[The Board dismissed the petition in Case No. 15–RC–3232 insofar as it relates to General Electric Company, Mississippi Test Support Department; Allied-Webb, a Joint Venture; Glantz Contracting Corporation; and Consolidated American Services, Inc.; and dismissed the petition in Case No. 15–RC–3168 in its entirety.]

[Text of Direction of Elections omitted from publication.]

Excelsior Underwear Inc. and Saluda Knitting Inc.[1] *and* Amalgamated Clothing Workers of America, AFL–CIO, Petitioner

K. L. Kellogg & Sons[2] *and* International Union of Operating Engineers, Local No. 3, AFL–CIO, and International Union of Operating Engineers, Local Union No. 12, AFL–CIO, Joint Petitioners. *Cases Nos. 11–RC–1876, and 21–RC–8955. February 4, 1966*

DECISIONS AND CERTIFICATIONS OF RESULTS OF ELECTIONS

In the *Excelsior* case, pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted by the Regional Director for Region 11 on December 6, 1963, among the employees in the unit described below. After the election, the parties were furnished with a tally of ballots which showed that of approximately 247 eligible voters, 246 cast ballots, of which 35 were for, and 206 against, the Petitioner, and 5 challenged. The challenges were insufficient in number to affect the results of the election. The Petitioner filed timely objections to conduct affecting the results.

The objections, as summarized by the Regional Director, related to the following:

(1) The Employer's conduct on November 29 in mailing to all employees an 8-page letter allegedly containing material misstatements as to Union dues and initiation fees, as well as provisions of the National Labor Relations Act, threats of plant closings, strikes and violence, and a predetermined position of refusing to bargain in the event the Union were to be selected as bargaining representative.

(2) The Employer's conduct in refusing to supply the Union with a list of employees and their addresses for the purpose of allowing the Union to answer the letter referred to in Objection No. 1.

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[1] Referred to herein as the *Excelsior* case.
[2] Referred to herein as the *Kellogg* case.

(3) The Employer's conduct on or about December 4, in posting a notice at its plants materially misrepresenting Union officials' salaries.

(4) The Employer's conduct on December 5, in giving a speech to employees on Company time containing promises of benefit if the employees did not select the Union as their bargaining representative.

(5) The conduct of certain townspeople of Saluda, South Carolina, in speaking to groups of employees on December 3 and 4, and informing them that other companies interested in relocating in Saluda, South Carolina, would not do so if the Union were selected as bargaining representative. Said townspeople allegedly also stated that Union representatives were Communistic and did not believe in God.

After investigation, the Regional Director, on January 10, 1964, issued and served upon the parties his report and recommendation on objections, in which he recommended that the objections be overruled and that a certification of election results be issued. Petitioner filed timely exceptions to the Regional Director's report.

In the *Kellogg* case, pursuant to a stipulation for certification upon consent election, a mail election by secret ballot was conducted by the Regional Director for Region 21 between May 15 and 28, 1964, among the employees in the unit described below. After the election, the parties were furnished with a tally of ballots which showed that of approximately 31 eligible voters, 30 cast votes, of which 9 were for, and 21 against, the Joint Petitioners. The Joint Petitioners filed timely objections to conduct affecting the results of the election.

Objection No. 1 alleged that the Employer, on or about May 5 and 13, 1964, sent to each employee letters containing certain false and coercive material. Objection No. 2 complained of the Employer's denial of the Joint Petitioners' request for a list of employees' names and addresses so that it would have an opportunity to mail campaign material to those employees.

After investigation, the Regional Director, on July 16, 1964, issued and served upon the parties his report and recommendation on objections, in which he recommended that objection No. 1 be sustained, objection No. 2 be overruled, and the election be set aside and a new election directed. The Joint Petitioners filed timely exceptions to the Regional Director's recommendation that objection No. 2 be overruled.[3]

[3] The Employer filed timely exceptions to the Regional Director's recommendation with respect to objection No. 1.

On April 2, 1965, the National Labor Relations Board, having determined that the Employers' denial of the Petitioners' request for the names and addresses of employees eligible to vote in the elections in these two cases presented a question of substantial importance in the administration of the National Labor Relations Act, as amended, ordered that the two cases be consolidated, and that oral argument be heard before the Board on May 20, 1965. The parties were given permission to file further briefs and directed to focus their attention, in briefs and argument, on the following questions:

> I. Can a fair and free election be held when the union involved lacks the names and addresses of employees eligible to vote in that election, and the employer refuses to accede to the union's request therefor?
>
> II. If such information should be made available, should the requirement be limited to situations in which the employer has utilized his knowledge of these names and addresses to mail anti-union letters or literature to employees' homes?
>
> III. If some requirement that the employer make addresses available is to be imposed, how should this be implemented? For example, should such names and addresses be furnished to a mailing service with instructions to mail, at the union's expense, such materials as the union may furnish? Or, should the union be entitled to have the names and addresses?

