

direct that the election directed herein be held during the Employer's peak season, on a date to be determined by the Regional Director.<sup>9</sup>

[Text of Direction of Election <sup>10</sup> omitted from publication.]

<sup>9</sup> The Employer contends, *inter alia*, that the petition is premature because filed before the peak season. However, there is no requirement that petitions for seasonal employees be filed during the peak season. It suffices that, as here, the election is not held until the peak season.

<sup>10</sup> As a Federal labor union, the Federal Union is affiliated directly with the AFL-CIO in contrast to a union which is affiliated with an international union. However, the Federal Union and the Brewery Workers request that their names appear jointly on the ballot in any election directed herein on the ground that the Federal Union has applied for a charter from the Brewery Workers and that their affiliation with the Brewery Workers will be completed in the near future. The Petitioner acquiesced in this request. Accordingly, we shall place the names of these two unions on the ballot jointly in the election herein directed. See *Adams Packing Association, Inc., supra*.

**Good-All Electric Mfg. Co. and International Brotherhood of Electrical Workers, Local 1525, AFL-CIO, Petitioner. Case No. 17-RC-2228. January 17, 1957**

**SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

Pursuant to a Decision and Direction of Election issued on June 5, 1956,<sup>1</sup> an election was conducted on July 18, 1956, under the direction and supervision of the Regional Director for the Seventeenth Region, among the employees in the unit heretofore found appropriate. At the close of the election a tally of ballots was furnished each of the parties in accordance with the Board's Rules and Regulations. The tally shows that 127 valid ballots were cast for the Petitioner, 382 valid ballots were cast against the Petitioner, 42 ballots were challenged, and 4 ballots were declared void.

On July 20, 1956, the Petitioner filed timely objections to conduct affecting the results of the election, and requested the right to withdraw its petition. On October 1, 1956, the Regional Director, after investigation, issued his report on the objections, recommending that the election be set aside, and that the Petitioner's request to withdraw its petition be approved. On October 18, 1956, the Employer filed exceptions to the Regional Director's report.

The Board has considered the objections, the Regional Director's report, the exceptions, and the entire record in the case, and finds merit in the Employer's exceptions.

In June 1955, the Employer announced to its employees that it had established a profit-sharing trust fund for them, and that it was making an initial payment to that fund based on the employees' earn-

<sup>1</sup> Not reported in printed volumes of Board Decisions and Orders.

ings for the fiscal year ending May 31, 1955. On July 16, 1956, the Employer announced to the employees that it was making a further payment to the trust fund based on the employees' earnings for the fiscal year ending May 31, 1956. The election was held 2 days later on July 18, 1956.

The Petitioner concedes that the employees were entitled to the 1956 trust fund benefit and should have received it, but contends that the announcement of the benefit should have been made on a date consistent with the announcement of the 1955 benefit or after the election of July 18, 1956. In apparent agreement with this contention, and apparently also because the 1956 announcement made reference to the Petitioner's organizing campaign, the Regional Director found that the announcement of this benefit was "more than mere temporal coincidence" with the election, and constituted improper interference with the election. We disagree.

Under the trust fund agreement, the Employer assumed a contractual obligation to pay to the trust, with respect to each fiscal year ending May 31 of each year subsequent to 1955, a contribution in an amount equal to 25 percent of the net income of the Employer for such fiscal year, subject to the limitation that such contribution should not exceed 15 percent of the employees' earnings. Thus, the benefit in question was not only one which had been previously granted, but, as conceded in effect by the Petitioner, was one which would be an annual practice. The first question raised by the Petitioner is why the 1956 announcement of a payment to the trust fund was made in July rather than in June as in 1955. The Employer offers a valid and reasonable explanation for this departure from past practice. In brief, this explanation is that certain prior collateral litigation required an audit of its books which made it impossible to determine its profits and the amount of the 1956 contribution to the trust fund until the audit was completed, and that as soon thereafter as possible the announcement of the 1956 contribution was made. Thus, the delay in the 1956 announcement of the benefit can in no way be attributed to the Employer or any design on its part to interfere with the election. There remains for consideration only the contention that because such announcement was already a month or more late, it should have been delayed for 3 more days until after the election. In 1955, the Employer announced the trust fund benefit as soon as possible after the May 31 closing date on which the contribution was based. The same practice was followed in 1956 after the delay over which the Employer had no control. Moreover, the 1956 announcement made no change in the established benefit for it reflected the same contribution as had been made a year earlier. In such circumstances, we find that the Employer was following a normal business

course, which it was not under any obligation to depart from by deferring the 1956 announcement until after the election, because of the fortuitous circumstance that the election was only 2 days away.<sup>2</sup> Nor do we consider the announcement's reference to the Petitioner's organizing campaign as showing a design to interfere with the election, in view of the fact that the Petitioner had previously raised the matter of the trust as an issue in the campaign and the Employer was simply countering with its view of the trust fund. Accordingly, we reject the Regional Director's recommendation that the election be set aside, and we hereby overrule the Petitioner's objections.

