

**Caribe Industrial and Electrical Supply, Inc. and Union Insular de Trabajadores Industriales y Construcciones Electricas, Inc. (UITICE), Petitioner. Case 24-RC-5424**

January 15, 1975

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election, an election by secret ballot was conducted on August 12, 1974, under the direction and supervision of the Regional Director for Region 24, among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished a tally of ballots which showed that, of approximately 33 eligible voters, 31 cast ballots, of which 15 were cast for, and 15 against, the Petitioner. There were no challenged ballots. One ballot was declared void. The voided ballot is sufficient to affect the election results. Thereafter, the Petitioner filed a timely objection to the conduct 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, 1974, issued and duly served on the parties his Report and Recommendation on Objections in which he recommended that the Board sustain the objection and that the Petitioner be certified. Thereafter the Employer timely filed exceptions<sup>1</sup> combined with a brief 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.

<sup>1</sup> In fn 3 of his report, the Regional Director, in apprising the parties of their rights to appeal his findings, conclusions, and recommendations to the Board, erroneously referred the parties to the procedures set forth in Sec. 102.67 of the Board's Rules and Regulations. Thereafter the Employer filed with the Board a document designated as a Petition for Review. In the circumstances we accept this document as exceptions to the Regional Director's report, pursuant to Sec 102.69 of the Board's Rules and Regulations, noting that the document fully complies with the number, timeliness, legibility, service, and statement of service requirements of said section. Moreover, inasmuch as the provisions of Sec. 102.67 substantially restrict the grounds upon which an appeal may be made, unlike the provisions of Sec 102.69, we have carefully examined the document filed by the Employer in light of the entire record in order to determine whether or not the Employer, having been erroneously referred to the procedures of

2. Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of 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 of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees of the Employer at its places of business located at Hato Rey P.R., and at La Muda, Guaynabo, Puerto Rico, including warehouse employees, drivers and their helpers, inside salesmen, shipping and receiving clerks, but excluding all office clerical employees, guards and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report, the Employer's exceptions<sup>2</sup> combined with a brief, and the entire record in this case and makes the following findings:

The Petitioner's objection related to the action of the Board agent in ruling void, during the tabulation of the ballots at the conclusion of the balloting, a ballot described in the Regional Director's report substantially as follows: the voter marked a vertical line in the "No" square and marked a complete "X" in the "Yes" square. The Regional Director concluded that the voter's intent is clearly reflected in the distinct "X" in the "Yes" square, and recommended that the ballot be ruled a valid "Yes" vote.

In its exceptions the Employer contends that the ballot in dispute was properly declared void by the Board agent. The Employer urges in effect that the vertical line in the "No" square constitutes a conflicting mark, which cancels the effect of the clear "X" in the "Yes" square, and that a ballot so marked fails to disclose the clear intent of the voter. We find the thrust of the Employer's contentions to be meritorious. In our view the recent holding in the *Mercy College*<sup>3</sup> case is dispositive of the issue presented here. As we observed there:

Sec. 102.67, has conceivably been prejudiced thereby. We note that the facts in the instant case were not in dispute, and accordingly, as conceded by the Employer, the result here turns on the application of said facts of the appropriate legal principles. We are satisfied that the document filed by the Employer fully sets forth the legal principles relied on by the Employer and urged upon us. Accordingly, we find that the Employer has not been prejudiced by having been erroneously referred to Sec. 102.67 of the Board's Rules and Regulations.

<sup>2</sup> In light of our determination herein that the disputed ballot is void, as contended by the Employer, we find it unnecessary to reach a determination with respect to the Employer's contention in the alternative to the effect that at the very least the election herein should be set aside.

<sup>3</sup> 212 NLRB 925 (1974).

In finding a ballot to be valid the Board requires that the intent of the voters in marking his ballot must be clearly expressed. Here the markings in either of the designated squares, absent the marking in the other square, would be considered a clear indication of the intent of the voter. However, inasmuch as both designated squares have been marked in such a manner, the true intent of the votes cannot in our judgment, be ascertained with the required degree of certainty.<sup>4</sup>

Accordingly, we find the ballot in dispute here to be void.

#### CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for Union Insular de Trabajadores Industriales y Construcciones Electricas, Inc. (UITICE), 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.

extent *Belmont Smelting & Refining Works, Inc.*, 115 NLRB 1481 (1956), also cited by the Regional Director is inconsistent herewith, we decline to follow it.

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<sup>4</sup> *Id.* We find *Gifford-Hill & Co., Inc.*, 181 NLRB 729 (1970), cited by the Regional Director, distinguishable on its facts as there was no attempted erasure or other attempt to obliterate one of the conflicting marks. To the