

**Superior of Missouri, Inc. and Teamsters Local Union No. 682, affiliated with International Brotherhood of Teamsters, AFL-CIO, Petitioner.** Case 14-RC-11946

November 30, 1998

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

The National Labor Relations Board, by a three-member panel, has considered objections to an election conducted on June 26, 1998 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 41 ballots cast for, and 20 against the Petitioner, with 2 challenged ballots, an insufficient number to affect the results of the election.<sup>1</sup>

The Board, having reviewed the record in light of the exceptions and brief, adopts the Regional Director's recommendations and finds that a certification of representative should be issued.<sup>2</sup>

1. In his Report, the Regional Director states that the "parties agreed" to reschedule the election from June 19 to June 26. The Employer in its exceptions, however, contends that the Regional Director "unilaterally rescheduled" the election. In adopting the Regional Director's recommendation to overrule Objections 1 and 2, we find it unnecessary to resolve this disagreement. It has long been held that a Regional Director may, in his discretion, reschedule an election if the originally scheduled election did not take place. *Alladin Plastics, Inc.*, 182 NLRB 64 (1970) (not objectionable for regional director to reschedule an election where election was not held on originally stipulated date because of Board agent error). Thus, even assuming the Regional Director unilaterally rescheduled the election in this proceeding, we find that he acted within his discretion in doing so. As for the Employer's contention that laboratory conditions were destroyed by a rumor that the Employer "bought off" the Board in order to delay the election, we note that the Board in *Alladin* specifically rejected a virtually identical contention. Here, as in *Alladin*, there is no evidence that the Petitioner was the source of the alleged rumor, and the Employer had the opportunity to respond to it. We therefore adopt the Regional Director's recommendations to overrule Objections 1 and 2.

2. Employer's Objection 3, which essentially alleges an objectionable waiver of union initiation fees, is based upon statements given by two unit employees. According to the statements of employees Kevin Calcagno and

Sean Sontag, they met with Tim Ryan, organizer for the Petitioner Union, at a bar on or about June 5. Calcagno stated: "Mr. Ryan told me that if I voted 'yes' in the election, my initiation fees would be waived." Calcagno further asserted that at a meeting with Ryan and a few employees the following week, one of them questioned Ryan as to how the Union could know if they voted "Yes," since the ballots were secret. According to Calcagno, Ryan replied that everyone who voted would have his initiation fees waived if the Union won. Sontag similarly stated that at the June 5 meeting "Mr. Ryan told us employees who voted yes in the election would have their \$300.00 initiation fees waived and employees who voted no would not have their \$300.00 initiation fees waived." Sontag said he was the one who questioned Ryan at a subsequent meeting about how this could be, given the secrecy of the ballot, and that Ryan said Sontag had evidently misunderstood him. "[Ryan] said every Superior employee working at the time the Union was voted in would not have to pay the initiation fee."

The Regional Director incorrectly stated that one of the employees had contradicted the other concerning Ryan's remarks at the June 5 meeting, but even assuming the truth of both employee statements, we agree with his conclusion that the proffered evidence does not establish that an objectionable fee waiver offer was made. As the Third Circuit noted concerning a contention that a waiver of initiation fees might be understood as an offer made only to those who voted for the Union in the election: "The Company's contention cannot be accepted. Because the ballots in a union election are kept secret even after the vote is tallied, the Union will never be able to determine which employees actually voted for union representation." *Molded Acoustical Products, Inc. v. NLRB*, 815 F.2d 934, 938 (3d Cir. 1987), cert. denied 484 U.S. 925 (1987), enfg. 273 NLRB 156 (1984). Accord: *De Jana Industries*, 305 NLRB 294 (1991). Indeed, the questioning of Ryan about ballot secrecy at the second meeting illustrated that very point.<sup>3</sup> We therefore adopt the Regional Director's recommendation to overrule Objection 3, and since there are no factual issues in dispute, we also reject the Employer's request for a hearing.

<sup>3</sup> We also note that the vice of the fee waiver found objectionable in *NLRB v. Savair Mfg Co.*, 414 U.S. 270 (1973), is not present here. In *Savair* the fee waiver was offered to those who manifested support before the election by signing union authorization cards. The Supreme Court found this objectionable because it would allow "the union to purchase endorsements and paint a false portrait of employee support during its election campaign." As the Board noted in *De Jana*, supra, 305 NLRB at 295, no such "false portrait" is created where there is no linkage to authorization cards or other "outward manifestation of support." There is no allegation in either employee statement in this case that the waiver was promised to those who signed union cards or otherwise manifested support before the election.

<sup>1</sup> The Employer contends that the failure of six employees to vote in the election may have affected the outcome. We note that the ballots they would have cast are insufficient in number to affect the results of the election.

<sup>2</sup> In the absence of exceptions, the Board pro forma adopts the Regional Director's recommendation that Objection 4 be overruled.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the ballots have been cast for Teamsters Local Union No. 682, International Brotherhood of Teamsters, AFL-CIO, and that it is the exclusive collective-bargaining representative for the employees in the following appropriate unit:

All full-time and regular part-time truckdrivers and helpers employed by the Employer at its 2264 Creve Coeur Mill Road, St. Louis, Missouri facility, EXCLUDING office clerical and professional employees, mechanics, equipment operator, guards and supervisors as defined by the Act.