As we have overruled the objections to the election, and as the tally of ballots shows that the Petitioner lost the election, we shall issue a certification of results of election to that effect. Accordingly, we deny the Petitioner's request to withdraw the petition.

[The Board certified that a majority of the valid ballots was not cast for International Brotherhood of Electrical Workers, Local 1525, AFL-CIO, in the election held herein, and that said organization is not the exclusive representative of the Employer's employees in the appropriate unit.]

MEMBER MURDOCK, dissenting:

In my opinion, the Employer's action here was calculated to, and did, interfere with a free election.

Assuming *arguendo* the validity of the Employer's explanation for its announcement of the 1956 payment to the trust fund a month or more later than its announcement of the 1955 payment to the fund, the Employer offers no valid explanation for its haste in making the 1956 announcement after there had already been a considerable postponement of the announcement beyond the established time for making it. If the announcement was already a month or more late, surely the Employer could have waited just 3 more days until after the election to make it. There is no evidence that the trust fund agreement precluded it, or that there were any other compelling reasons for not doing so. Having already deviated considerably from its established practice with respect to notice of contributions to the trust fund, I fail to see how a very slight further deviation would have been prejudicial to either the Employer or the employees. Moreover, the announcement also makes an antiunion reference to the Petitioner's organizing campaign, stating that: "No union was responsible for the establishment of the trust. No union can help us work together to achieve the success which means employment, security and income to Good-All employees." In view of the foregoing, I would find that the announcement of this employment benefit with such "haste after

<sup>2</sup> See *Detroit Aluminum & Brass Corporation*, 107 NLRB 1411.

delay" 2 days before the election, accompanied by antiunion statements, was calculated to, and did, interfere with a free election.<sup>3</sup> I would therefore, set aside the election.

CHAIRMAN LEEDOM took no part in the consideration of the above Supplemental Decision and Certification of Results of Election.

<sup>3</sup> See *Le Roi Company*, 105 NLRB 309.

**Wyman-Gordon Co., Ingalls Shepard Division and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO<sup>1</sup> and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, AFL-CIO,<sup>2</sup> Petitioners. Cases Nos. 13-RC-4916 and 13-RC-4997. January 18, 1957**

### DECISION AND DIRECTION OF ELECTIONS

Upon separate petitions duly filed under Section 9 (c) of the National Labor Relations Act, a consolidated hearing was held before Rush F. Hall, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>3</sup>

Upon the entire record in this case, the Board finds:<sup>4</sup>

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.<sup>5</sup>

<sup>1</sup> Herein referred to as the Boilermakers.

<sup>2</sup> Herein referred to as the UAW.

<sup>3</sup> The Employer moved that the UAW's petition be dismissed and that the petitions herein not be consolidated because the UAW's showing of interest was untimely made. The Board has consistently held that showing of interest is a matter for administrative determination and cannot be litigated in a representation proceeding *California Furniture Shops, Ltd*, 115 NLRB 1399. Moreover, we are administratively satisfied with the UAW's showing of interest in this proceeding.

The Employer also contends that both petitions are barred on the ground that a petitioner who withdraws a petition is prohibited from again filing a new petition affecting the same employer and employees for a period of 6 months. The Board's records show that the Boilermakers and the UAW did file and withdraw petitions less than 6 months prior to their filing of the petitions herein, but the withdrawals in both cases were made *without prejudice* to the filing of new petitions. We find no merit in the Employer's contention as the limitation alleged by the Employer applies only to cases where the Petitioner's withdrawal has been *with prejudice*.

<sup>4</sup> The Employer's request for oral argument is hereby denied as the record and the briefs adequately present the issues and positions of the parties.

<sup>5</sup> Employees Independent Union of Wyman-Gordon, hereinafter called the Independent, was permitted to intervene in both cases on the basis of its contractual interest. The UAW intervened in Case No. 13-RC-4916, on the basis of a showing of interest.

The Employer would not stipulate that the Boilermakers and the UAW are labor organizations. Moreover, the Boilermakers and the UAW refused to stipulate as to the Independent's status as a labor organization. The record reveals that all three organizations exist for the purpose of bargaining collectively on behalf of their members with Employ-