

Union Industries, Inc d/b/a Union Manufacturing Company and Robert Lewis, Petitioner and Sheet Metal Workers International Association, Local No 66, AFL-CIO Case 19-UD-436

October 25 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 determinative challenges in an election held March 21 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 three for withdrawing the authority of the bargaining representative to require under its agreement with the Employer that membership in the Union be a condition of employment and four against the proposition with two challenged ballots

The Board has reviewed the record in light of the exceptions and brief has adopted the Regional Director's findings and recommendations and finds that a certification of results of election should be issued

We adopt the Regional Director's finding that Kentt Cooper and Nicholas Cooper were ineligible to vote in this deauthorization election because both are sons of the Employer's owner and sole stockholder and therefore are not statutory employees within the meaning of Section 2(3) of the Act In so doing we have considered the Employer's various arguments that the Union waived the right to contest these individuals' eligibility because both Coopers have been considered members of the unit for several years that the unit for a deauthorization election must be coextensive with the contractual unit and the Coopers have historically been in that contract unit and that the Union did not protest the Coopers' inclusion prior to entering into the Stipulated Election Agreement Because we deal here with a statutory exclusion each of these arguments is without merit

In *St Paul & Tacoma Lumber Co* 81 NLRB 434 (1949) the Board held in an analogous context that unit members if found to be statutory supervisors could not vote in a union shop authorization election The Board indicated that although Section 14(a) of the Act permitted an employer voluntarily to bargain collectively with a labor organization which includes supervisors among its members the section also prohibits the Board from lending its processes to such activity 81 NLRB at 436 Similarly although the parties here may have voluntarily agreed to the Coopers' inclusion in the unit the Board itself may not sanction the inclusion because the Coopers in fact are not statutory employees since they come within the exclusion under Section 2(3) individuals employed by [their] parent Further the fact that the Union did not object to the Coopers' inclusion before signing the Stipulated Election Agreement did not prohibit it from later challenging these individuals at the election See *Fisher New Center Co* 184 NLRB 809 (1970) And as these two individuals are not statutory employees we reject the Employer's further argument that the Regional Director erroneously failed to apply a community of interest standard to the issue of these individuals' inclusion in the unit Cf *NLRB v Action Automotive* 469 U S 490 497-498 (1985) Finally the Employer's reliance on *McAllister Bros* 278 NLRB 601 (1986) is misplaced Contrary to the Employer's assertion the Board there was not faced with the question of the effect of the parties' inclusion of statutory supervisors in the unit Rather the issue there was whether the individuals involved in fact were supervisors The Board found they were not

CERTIFICATION OF RESULTS OF ELECTION

It is certified that the majority of the valid ballots have not been cast for withdrawing the authority of Sheet Metal Workers International Association Local No 66 AFL-CIO to require under its agreement with the Employer that membership in such labor organization be a condition of employment in conformity with Section 8(a)(3) of the Act