

**Albuquerque Publishing Company and Chauffeurs, Teamsters & Helpers, Local Union 492, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America.** Cases 28-CA-3359, 28-CA-3359-2, and 28-RC-2819

July 28, 1975

**DECISION, ORDER SEVERING CASES, AND CERTIFICATION OF RESULTS OF ELECTION**

BY CHAIRMAN MURPHY AND MEMBERS KENNEDY AND PENELLO

Pursuant to a stipulation for Certification Upon Consent Election, a secret ballot election was conducted on September 25, 1974,<sup>1</sup> among the employees in the stipulated unit.<sup>2</sup> The tally of ballots furnished the parties showed that of approximately 70 eligible voters 64 cast valid ballots, and of the valid ballots cast 29 were for, and 34 against, the Petitioner. There was one challenged ballot, an insufficient number to affect the results of the election.

Thereafter, on October 1, the Petitioner filed timely objections to conduct affecting the results of the election.<sup>3</sup> Based on his investigation of the objections, the Regional Director issued a report and notice of hearing on November 14, wherein he determined that there were "substantial issues of fact and credibility" concerning the objections which required a hearing. The hearing was held at Albuquerque, New Mexico, on December 19 and 20 before Hearing Officer Peter N. Maydanis. The hearing dealt solely with the conduct specified in the Petitioner's objections.

On November 14—the same day on which the Regional Director's Report on Objections and Notice of Hearing issued—the Petitioner filed a charge in Case 28-CA-3359, and on November 20 filed a second charge in Case 28-CA-3359-2. Both charges alleged that on dates *after* the election had been held the Employer engaged in certain conduct violative of Section 8(a)(3) and (1) of the Act. However, in investigating the charges and in deciding their merit, the Regional Director discovered evidence which he

deemed sufficient to indicate that certain conduct violative of Section 8(a)(1) of the Act occurred on dates falling within the critical preelection period. Accordingly, on January 29, 1975, the Regional Director issued a complaint in Cases 28-CA-3359 and 28-CA-3359-2, alleging, *inter alia*, that on dates falling within the critical period the Employer (1) made certain statements which created the impression of surveillance, and (2) threatened an employee with a discharge or reassignment to a lower paying position if that employee did not cease engaging in union activity.

On February 14, 1975, the Regional Director issued a Supplemental Report on Objections and an order consolidating the unfair labor practice and the representation cases and issuing a notice of hearing on both. In the order consolidating the cases, the Regional Director provided that the Administrative Law Judge assigned to hear and to decide the issues raised in the consolidated proceeding should also decide whether any part of the alleged unlawful conduct described in the complaint would warrant setting aside the election. The Regional Director also recommended to the Board that, pending the disposition of the issues tendered in the consolidated proceeding, the Board defer ruling on the election objections referred to the Hearing Officer in Case 28-RC-2819 under the November 14 notice of hearing. Thereafter, the Employer filed with the Board timely exceptions together with a supporting brief.<sup>4</sup>

On March 14, 1975, the Hearing Officer issued his report on the election objections which had been referred to him for hearing by the November 14 notice of hearing, *supra*. He recommended therein that all such objections be overruled, and that the results of the election be certified. Thereafter, Petitioner filed timely exceptions to the Hearing Officer'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.

The Board has considered the entire record in these proceedings in light of the Regional Director's Report and Supplemental Report on the election objections, the Hearing Officer's report on objections to conduct affecting the results of the election, the exceptions and supporting brief filed by the Employer to the Regional Director's Supplemental Report on the election objections, and the exceptions filed by the Petitioner to the Hearing Officer's report on the election objections. For the reasons set out below, the Board finds merit in the exceptions filed by the Employer to the Regional Director's Supplemental Report on Objections, and has decided to (1) reject

<sup>4</sup> As a result, the Regional Director postponed the consolidated hearing.

<sup>1</sup> All dates are 1974 unless otherwise indicated.

<sup>2</sup> The stipulated unit is as follows: All circulation and dock employees including district supervisors, relief men, dealer men, dock men, office clerks and field representatives; excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act and all other employees.

