

**Hecla Mining Company and United Steelworkers of America, AFL-CIO-CLC; International Union of Operating Engineers, Local 428, AFL-CIO; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 310; Laborers District Council, State of Arizona, Local 479, AFL-CIO; International Brotherhood of Electrical Workers, Local 570, AFL-CIO, Joint Petitioner.** Case 28-RC-2495

June 26, 1975

### THIRD SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS FANNING, JENKINS, AND PENELLO

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election held March 6, 1974,<sup>1</sup> and the attached Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the parties' exceptions and briefs, and hereby adopts the Hearing Officer's findings<sup>2</sup> and recommendations,<sup>3</sup> with the following modification.

Objections were timely filed in this proceeding on March 13, 1974.<sup>4</sup> Thereafter, on June 7, after the Regional Director had issued his Report and Recommendations and while the Employer's exceptions thereto were pending before the Board, the Employer filed additional objections, identified as 2(a) through (1), based on alleged misconduct first discovered during its investigation of the original objections.

The Hearing Officer found that, although the additional objections filed on June 7 were not timely filed and that the Employer, with due diligence, could have timely developed and filed them, these objections could nevertheless be considered at this time. We disagree with the conclusion that consideration of the June 7 objections is proper.

In support of his finding, the Hearing Officer relied on certain decisions in which the Board held that it

<sup>1</sup> The election was conducted pursuant to a Supplemental Decision, Order, and Direction of Second Election issued by the Board. The tally was: 329 for, and 291 against, the Joint Petitioner; there were 2 challenged ballots, an insufficient number to affect the result.

<sup>2</sup> The Employer has excepted to certain credibility resolutions of the Hearing Officer. It is the established policy of the Board not to overrule a Hearing Officer's credibility resolutions unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *The Coca-Cola Bottling Company of Memphis*, 132 NLRB 481, 483 (1961); *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no sufficient basis for disturbing the credibility resolutions in this case.

<sup>3</sup> Inasmuch as neither party has excepted to the Hearing Officer's recommendations that Objections 2(e) and 2(k) be overruled, we adopt, *pro*

was not only proper but incumbent upon the Regional Director, in investigating objections, to consider conduct which, although not timely alleged as constituting objectionable conduct, was discovered and developed during such investigation.<sup>5</sup> However, these cases are inapposite inasmuch as they involved matters which came to the Board's attention in the course of its investigation of timely filed objections. None of them involved a situation where, as here, the objecting party filed new objections after the Regional Office had completed its investigation of the timely filed objections, the Regional Director's Report and Recommendations had issued, and the proceeding was pending before the Board. Accordingly, we find the objections filed on June 7, nearly 3 months after three original objections, were not timely filed and should not have been considered.<sup>6</sup>

### CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for United Steelworkers of America, AFL-CIO-CLC; International Union of Operating Engineers, Local 428, AFL-CIO; International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 310; Laborers District Council, State of Arizona, Local 479, AFL-CIO; and International Brotherhood of Electrical Workers, Local 570, AFL-CIO, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the foregoing labor organizations jointly are the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All production and maintenance employees employed at the employer's Lakeshore Project of Hecla Mining Company, located approximately 30 miles south of Casa Grande, Arizona; excluding office clericals, guards, watchmen, professionals, all subcontractor employees and supervisors, as defined in the Act.

*forma*, his recommendations with respect to these objections.

<sup>4</sup> All dates herein are in 1974 unless otherwise indicated.

<sup>5</sup> *Hobart Manufacturing Company*, 92 NLRB 203 (1950); *North Lake Convalescent Hospital*, 173 NLRB 992 (1968); *Thomas Products Co., Division of Thomas Industries, Inc.*, 169 NLRB 706 (1968); *National Electric Co., Div. McGraw Edison Company*, 184 NLRB 691 (1970); *First Health Care Corporation d/b/a Hanford House Health Care*, 210 NLRB 188 (1974); *Richard A. Glass Company*, 120 NLRB 914 (1958); *McFarling Bros., Midstate Poultry & Egg Co.*, 123 NLRB 1384 (1959).

<sup>6</sup> Board Rules and Regulations, Series 8, as amended, Sec. 102.69; *Heritage Nursing Center, Inc.*, 207 NLRB 826 (1973). Cf. *Jason/Empire, Inc.*, 212 NLRB 137 (1974). In any event, we find, in agreement with the Hearing Officer, that the June 7 objections were, in any event, lacking in merit.