49's contract if a machine broke down the operator would be sent home; but that under the CLA contract employees would work on any open job. Berghuis also indicated to this employee that the differences in insurance and dues favored the CLA. Berghuis asked this employee to explain what Berghuis had said to other employees.

Another employee reports that Berghuis talked to him often; that Berghuis told him that he (Berghuis) felt employees would be better off if they went CLA and probably would get more hours based on the present CLA and Local 49 contracts; that employees would probably get more hours of work because Local 49's contract requires overtime after 8 hours a day whereas the CLA contract requires overtime after 40 hours a week. In response to the employee's question, Berghuis indicated that he thought the CLA's wage scale was \$1 an hour less than that of Local 49.

Another employee states that a day or two before the election, Berghuis told him that if machinery broke down, under the Local 49 contract the employee would have to be sent home, but under the CLA contract the employee could be reassigned labor or other work; and that CLA contractors usually had a little better equipment. This employee was told by Berghuis that Berghuis had been told by an operator that under Local 49's health and welfare provisions, quite a few operators run out of hours before the end of the year and that this seldom happened under the CLA contract. Also, Berghuis remarked, in a joking manner, "If you are going to vote 49, don't come." Then Berghuis added, "No, I don't care how you vote; it's none of my business." The employee voted in the election.

A sixth employee states that Berghuis talked to his whole crew at least twice between June 26 and August 1, 1973; that Berghuis asked that the employees support the CLA over Local 49; that Berghuis said if the CLA got in, employees would be able to continue working as laborers when their machines broke down, but employees would be sent home if Local 49 were selected; that although he could not guarantee it, there was a possibility of working more overtime if the CLA got in because the CLA pay scale was 80 cents per hour less than that of Local 49.

A seventh employee states that Berghuis talked to him at least three times before the election; that Berghuis told him that under the Local 49 contract employees were assigned one piece of equipment and if that broke down, employees would be sent home and would not be given a chance to work on other equipment or on the labor crew; that if employees voted for the CLA, under the CLA contract, they could be assigned other machines or to a labor crew or run the water truck and in this manner employees would get their hours in, and that employees would therefore make more money. Berghuis also told this employee that under the CLA, employees pay dues only when working while Local 49 requires dues be paid year around; that Local 49's dues were \$109 a month; and that CLA dues were only 35 cents per hour. Berghuis added that the benefits were better under the CLA contract. Berghuis asked the employee what the employee would rather do, make more money under the CLA or less money under Local 49. The employee indicated the former.

Another employee states that Berghuis talked to him two or three days before the election. Berghuis initiated the conversation remarking, "I imagine you are a 49er." The employee acknowledged he was. Berghuis stated that the facts in the letter sent to employees by Local 49 weren't true; that there were more companies whose employees were represented by the CLA than indicated in the letter; that he felt the CLA was a better union for the Employer's operation; that he thought the coverage under the insurance was year around under the CLA and Local 49's plan only covered employees when working; that the CLA insurance costs were less but had better coverage; that there were more companies whose employees were represented by the CLA than by Local 49; that the CLA pay scale was a little bit less than Local 49's, but that this would allow employees under the CLA contract to work Saturdays as make-up because overtime didn't have to be paid. Berghuis stated that if your machine broke down under the CLA, employees could be switched and work as laborers and wouldn't have to be sent home; that under the Local 49, employees wouldn't work as

laborers because of the higher costs and that was why employees would have to be sent home; that he would have to pay operators' wages and that was why employees never went on labor crews; that under the CLA, employees could be put on labor crews and draw laborers' pay; and that there was the possibility of getting more overtime under the CLA because of the lower pay. Berghuis said if the employee was going to vote CLA to make sure to come and vote but if the employee wasn't going to vote CLA, he didn't have to come and vote. The employee stated that Berghuis wasn't trying to be funny with this remark, but that the employee did vote in the election.

Another employee reports that a few days before the election Berghuis indicated to him that he should vote for the CLA; that if the election went the right way employees could work two 10-hour shifts a day but if the election went the other way, if a machine broke down, the operator would have to go home and wait until it was fixed; that the operator could not do mechanic or laborer work.

Another employee states that a day or two before the election Berghuis told him that the CLA retirement and hospitalization plans were better than Local 49's; that under Local 49, health, welfare, and retirement were paid by the Employer to the Union; that under the CLA this was paid directly to the employees; that Local 49 members told him that retirement was about \$36 a month; that the contents of a letter sent out by Local 49 was a pack of lies; that the CLA had contracts with more employees than indicated on the letter.