<sup>3</sup> Petitioner's objections alleged that during the critical period the Employer (1) threatened to withdraw certain fringe benefits should the Union win the election, and (2) indicated it would refuse to bargain in good faith with the Petitioner, should Petitioner win the election.

the Regional Director's recommendation as set out in his Supplemental Report on Objections and to sever Cases 28-CA-3359 and 28-CA-3359-2 from Case 28-RC-2819; (2) resolve the objections to the election solely on the basis of that part of the alleged objectionable conduct described in the Regional Director's initial report on objections and referred by the Regional Director to the Hearing Officer for hearing and resolution; and (3) adopt the Hearing Officer's findings and recommendations with respect to such objections.

1. In agreement with the Employer's contentions, we find that the Regional Director erred in consolidating the cases herein when, during his investigation of the charges of unfair labor practices filed subsequent to his completion of the investigation of objections to the election and subsequent to his issuance of a notice of hearing on objections, he uncovered other conduct which arguably interfered with the results of the election. That additional conduct is described in the Regional Director's Supplemental Report on Objections and, as there noted, evidence of its occurrence is disputed. The Regional Director accordingly proposes that, although the only issues raised by the election objections as described by the Regional Director's initial Report on Objections are now ripe for resolution, we should not, if we find those objections to be without merit, certify the election results until a further hearing is held to resolve the disputed issues concerning the newly discovered alleged objectionable conduct, even though the latter was never made the subject of any formal objections.<sup>5</sup> We find no warrant for that proposal.

Inordinate delays in the determination of representation matters are not to be encouraged; and clearly our concern that the results of an election reflect the free choice of the voters should not blind us to the desirability of confining our inquiry concerning alleged election interference to those matters specified and/or uncovered during a duly conducted investigation of timely filed objections. Precedent for so doing is provided by the recently decided *Hecla Mining Company* case, 218 NLRB No. 61 (1975). There, the Board refused to consider the effect on an elec-

tion of allegedly objectionable conduct which had been brought to a Regional Director's attention by the filing of supplemental objections after the Regional Director had completed the investigation of timely filed objections and while the issues concerning their merit were pending before the Board. We perceive no distinction of substance in the situation here before us, where the supplementally alleged conduct came to the Regional Director's attention in his investigation of unfair labor practice charges filed long after his investigation of the timely filed objections had been completed—and even after the conclusion of the hearing he directed to resolve disputed questions of fact relevant to those timely filed objections. The reasons of policy impelling the Board's decision to refuse consideration of the late discovered alleged objectionable conduct in *Hecla* apply here with equal, if not greater, force.

We shall therefore sever Cases 28-CA-3359 and 28-CA-3359-2 from Case 28-RC-2819, remand the unfair labor practice cases to the Regional Director for such action as he deems appropriate, and confine our resolution of the election issues to those described in the Regional Director's initial report on the timely filed objections and the Hearing Officer's recommendations on the same.

With respect to the objections in Case 28-RC-2819, the Board, having considered the record in light of Petitioner's exceptions, hereby adopts the Hearing Officer's findings<sup>6</sup> and recommendations. We shall, therefore, certify the results of the election held in Case 28-RC-2819.

## ORDER

It is hereby ordered that Cases 28-CA-3359 and 28-CA-3359-2 be, and they hereby are, severed from Case 28-RC-2819.

IT IS FURTHER ORDERED that Cases 28-CA-3359 and 28-CA-3359-2 be, and they hereby are, remanded to the Regional Director for such action as he deems appropriate and consistent with the Board's Rules and Regulations, Series 8, as amended.

<sup>5</sup> It bears mentioning that the Employer conduct referred to in the unfair labor practice charges, *supra*, was described as having occurred on dates succeeding the election. *National Electric Coil Div. McGraw-Edison Company*, 184 NLRB 691 (1970), the case cited by the Regional Director in support of his proposal here, is clearly distinguishable. There, the conduct other than that specified in the objections timely filed by the parties was uncovered in the course of a Regional Director's investigation of contemporaneously pending unfair labor practice charges and before the investigation of the election objection had been completed.

<sup>6</sup> The Petitioner 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 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.

**CERTIFICATION OF RESULTS OF ELECTION**

It is hereby certified that a majority of the valid ballots have not been cast for Chauffeurs, Teamsters & Helpers, Local Union 492, affiliated with International Brotherhood of Teamsters, Chauffeurs, Ware-

housemen & Helpers of America, 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.