

**United Insurance Company of America and United Food and Commercial Workers International Union, AFL-CIO, Petitioner.** Case 12-RC-8127

January 30, 1998

DECISION AND DIRECTION

BY CHAIRMAN GOULD AND MEMBERS FOX AND LIEBMAN

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in an election held August 21, 1997, 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 12 for and 8 against the Petitioner, with 4 challenged ballots.

Subsequently, the Petitioner withdrew its challenges to the ballots cast by Patricia Thomas, Gary Miller, and Larry Beuer. The Employer maintains its challenge to the ballot of David Jeffers, who has waived his right to a secret ballot pursuant to *Ladies' Garment Workers*, 137 NLRB 1681 (1962).

The Board has reviewed the record in light of the exceptions and brief and adopts the Regional Director's findings and recommendation to open and count the four ballots. We direct that the Regional Director shall first open and count the ballots of Patricia Thomas, Gary Miller, and Larry Beuer and issue a revised tally of ballots. If any of these three ballots were cast for the Petitioner, the Regional Director shall certify

the Union. If the revised tally shows that all three ballots were cast against the Petitioner, the Regional Director shall then open and examine Jeffers' ballot and take further appropriate action as specified in the Direction below. We note that our adoption of the recommendation to open and examine the ballot cast by David Jeffers has no bearing whatsoever on any subsequent adjudication of the unfair labor practice charge, filed in Case 12-CA-18978, alleging his unlawful discharge.

DIRECTION

IT IS DIRECTED that Case 12-RC-8127 be remanded to the Regional Director for Region 12. The Regional Director shall, within 14 days from this Decision and Direction, open and count the ballots of Patricia Thomas, Gary Miller, and Larry Beuer, and issue a revised tally of ballots. The Regional Director shall determine if any one of these ballots was cast for the Petitioner. If so, the Regional Director shall certify the Petitioner as the collective-bargaining representative. If all three ballots were cast against the Petitioner, the Regional Director shall then open and examine the ballot of David Jeffers. If Jeffers voted for the Petitioner, the Regional Director shall, without issuing a revised tally of ballots, certify the Petitioner. If Jeffers voted against the Petitioner, the issue of Jeffers' eligibility shall be determined in conjunction with the investigation of the charge filed in Case 12-CA-18978.