

**Best Products Co., Inc. and United Food & Commercial Workers, Local 428, AFL-CIO, Petitioner. Case 32-RC-1575**

28 March 1984

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

**BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS**

The National Labor Relations Board, by a three-member panel, has considered an objection to an election<sup>1</sup> held 3 June 1982 and the hearing officer's report recommending disposition of same.

The Board has reviewed the record in light of the exceptions and brief, and hereby adopts the hearing officer's findings and recommendations.<sup>2</sup>

<sup>1</sup> The election was conducted pursuant to a Stipulated Election Agreement. The tally was 38 votes for, and 26 against, the Petitioner; there were 7 challenged ballots, an insufficient number to affect the results.

<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. *Coca Cola Bottling Co. 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.

The parties' stipulation (pre-printed NLRB Form) provided that "[e]ach party hereto will be allowed to station *an equal* number of authorized observers. . . ." During the preelection conference before the first voting session, the Petitioner requested that the number of observers be increased to two per party on the grounds that an additional observer was necessary to enable the Petitioner to identify all the voters. The Board agent granted the request, and requested the Employer to provide

**CERTIFICATION OF REPRESENTATIVE**

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Food & Commercial Workers, Local 428, AFL-CIO, and that it is the exclusive representative of the employees in the following appropriate unit:

All full-time and regular part-time employees employed by the Employer at its 550 W. Hamilton Avenue, Campbell, California facility; excluding all confidential employees, guards, and supervisors as defined in the Act.

*an equal* number of observers. The Employer declined for several reasons. In agreement with the hearing officer, we find that the instant facts are clearly distinguishable from those in *Summa Corp. v. NLRB*, 625 F.2d 293 (9th Cir. 1980), where the Board agent allowed the union an additional observer without first notifying the employer.

Here, the question of the number of observers arose at the preelection conference, and the Employer had sufficient time (15 to 30 minutes before the first session, and several hours before the second session) in which to secure additional observers if he so chose. The Employer did not even attempt to do so. Furthermore, the parties' stipulation did not specify the number of observers, but only provided that both parties would have an equal number. The Board agent acted within her discretion in allowing each party two observers. Contrary to his colleagues, Member Hunter finds that the parties had an agreement that each would have one observer, and that the Board agent breached the agreement. Member Hunter finds, however, that the Employer has failed to show that it was prejudiced or that the presence of the extra observer had any impact on the election or that there was any material breach under the circumstances. Member Hunter notes that the stipulation itself did not limit the number of observers but just provided that both parties would have *an equal* number. Thus, in Member Hunter's view, 15 to 30 minutes was sufficient time for the Employer to secure an additional observer, which the Employer refused to even attempt.