

**Kohler Food Service, Inc. and Allene Reagan, Petitioner and Hotel Employees and Restaurant Employees International Union, Local 70, AFL-CIO. Case 9-RD-1204**

22 March 1985

**DECISION AND ORDER REMANDING  
PROCEEDING TO REGIONAL  
DIRECTOR**

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

The National Labor Relations Board has considered objections to an election held 28 August 1984 and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 2 for and 44 against the Union, with 2 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions<sup>1</sup> and briefs, and has adopted the Regional Director's findings and recommendations<sup>2</sup> only to the extent consistent with this Decision and Order.

The Union alleged that supervisors of the Employer, Reagan and Carson, were improperly involved in the election by filing the petition, soliciting the showing of interest among employees, and acting as observers during the election. In overruling the Union's objection, the Regional Director did not set forth what evidence he relied on in concluding that Reagan and Carson are not supervisors; rather, he relied on his own determination to that effect in dismissing a concurrent unfair labor practice charge. The Regional Director further stated that the Union has no evidence that Reagan and Carson are supervisors. However, the Union in its exceptions to the Regional Director's recommendation has set forth evidence that Reagan, at

<sup>1</sup> The Regional Director's report inadvertently referred to the time for the filing of a request for review of the report, rather than exceptions to the report, and the Union titled its exceptions "Request for Review." We have treated the document as exceptions to the Regional Director's report.

<sup>2</sup> In the absence of exceptions, we adopt, pro forma, the Regional Director's recommendations concerning Objections 2 and 3.

least, uses independent judgment in the direction of banquet waitresses, has reprimanded employees, and has released employees early without checking with higher management. Under these circumstances, the Board cannot rely on the Regional Director's administrative conclusion in the unfair labor practice proceeding. Rather, the Board must obtain all the facts concerning the supervisory status of Reagan and Carson so that it can make its own determination as to whether they are supervisors.

**ORDER**

IT IS ORDERED that this case be remanded to the Regional Director to direct a hearing to decide the factual issues raised by the Union's Objection 1. Thereafter, the provisions of Section 102.69(f) of the Board's Rules and Regulations shall apply.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting such hearing shall prepare and cause to be served on the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of this objection. Within 10 days from the date of the issuance of the report, either party may file with the Board in Washington, D.C., eight copies of exceptions to the report. Immediately on the filing of exceptions, the party filing them shall serve a copy on the other party and shall file a copy with the Regional Director. If no exceptions are filed, the Board will adopt the recommendation of the hearing officer.

IT IS FURTHER ORDERED that this matter is referred to the Regional Director for Region 9 for the purpose of conducting the hearing, and that the Regional Director is authorized to issue notice of the hearing.

**MEMBER DENNIS, concurring.**

I agree that the Union's Objection 1 raises substantial and material issues of fact and law which can best be resolved by a hearing. Therefore, I concur in ordering that this case be remanded to the Regional Director for Region 9 for the purpose of conducting such a hearing before a duly designated hearing officer.