The Board also invited certain interested parties to file briefs *amicus curiae* and to participate in oral argument. This invitation was accepted by: The chamber of commerce of the United States; American Federation of Labor and Congress of Industrial Organizations; International Union of Electrical, Radio and Machine Workers, AFL–CIO; and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW–AFL–CIO. The National Association of Manufacturers, Retail Clerks International Association, AFL–CIO, and Textile Workers Union of America, AFL–CIO, filed briefs but did not participate in the argument. The International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America participated in the argument but did not file a brief.

Upon the entire record in each of these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the policies of the Act to assert jurisdiction herein.

2. The Petitioner (Joint Petitioners in *Kellogg*) is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Sections 9(c)(1) and 2(6) and (7) of the Act.

4(a) In *Excelsior* the parties stipulated, and we find, that all production and maintenance employees, plant clerical employees, and janitors at both the Employer's plants in Saluda, South Carolina, excluding all office clerical employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

(b) In *Kellogg* the parties stipulated, and we find, that all drillers, derrickmen, rotary helpers, yardmen, mechanics, and welders, excluding all office clerical employees, professional employees, truckdrivers, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

5. Exceptions Nos. 1, 3, 4, and 5 in *Excelsior* are without merit and hereby rejected.

6. Objection No. 2 in each of these cases poses the question whether an employer's refusal to provide a union with the names and addresses of employees eligible to vote in a representation election should be grounds on which to set that election aside. The Board has not in the past set elections aside on this ground. For, while the Board has required that an employer, shortly before an election, make available for inspection by the parties and the Regional Director a list of employees claimed by him to be eligible to vote in that election, there has been no requirement that this list contain addresses in addition to names. The rules governing representation elections are not, however, "fixed and immutable. They have been changed and refined, generally in the direction of higher standards."[4]

We are persuaded, for the reasons set out below, that higher standards of disclosure than we have heretofore imposed are necessary, and that prompt disclosure of the information here sought by the Petitioners should be required in all representation elections. Accordingly, we now establish a requirement that will be applied in all election cases. That is, within 7 days after the Regional Director has approved a consent-election agreement entered into by the parties parties pursuant to Section 102.62 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, or after the Regional Director or the Board has directed an election pursuant to Sections 102.67, 102.69, or 102.85 thereof, the employer must file with the Regional Director an election eligibility list, containing the names

[4] *Sewell Manufacturing Company*, 138 NLRB 66, 70. See also *Peerless Plywood Company*, 107 NLRB 427, *Gummed Products Company*, 112 NLRB 1092; *Hollywood Ceramics Company, Inc.*, 140 NLRB 221; *Dal-Tex Optical Company, Inc*, 137 NLRB 1782, at 1786–1787.

and addresses of all the eligible voters. The Regional Director, in turn, shall make this information available to all parties in the case. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.[5]

The considerations that impel us to adopt the foregoing rule are these: "The control of the election proceeding, and the determination of the steps necessary to conduct that election fairly [are] matters which Congress entrusted to the Board alone."[6] In discharging that trust, we regard it as the Board's function to conduct elections in which employees have the opportunity to cast their ballots for or against representation under circumstances that are free not only from interference, restraint, or coercion violative of the Act, but also from other elements that prevent or impede a free and reasoned choice.[7] Among the factors that undoubtedly tend to impede such a choice is a lack of information with respect to one of the choices available.[8] In other words, an employee who has had an effective opportunity to hear the arguments concerning representation is in a better position to make a more fully informed and reasonable choice. Accordingly, we think that it is appropriate for us to remove the impediment to communication to which our new rule is directed.

As a practical matter, an employer, through his possession of employee names and home addresses as well as his ability to communicate with employees on plant premises, is assured of the continuing opportunity to inform the entire electorate of his views with respect to union representation. On the other hand, without a list of employee names and addresses, a labor organization, whose organizers normally have no right of access to plant premises,[9] has no method by which it can be certain of reaching all the employees with its arguments in

[5] In the event that the payroll period for eligibility purposes is subsequent to the direction of election or consent-election agreement, the eligibility list shall be filed within 7 days after the close of the determinative payroll period for eligibility purposes. In order to be timely, the eligibility list must be *received* by the Regional Director within the period required No extension of time shall be granted by the Regional Director except in extraordinary circumstances nor shall be filing of a request for review operate to stay the requirement here imposed.

