

Star Kist Caribe, Inc. and Mani Can, Inc. and United Industrial Workers, Service, Transportation, Professional & Government of N.A., AFL-CIO, Petitioner. Case 24-RC-7795

January 20, 1998

SUPPLEMENTAL DECISION AND ORDER
REMANDING

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HURTGEN

The National Labor Relations Board, by a three-member panel, has considered objections to an election held December 18 and 19, 1996, and the Regional Director's supplemental report recommending disposition of the objections. The election was conducted pursuant to a Decision and Direction of Second Election issued by the Board on November 14, 1996. The tally of ballots shows 1318 for and 2274 against the Petitioner, with 156 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the Petitioner's exceptions¹ and brief, and has adopted the Regional Director's findings and recommendations, as modified below.

The Regional Director directed a hearing to resolve issues raised by several of the Petitioner's objections to the second election.² The Regional Director, however, overruled a portion of Petitioner's Objection No. 5(h), which alleges in part that the Employer, on or about September 23, 1996, threatened employees with loss of jobs.

The Regional Director found that to the extent Objection No. 5(h) alleged that a September 23, 1996

¹The Petitioner's unopposed motion, as amended, submitting documents in support of its exceptions is granted.

²No exceptions were filed to the Regional Director's direction of a hearing as to portions of Objections Nos. 5(c), 5(g), 5(h), 5(i) (second 5(i)), and 5(j).

leaflet constituted objectionable conduct, the allegation raised conduct that was outside the critical period for the holding of the second election. In making this finding, the Regional Director identified November 14, 1996, as the commencement of the critical period for the second election, which is the date of the Decision and Direction of Second Election issued by the Board.

Contrary to the statement of the Regional Director, the critical period for a second election commences as of the date of the first election. *Times Wire & Cable Co.*, 280 NLRB 19, 20 fn. 10 (1986); *Singer Co.*, 161 NLRB 956 (1966). The first election was held on June 19 and 20, 1996. Accordingly, the allegedly objectionable leaflet of September 23, 1996, falls within the critical period for the second election. We shall therefore remand this portion of Objection No. 5(h) to the Regional Director for an investigation or hearing, as she deems appropriate. In all other respects, the Petitioner's exceptions are denied.³

ORDER

It is ordered that this case is remanded to the Regional Director for a supplemental report on the Petitioner's Objection No. 5(h) which may, at the Regional Director's discretion, be based on an investigation or a hearing, and the Regional Director is authorized to issue notice of any hearing. This supplemental report shall contain recommendations concerning whether the alleged conduct constitutes conduct warranting the setting aside of the election.

IT IS FURTHER ORDERED that this case is remanded to the Regional Director for Region 24 for the purpose of conducting the investigation or hearing as she may find necessary.

³Contrary to the Regional Director and her colleagues, Member Fox would direct a hearing on the Petitioner's Objections Nos. 3, 5(a), 5(b), 5(d), 5(e), and 5(f).