Another employee states that a couple of weeks prior to the election and again just before the election Berghuis told him that employees could work when machinery broke down under the CLA but not under Local 49.

Three employees state that on separate occasions before the election it was suggested to them or they were asked by Berghuis to try to get the other employees to vote for the CLA or to tell other employees the benefits of the CLA. One of the employees adds that Berghuis said if the employee wanted to, he could explain to other employees about the CLA, but not to tell the other employees how to vote, but rather tell them to vote any way they wanted to.

Berghuis states that he initiated each conversation by explaining to employees how the election would be conducted; that he told employees that he favored the CLA over Local 49, but that it was their decision and he would try to negotiate with the Union the employees selected; that he had examined each Union's contract and that there were differences in the contracts which he hoped the men understood;

that the CLA did not follow craft lines; that under the CLA contract if machinery broke down the operator could be used on labor crews or help repair the machinery; that Local 49's contract follows craft lines and should a machine be broken down for two or three days the operator could not be used; that his past experience under union contracts was that when he assigned operators to perform laborers' work, the Employer got complaints from the Laborers' Union. Further, Berghuis explained that under the Local 49 contract overtime was required after 8 hours a day while the CLA contract required overtime only after 40 hours a week; that this meant that should weather shut down a job for a day the Employer could make up for lost time with no additional cost under the CLA contract by working longer hours later that week while under Local 49's contract the Employer would be required to pay overtime if he wished to make up for lost time and decided to work more than 8 hours a day. Berghuis states that he told employees that if Local 49 were voted in, he would try to negotiate freedom from those restrictions.

Berghuis adds that he urged employees to make sure they voted; that it was the employees' decision and he would try to negotiate with the Union the employees selected; that it was a secret ballot election and he would not know how they voted and that before employees voted they should hear all sides. Berghuis states he also noted in these conversations that there was a possibility of negotiations within each contract and that the contract would have to be negotiated after the election, but that his past experience with Local 49 did not give him the indication that he could negotiate a contract with Local 49 similar to the CLA contract. Further, Berghuis indicated to employees that he had contracts in his office that were available to them.

Berghuis states that he was questioned about health and welfare and initiation fees and tried to answer these questions based on his reading of the contracts. Berghuis denies telling employees it cost \$109 per month to be a member of Local 49. He states he told an employee who inquired of him that he heard from another employee that Local 49's retirement benefits were bad and that the employee had said he received only about \$40 per month.

Based on all the evidence received during the investigation, I conclude that the preponderance of the evidence supports the Employer's contention that his remarks relating to the advantages of the CLA over Local 49 with respect to the breakdown of equipment and the possibility of increased overtime work and therefore increased earnings were linked to the Employer's adherence to the collective-bargaining agreements of the respective Unions. As above detailed, several employees confirm this. These

remarks do not imply that the Employer would take action in retaliation for its employees' selection of one Union or another. Rather, in my view, they are statements of opinion and prediction of events which might occur, matters which were relevant to the election issues and which the Employer had a right to call to the employees' attention. I find therefore that the Employer's campaigning and expressing of a preference for the CLA were unaccompanied by promises of benefit or threats of reprisal and were, rather, predictions as to the precise effects the Employer believes the choice of a particular Union would have on the operations of the Employer and were phrased on the basis of objective facts to convey to employees the Employer's belief as to the consequences beyond the Employer's control. I conclude therefore that such remarks by the Employer to employees do not exceed the bounds of legitimate campaign propaganda and do not provide a basis for setting aside the election. *Plymouth Shoe Company*, 182 NLRB 1. Cf. *Garden City Fan and Blower Company*, 196 NLRB No. 112; *Bostitch Division of Textron, Inc.*, 176 NLRB 377; *Murphy Body Works, Inc.*, 174 NLRB 824; *T. M. Duche Nut Co., Inc.*, 174 NLRB 457; *Wilmington Heating Service, Inc.*, 173 NLRB 68; *The Mather Company, Fluorotec Division*, 172 NLRB 253; *Trent Tube Company, Subsidiary of Crucible Steel Company of America*, 147 NLRB 538.

Similarly, I find that the other remarks by the Employer pointing out the advantages of the CLA over Local 49 and the Employer's suggestions to employees that they urge other employees to support and vote for the CLA, unaccompanied by promises of benefit, threats of reprisal or other coercive conduct, constitute only the Employer's expression of a preference for one Union over the other which, as above noted, does not provide a basis to set aside the election. *Plymouth Shoe Company, supra*. Cf. *Gary Aircraft Corporation*, 190 NLRB 306.