However, the rule we have here announced is to be applied prospectively only. It will not apply in the instant cases but only in those elections that are directed, or consented to, subsequent to 30 days from the date of this Decision We impose this brief period of delay to insure that all parties to forthcoming representation elections are fully aware of their rights and obligations as here stated

[6] *N.L.R.B.* v. *Waterman Steamship Corporation,* 309 U.S. 206, 226; see also *N.L.R.B.* v. *Sharlington Supermarket, Inc., et al.,* 224 F. 2d 649, 651 (C.A. 4).

[7] See *General Shoe Corporation,* 77 NLRB 124, 126–127

[8] See Bok, *The Regulation of Campaign Tactics in Representation Elections under the National Labor Relations Act,* 78 Harv. L. Rev. 38, 46, 92 (1964).

[9] *N.L.R.B.* v. *The Babcock & Wilcox Company,* 351 U.S 105

favor of representation, and, as a result, employees are often completely unaware of that point of view. This is not, of course, to deny the existence of various means by which a party *might* be able to communicate with a substantial portion of the electorate even without possessing their names and addresses. It is rather to say what seems to us obvious—that the access of *all* employees to such communications can be insured only if all parties have the names and addresses of all the voters.[10] In other words, by providing all parties with employees' names and addresses, we maximize the likelihood that all the voters will be exposed to the arguments for, as well as against, union representation.

Nor are employee names and addresses readily available from sources other than the employer. The names of some employees may be secured with the assistance of sympathetic fellow employees, but, in a large plant or store, where many employees are unknown to their fellows, this method may not yield the names and addresses of a major proportion of the total employee complement.[11] Additionally, there are not infrequently employees on layoff status, sick leave, leave of absence, military leave, etc., eligible to vote,[12] yet unknown to their fellow employees. Furthermore, employees are frequently known to their fellows only by first names or nicknames, so that there may be significant problems in obtaining the home addresses even of those employees whose names are known. Finally, all the foregoing difficulties are compounded by the more or less constant turnover in the employee complement of any employer.[13]

In sum, not only does knowledge of employee names and addresses increase the likelihood of an informed employee choice for or against representation, but, in the absence of employer disclosure, a list of names and addresses is extremely difficult if not impossible to obtain.

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[10] A union that does not know the names or addresses of some of the voters may seek to communicate with them by distributing literature on sidewalks or street corners adjoining the employer's premises or by utilizing the mass media of communication. The likelihood that *all* employees will be reached by these methods is, however, problematical at best. See *N.L.R.B.* v. *United Aircraft Corp., et al.*, 324 F. 2d 128, 130 (C.A. 2), cert. denied 376 U.S. 951. Personal solicitation on plant premises by employee supporters of the union, while vastly more satisfactory than the above methods, suffers from the limited periods of nonworking time available for solicitation (generally and legally forbidden during working time, *Peyton Packing Company, Inc.*, 49 NLRB 828, 843) and, in a large plant, the sheer physical problems involved in communicating with fellow employees.

[11] See, e.g., *The May Department Stores Company, d/b/a The May Company*, 136 NLRB 797, 808, enforcement denied 316 F. 2d 797 (C.A. 6), in which, after some 20 months of organizational effort, the union possessed names and addresses of only 1250 out of approximately 3,000 eligible voters.

[12] *Vent Control, Inc., etc.*, 126 NLRB 1134 (layoff); *Otarion Listener Corp., et al.*, 124 NLRB 880 (sick leave); *Channel Master Corporation*, 148 NLRB 1343 (leave of absence); *Brown Cigar Company*, 124 NLRB 1435, 1437, footnote 3 (military leave).

[13] See 88 Monthly Labor Rev., 1022–1024 (August 1965).

Accordingly, as we have stated, we shall in the future regard an employer's refusal to make a prompt disclosure of this information as tending to interfere with prospects for a fair and free election.[14]

A requirement that all participants in an election contest have the opportunity to ascertain the names and addresses of the voters is not uncommon. Lists of registered voters in public elections are open to inspection and copying by the public.[15] When stockholders wish to participate in election contests (or other proxy contests), management either must provide them with the names and addresses of other stockholders or mail campaign material for them.[16] Any candidate for union office is entitled to have the union distribute his campaign literature to all members.[17]

We see no reason why similar opportunities should not be available in a representation election. As one thoughful commentator has stated, "Since the opportunity for both sides to reach all the employees is basic to a fair and informed election, the reasons for requiring disclosure seem just as strong as those leading to similar requirements under other provisions of the law." [18]

While the rule we here announce is primarily predicated on our belief that prompt disclosure of employee names and addresses is necessary to insure an informed electorate, there is yet another basis on which we rest our decision. As noted (*supra*) an employer is presently under no obligation to supply an election eligibility list until shortly before the election. The list, when made available, not

