

Kraft, Inc. Retail Food Group and Zennon N. Olow, Petitioners and Local 34, United Food & Commercial Workers of America, AFL-CIO. Case 3-RD-819

17 January 1985

**DECISION AND DIRECTION OF
SECOND ELECTION**

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

The National Labor Relations Board has considered objections to an election held 23 March 1984 and the Acting Regional Director's report and addendum recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 119 for and 112 against the Union, with no challenged ballots.

The Board has reviewed the record in light of the Employer's exceptions and brief and adopts the Acting Regional Director's findings and recommendations only to the extent consistent with this Decision and Direction of Second Election.

Both the Petitioner and the Employer filed timely objections to conduct affecting the results of the election. Following an investigation, the Acting Regional Director concluded, without a hearing, that all objections lacked merit and did not warrant setting aside the election. The Acting Regional Director recommended that all objections be overruled and a certification of representative issue.

Contrary to the Acting Regional Director, we sustain the Petitioner's Objection 1 and the Employer's Objection 1 which concern the Region's use of a multilanguage Board election ballot.¹ On examination, we find, for the reasons set forth below, that the multilanguage ballot furnished by the Region is so seriously defective on its face as to interfere with the employees' ability to exercise their election choice.²

We first observe that the instructions and the proposition on the ballot appear in four languages. The Spanish and English translations are set forth in what appears to be preprinted type with letters smaller than the handwritten characters of the Vietnamese and Laotian translations. Thus, at times the Spanish and English translations seem lost or

overshadowed by the other two translations. The translations are generally line by line which tends to create artificial phrasing in several of the languages. In our view the layout of the ballot makes for difficult reading even for the English-reading voters.

We also note the critical flaws encountered with the Vietnamese and Laotian interpretations, as pointed out by the Employer. The Acting Regional Director in his report conceded these translation inaccuracies but downplayed the high potential for voter confusion created if the proposition on the ballot makes no sense in two of the languages. The Acting Regional Director found a cure for the ballot's defects. He was persuaded that the partisan preelection campaigning, the collective-bargaining agreements, and the dues-checkoff authorization cards—all in English—somehow justified the poorly translated Board ballot. We disagree. We attach no weight to the fact that non-English reading employees may be forced to deal with only English translations in the workplace. Rather, it is the Board's responsibility when a multilanguage ballot is deemed appropriate to supply a ballot that can be comprehended in all the languages appearing on the ballot. See *General Shoe Corp.*, 77 NLRB 124 (1948), and *Fibre Leather Mfg. Corp.*, 167 NLRB 393 (1967).

We also disagree with the Acting Regional Director's conclusion that the eligible voters were presented with sufficient information prior to the election to enable them to intelligently cast their ballots. The requisite laboratory conditions for free expression of voter preference were not present here. *Rattan Art Gallery, Ltd.*, 260 NLRB 255 (1982). Board notices of election and the parties' instructional election campaigning have been found insufficient to cure defective Board ballots. *Thermalloy Corp.*, 233 NLRB 428 (1977), and *Marriot In-Flite Services v. NLRB*, 417 F.2d 563 (5th Cir. 1969), denying enf. 171 NLRB 742 (1968).

Because we find the ballot itself to be seriously inadequate, we need not address the Acting Regional Director's findings that the translation issues involved only a small percentage of the voters constituting an insufficient number to affect the results of the election. However, we point out that, contrary to the Acting Regional Director's findings, there is no indication from the evidence before us as to the number of Hispanic, Vietnamese, and Laotian employees who are unable to read English. The Acting Regional Director incorrectly assumed that the number of employees was three since the Employer supplied specific evidence concerning three employees who claimed confusion by the ballot. Rather, the appearance of the ballot has a

¹ In view of our disposition of this case, we do not find it necessary to address the Petitioner's and the Employer's remaining objections. The Petitioner's Objection 2 dealt with statements appearing in a local newspaper article allegedly attributable to the Union. The Petitioner's Objection 3 involved alleged union promises made to certain maintenance department unit employees. The Employer's Objection 2 was withdrawn. The Employer's Objection 3 alleged impermissible electioneering by the Union in the vicinity of the polling area. The Employer's Objection 4 concerned alleged threats made by a proumon employee sympathizer.

² A copy of the ballot is attached [omitted from publication].

tendency to confuse even the English-reading voters, which comprise the majority of the unit. In these circumstances, where the ballot is facially defective, we view evidence of actual voter confusion which would alter the election count as irrelevant. Nor is it controlling that some voters may have understood the ballot as relied on by the Acting Regional Director.

Accordingly, we reverse the Acting Regional Director's recommendation to overrule the Petitioner's Objection 1 and the Employer's Objection 1, sustain these objections, and set aside the election. We conclude in these circumstances it will effectuate the policies of the Act to direct another election.

[Direction of Second Election omitted from publication.]

MEMBER DENNIS, dissenting.

Contrary to my colleagues, I would not set aside the election. I do not believe that the translation of each line of the ballot into three non-English languages precluded employees from reading the English portion. I therefore would not find that the ballot's organization was so confusing as to inter-

fere with employees' opportunity to make informed decisions. That the Region might have organized the ballot better is not the issue. Rather, the issue is whether employees voted under conditions that permitted them to cast votes intelligently.

Further, I agree with the Acting Regional Director's determination that, under the circumstances, mistranslation of the ballot's propositions does not warrant setting aside the election. The translations in question were for only 3 out of a 238-person unit.¹ It is clear from two employees' statements that they understood (from the election campaign and reading the ballot's English as well as the foreign language) what they were voting about; the third employee admitted not even reading the propositions. Moreover, even assuming the three employees were confused by the ballot and voted contrary to their intentions, their votes could not have affected the election results.

In sum, I believe the facts show that the employees had sufficient information to vote intelligently, and the ballot did not taint the election results.

¹ Neither the Employer nor the Petitioner excepted to this finding