Finally, the remarks by Berghuis to two employees to the effect that if they were going to vote for Local 49 they shouldn't vote does not provide a basis to set aside the election in view of the facts that one employee states that Berghuis was joking when he made the remark and the other employee did in fact vote in the election and such a remark, even if serious, to a single employee is too isolated and innocuous to justify setting aside the election. Cf. *Garden City Fan and Blower Company, supra*.

Accordingly, the Regional Director concludes that Local 49's Objections 1, 2, 4, and 8 are without merit and recommends that they be overruled.

*Objections 3 and 7:* In its third objection, Local 49 alleges that the Employer and the CLA made deliberately false and unfounded statements that if

Local 49 were selected there would be a strike. In its seventh objection, Local 49 alleges that the CLA made threats and misrepresentations to employees that if they did not vote for the CLA the employees would be discharged or disciplined.

Employee LaVerne Wieberdink talked to several employees about the election. One employee states that Wieberdink talked to him several times prior to the election and specifically on July 29 and 31, 1973; that Wieberdink told him that if he were going to stay working for the Employer he had better vote for the CLA; that this came from the bosses; and that if the bosses found out he voted for Local 49 he would be done.

Another employee states that Wieberdink told him that he would make more money with the CLA; that if employees' equipment broke down under Local 49, the employees would be sent home while with the CLA you would get assigned to another crew.

A third employee states that Wieberdink told him that if he did not vote CLA he could go down the road.

A fourth employee reports that Wieberdink told him that it looked like the CLA would get in and if this employee wanted to keep his job he better vote for the CLA.

Another employee reports that he overheard Wieberdink tell other employees that if Local 49 prevailed in the election, there would be a strike and employees would not have a job.

Local 49 alleges that Wieberdink was an agent of the CLA. The investigation revealed that for several years prior to 1971 employees of Berghuis Construction Co. were represented by the CLA; and that in 1972 the Board certified three unions, one of which was Local 49, as a joint representative of the employees of Berghuis Construction Co. During this time Wieberdink was employed by Berghuis Construction Co. Between 1968 and 1972 when the CLA represented Berghuis' employees, Wieberdink was the CLA shop steward. Following Local 49's certification, Wieberdink maintained his membership in the CLA only until February 1972. There is no evidence that the CLA recruited Wieberdink to campaign on their behalf or that Wieberdink, during the preelection campaign period, was acting in any capacity other than that of an employee.

One employee states that two or three days before the election during the employee's conversation with Berghuis about the advantages of the CLA, Berghuis stated that next spring Local 49 would be off work; that it was then contract time and Local 49 usually struck. The employee denied that this was in response to any question he had asked.

Berghuis states that when he was talking to employees some asked questions about the possibili-

ty of a strike; that he replied that he could not answer that question; that to the best of his knowledge Local 49 had one strike in 1970 and one in 1972; and that he did not know if a contract between Local 49 and the Employer would run out next spring. Berghuis states he added that he did not recall the CLA ever striking in Minnesota.

The investigation did not establish that the Employer made deliberately false or unfounded statements that if Local 49 were selected there would be a strike. Berghuis did note to a few employees Local 49's strike history. However, in my view, these remarks did not exceed the bounds of legitimate campaign propaganda and do not provide a basis for setting aside the election. Cf. *Bostitch Division of Textron, Inc., supra*; *Coors Porcelain Company*, 158 NLRB 1108.

Further, I find that the remarks attributed to Wieberdink did not interfere with the free and reasoned choice of the employees and do not provide a basis for setting aside the election. In support of this finding, I note the absence of evidence that Wieberdink was an agent of the CLA or that the CLA was otherwise responsible for the remarks and I conclude that the remarks were not of such a nature as to create a general atmosphere of fear and reprisal among the voters. *Corriveau & Routhier Cement Block, Inc.*, 171 NLRB 787; *O. K. Van & Storage Company*, 122 NLRB 795.

Accordingly, the Regional Director concludes that Local 49's Objections 3 and 7 are without merit, and recommends that they be overruled.

*Objections 5 and 6:* In its fifth objection Local 49 alleges that the Employer laid off employees because of their support of Local 49. In its sixth objection Local 49 alleges that the layoffs were timed to improperly influence the outcome of the election. The Employer denies that layoffs were discriminatorily motivated or were timed to influence the election.

