

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 94-97

November 8, 1994

TO : All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM : William G. Stack, Associate General Counsel

SUBJECT: Discretion in Using English-Only Ballots

The purpose of this memorandum is to provide further guidance with respect to decisions to use English-only ballots in elections in which some of the voters cannot read English.

Memorandum OM 91-74, dated August 23, 1991, noted that Regional Directors have the discretion to provide English-only ballots to all voters at the polling place in elections where the Notice of Election, including the sample ballot, was provided in foreign language(s). See Precise Castings, 294 NLRB 1164 (1989), enfd. 915 F.2d 1160 (7th Cir. 1990), cert. denied 499 U.S. 959 (1991). This procedural option allows Regions to conduct more timely elections and to avoid the delay and the administrative and cost burden associated with providing multi-language ballots.

Commenting on this procedure, the Circuit Court noted that anyone who takes the trouble to read the Notice of Election, translated into any language the parties desire, will be equipped to "vote accurately" using the English-only ballot. Despite the legal acceptance and administrative benefits to the Region of English-only ballots, there are situations in which the best procedure to assure intelligent voter participation would include ballots as well as the Notice of Election translated into any foreign language desired. In these instances, such a procedure would clearly better serve the public.

Accordingly, when Regions consider ballot language, service to the customer should be considered as well as delay, administrative burden and potential for objections. In exercising the Director's discretion, the Region may wish to consider factors such as the portion of the voting group who speak a foreign language and do not read English; the number of foreign language translations that would be required to accommodate these voters; and whether written communication between the employer and these employees is in

English or their native language. It would appear that for many two-language elections (English and a foreign language) a multi-language ballot may frequently be indicated, particularly in units with a large proportion of voters who cannot read English. In such situations, some extra time and expense is required to construct and reproduce the ballots but the customer would be better served.

Ballots written in three or more languages (English and two or more foreign languages) are more problematic. Constructing the ballot becomes more difficult; significant delay is more likely; costs may increase dramatically; and the resulting ballot may become oversized and the interposing of languages confusing, especially if one or more of the translations require hand-written characters. See Kraft Inc., 273 NLRB 1484 (1985).

While a flat rule for English-only ballots is being discouraged, we wish to emphasize that Directors continue to have discretion to determine the need for foreign language ballots. If you have any questions concerning this memorandum, please contact me or your Assistant General Counsel.



W. G. S.

cc: NLRBU