

**San Francisco Sausage Co, Petitioner and Sausage Makers' Union Local No 203, U F C W, AFL-CIO-CLC**

**Maurice Melaver, Petitioner and Sausage Makers' Union Local No 203, U F C W, AFL-CIO-CLC Cases 20-RM-2689 and 20-RD-2006**

October 19 1988

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

**BY CHAIRMAN STEPHENS AND MEMBERS JOHANSEN AND CRACRAFT**

The National Labor Relations Board by a three member panel has considered objections in an election held March 31 1988 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 21 for and 53 against the Union with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs has adopted the Regional Director's findings<sup>1</sup> and recommendations and

<sup>1</sup> In the absence of exceptions we pro forma adopt the Regional Director's recommendations that Objections 1 to 8 be overruled.

The Regional Director overruled the Union's Objection 9 which contended that the Board agent improperly allowed Petitioner Melaver to summon voters over the Employer's intercom system. The Union's exceptions rely on *Alco Iron & Metal Co* 269 NLRB 590 (1984). Contrary to our dissenting colleague we find *Alco* distinguishable. The Board agent's allowing the Petitioner to use the intercom system to announce that employees could vote was a delegation of a minor task. In *Alco* the Board agent permitted the union observer to interpret and explain the voting procedure to Spanish speaking employees without the Board agent's participation thereby effectively turning over control of the election to the observer. See *US Ecology Inc v NLRB* 772 F.2d 1478 1482-1484 (9th Cir 1985).

The Union also excepts to the Regional Director's failure to consider an unfair labor practice charge and a supporting affidavit or to consolidate the representation and unfair labor practice cases. The charge how

finds that a certification of results of election should be issued.

**CERTIFICATION OF RESULTS OF ELECTION**

IT IS CERTIFIED that a majority of the valid ballots have not been cast for the Sausage Makers Union Local No 203 U F C W AFL-CIO-CLC and that it is not the exclusive representative of these bargaining unit employees.

**MEMBER JOHANSEN dissenting**

The parties clearly and specifically agreed prior to the election that the Board agent would use the plant intercom system to notify the employees that it was time to vote. Contrary to this specific agreement the Board agent for reasons best known to her allowed the Petitioner in the RD case to summon the voters via the intercom. The employees hearing the Petitioner's voice making the announcement that it was time to vote could easily have concluded that the Petitioner not the Board agent was really running the election. Under the rule established in *Alco Iron & Metal Co* 269 NLRB 590 (1984) I find that the atmosphere of impartiality in which the election should have been held was not present. Id at 591. Accordingly I would set the election aside based on the Board agent's conduct in this regard.

\_\_\_\_\_ ever was filed well after the time for filing objections expired and involves a matter unrelated to the Union's timely objections. Therefore the charge allegations will not be considered as objectionable conduct in this proceeding because the Union failed to show by clear and convincing proof that the underlying evidence was newly discovered and previously unavailable. *Burns Security Services* 256 NLRB 959 960 (1981). Further the Union failed to show that the Regional Director abused his discretion in deciding not to consolidate the representation and unfair labor practice cases.