On August 24, 1973, Local 49 filed an unfair labor practice charge in Case 18-CA-3962 alleging, in part, that the Employer violated Section 8(a)(3) of the Act by laying off employees because of their support of Local 49 and in order to prevent employees from expressing that preference in the pending election. The Regional Director having caused an investigation to be made of such allegations in the unfair labor practice charge and having concluded that the evidence was insufficient to establish that the layoffs were unlawfully motivated or that employees were selected for layoff based on unlawful motivation or that the layoffs were timed in order to influence the outcome of the election, on December 14, 1973, advised the Petitioner in writing that the Regional

Director was refusing to issue complaint with respect to such allegations.

The Board has held that an objection based on alleged discriminatory discharges must be supported by a meritorious unfair labor practice charge. *Texas Meat Packers, Inc.*, 130 NLRB 279.

Accordingly, the Regional Director concludes that Local 49's Objections 5 and 6 are without merit and recommends that they be overruled.

*Objection 9:* In its ninth objection, Local 49 alleges that the Employer distributed a letter to all employees containing promises of economic benefit if employees selected the CLA, approving and implicitly promising to agree to the CLA contract while disapproving and implicitly promising not to agree to the Local 49 contract. The Employer denies the letter constitutes objectionable conduct.

On about July 27, 1973, the Employer sent a letter to its employees. The first four paragraphs explained the mechanics of the election. The fifth paragraph reads as follows:

I wish to go on record that I favor the Christian Labor Association, and ask you to vote for it. I believe the contract they have with other construction companies in Minnesota is better all around for both employees and employers than the Local #49 contract. It has excellent fringe benefits and provides the company the flexibility we need to be sure that we can keep our employees fully employed.

The Regional Director has reviewed the alleged objectionable paragraph set forth above and concludes that the remarks contained therein, considered in isolation and in conjunction with the facts disclosed in the investigation of Objections 1, 2, 4, and 8, do not constitute promises of benefit or otherwise exceed the bounds of legitimate campaign propaganda. Cf. *C. E. Glass, Division of Combustion Engineering, Inc.*, 189 NLRB 496.

Accordingly, the Regional Director concludes that Local 49's Objection 9 is without merit and recommends that it be overruled.

*Objection 10:* In its tenth objection Local 49 alleges that the Employer improperly interrogated employees concerning whether they favored the CLA or Local 49.

One employee states that he and a second employee were in Berghuis' office and Berghuis asked what it looked like; "Which union did the majority favor?" The other employee denies that he was present with the first employee when Berghuis asked this question but states that on another occasion he was in the office with a third employee when Berghuis asked him how he thought the

election was going to go. This employee adds that Berghuis told him he should vote the way he wanted but to be sure to vote.

Berghuis states that after the petitions were filed but before the election, the first two employees came into his office; that they brought up the subject of the election and indicated that they wanted the CLA; that he told them that if they wanted it they ought to work for it; that the employees asked if Berghuis had a feeling on how the election would turn out and Berghuis replied that if anybody knew, it should be the employees. Berghuis denies asking the employees how they felt the election would turn out.

Berghuis states that shortly before the election, the second group of two employees came into his office and told him they were interested in how the election would turn out. Berghuis states he told them they should go out and work on it; that they had a right to tell other employees how they felt, but that was up to them. Berghuis states that the employees wanted to know if Berghuis was going to be angry or upset if they tried to fight for one Union; and that Berghuis told them as far as he was concerned they could go

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<sup>4</sup> Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in

out and work for any Union or neither; that Berghuis' concern was that everybody votes and everybody makes up his own mind.

Even assuming the conversations occurred as related by the employees, I conclude that they do not provide a basis for setting aside the election. I note that the remarks were made in an atmosphere free of coercive conduct, that Berghuis told one of the employees that he should vote the way he wanted, and that in any event such remarks were isolated in nature. Cf. *Garden City Fan and Blower Company, supra*; *Dyersburg Cotton Products, Inc.*, 168 NLRB 1116.

Accordingly, the Regional Director concludes that Local 49's Objection 10 is without merit and recommends that it be overruled.

#### Conclusion and Recommendation

Having recommended that Local 49's objections be overruled in their entirety, the Regional Director further recommends that a Certification of Representative issue.<sup>4</sup>

Washington, D C Exceptions must be received by the Board in Washington by January 2, 1974.