

The Singer Company, U.S. Sewing Products Division, District One and Local 169, Retail Clerks International Union, AFL-CIO, Petitioner. Case 29-RC-4193

September 21, 1978

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND TRUESDALE

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered the objection to an election held on May 25, 1978,¹ and the Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs² and hereby adopts the Regional Director's findings and recommendations.³

ORDER

It is hereby ordered that the election held on May 25, 1978, be, and it hereby is, set aside.

[Direction of Second Election omitted from publication.]⁴

MEMBER PENELLO, dissenting:

I am unable to agree with my colleagues that the posting of the Board election notices was inadequate and therefore destroyed the laboratory conditions for holding a fair election.

The election was conducted on May 25, 1978, on the premises of each of the eight retail stores in the unit. The official notices were posted at all but one store at least 1 day prior to the election.

On numerous occasions, the Employer and the Petitioner made the employees aware of the pending election. On May 1, well before the election, the Employer posted the following notice in the stores:

NOTICE TO EMPLOYEES

Today, the Company signed an agreement with the National Labor Relations Board providing for the holding of a secret ballot election on May

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 39 for, and 31 against, Petitioner; there were no challenged ballots.

² Respondent's motion for extended time for filing an answering brief is hereby granted, and its brief has been considered.

³ Although not unsympathetic to the dissent's view, we believe strict adherence to the precedents of *Kilgore Corporation*, 203 NLRB 118 (1973), and *Thermalloy Corp.*, 233 NLRB 428 (1977) will best insure that employees receive adequate opportunity and time to read and study the Board's election notices, which contain information that is essential to establish the laboratory conditions necessary for holding a fair election.

⁴ [Excelsior footnote omitted from publication.]

25, 1978. On that date, the NLRB election agents will visit each District #1 store so that all employees will have an opportunity to vote.

We will be in touch with you later with more details about the matter.

True to its word, the Employer continued to inform the employees of the pending election. The record reveals that some of the store managers told some of their employees of the date and times of the election. In addition, at a meeting about 2 weeks before the election, the Employer informed the employees of four stores of the election date. Finally, at a meeting on May 24 attended by all but 15 employees, the Employer again informed the employees that the election was on May 25.

The Petitioner also told employees, at meetings held on May 10 and 16, the date and times of the election, as well as stating the unit, the eligibility date, and the fact that the election would be secret ballot. Further, in the period from May 4 to 23, the Petitioner sent three letters to all employees on the *Excelsior* list.

The tally of ballots showed that 70 of approximately 74 eligible voters voted in the election. This means that 94 percent of the eligible employees voted. The election resulted in a 39-to-31 victory for the petitioning Retail Clerks.

In my view, the Employer has not met its burden of showing that the conduct objected to affected the results of the election. The Board has never established a rule specifying the time before an election when notices must be posted. Here, the notices were posted at all but one store, at least 1 day before the election. There is no evidence that the employees were misled, nor any evidence that any employee was deprived of his or her free choice. As indicated above, both parties conducted active campaigns, frequently mentioning when the election would take place. In addition, the Employer has presented no evidence that the employees were not aware of their basic rights under the Act. Finally, it is clear that the employees were aware of the election as indicated by the 94-percent participation of eligible voters.⁵ This percentage of employee participation is greater than in the usual Board election.⁶

Accordingly, on these facts, I would find no interference with the conduct of the election and would certify Local 169, Retail Clerks International Union, AFL-CIO, as bargaining representative.⁷

⁵ The votes of the remaining four employees can in no way affect the outcome of the election.

⁶ In the fiscal year ending September 30, 1977, on the average 88 percent of the eligible voters participated in Board-conducted elections. 42 NLRB Ann. Rep. 301 (1977).

⁷ See my dissenting opinions in *Kilgore Corporation*, 203 NLRB 118 (1973), enforcement denied 510 F.2d 1165 (C.A. 6, 1975); *Congoleum Industries, Carpet Divisions*, 227 NLRB 108 (1976); *Thermalloy Corp.* 233 NLRB 428 (1977).