[14] While we have discussed the importance of disclosure in the context of the typical case in which the employer and union are the parties engaged in communicating with the electorate, it should be noted that the requirement here imposed applies equally to the case in which an election has been directed upon a petition by an employee or group of employees who seek to decertify an existing bargaining representative or to rescind that representative's authority to enter into a union-security agreement of the sort otherwise authorized by Section 8(a)(3) of the Act. In these latter cases, the petitioning employees would be entitled to the names and addresses of their fellow employees as an aid in their efforts to communicate their arguments against continued union representation or continuance of an existing union-security agreement Similarly, the union, as a party to the election, would be entitled to employees' names and addresses so as to communicate its position. In short, the disclosure requirement here adopted applies whenever a Board election has been scheduled and insures all parties to the election, whatever their viewpoint, of an opportunity to communicate with the electorate. The only exception is in the expedited election conducted pursuant to 8(b)(7)(C). In this situation, we believe that the timespan between the direction of election and the conduct thereof is too brief, taking into account the time required for the employer to compile and file a list of names and addresses, for the union to be able to make any meaningful use of this information. Hence, in that limited situation, we do not require disclosure.

[15] 29 C.J.S. *Elections* § 50.

[16] 17 C.F.R. 240.14a—7, 8.

[17] 73 Stat. 532, 29 U.S.C. § 481(c).

[18] Bok, *The Regulation of Campaign Tactics in Representation Elections under the National Labor Relations Act,* 78 Harv. L. Rev. 38, 99–100 (1964); Cf. Summers, *Judicial Regulation of Union Elections,* 70 Yale L. J. 1221, 1227–1228 (1961). Another manifestation of the concept that all participants in an election should have access to the electorate is embodied in 48 Stat. 1088, as amended, 47 U.S.C. § 315(a), which provides for equal time for political candidates on radio and television.

infrequently contains the names of employees unknown to the union and even to its employee supporters. The reasons for this are, in large part, the same as those that make it difficult for a union to obtain, other than from the employer, the names of all employees; i.e., large plants with many employees unknown to their fellows, employees on layoff status, sick leave, military leave, etc. With little time (and no home addresses) with which to satisfy itself as to the eligibility of the "unknowns," the union is forced either to challenge all those who appear at the polls whom it does not know or risk having ineligible employees vote. The effect of putting the union to this choice, we have found, is to increase the number of challenges, as well as the likelihood that the challenges will be determinative of the election, thus requiring investigation and resolution by the Regional Director or the Board. Prompt disclosure of employee names as well as addresses will, we are convinced, eliminate the necessity for challenges based solely on lack of knowledge as to the voter's identity. Furthermore, bona fide disputes between employer and union over voting eligibility will be more susceptible of settlement without recourse to the formal and time-consuming challenge procedures of the Board if such disputes come to light early in the election campaign rather than in the last few days before the election when the significance of a single vote is apt to loom large in the parties' calculations. Thus the requirement of prompt disclosure of employee names and addresses will further the public interest in the speedy resolution of questions of representation.

The arguments against imposing a requirement of disclosure are of little force especially when weighed against the benefits resulting therefrom. Initially, we are able to perceive no substantial infringement of employer interests that would flow from such a requirement. A list of employee names and addresses is not like a customer list, and an employer would appear to have no significant interest in keeping the names and addresses of his employees secret (other than a desire to prevent the union from communicating with his employees—an interest we see no reason to protect). Such legitimate interest in secrecy as an employer may have is, in any event, plainly outweighed by the substantial public interest in favor of disclosure where, as here, disclosure is a key factor in insuring a fair and free electorate. Cf. *N.L.R.B.* v. *F. W. Woolworth Co.*, 352 U.S. 938, reversing *per curiam* 235 F. 2d 319 (C.A. 9); *N.L.R.B.* v. *Truitt Mfg. Co.*, 351 U.S. 149; *FCC* v. *Schreiber*, 381 U.S. 279

The main arguments that have been presented to us by the Employers and the *amici curiae* supporting the Employers relate not to any infringement of *employer* rights flowing from a disclosure requirement but rather to an asserted infringement of *employee* rights. Thus, it is

argued that if employees wished an organizing union to have their names and addresses they would present the union with that information. By compelling the employer to provide the union with information that the employees have chosen not to divulge, the Board, it is asserted, compels employer interference with the Section 7 rights of employees to refrain from union activities. We regard this argument as without merit. An employee's failure to provide a union with his name and address, whether due to inertia, fear of employer reprisal, or an initial predisposition to vote against union representation, is not, as we view it, an exercise of the Section 7 rights to refrain from union activity. Rather, in the context with which we are here concerned—a Board-conducted representation election—an employee exercises this right by voting for or against union representation.

Similarly, we reject the argument that to provide the union with employee names and addresses subjects employees to the dangers of harassment and coercion in their homes. We cannot assume that a union, seeking to obtain employees' votes in a secret ballot election, will engage in conduct of this nature; if it does, we shall provide an appropriate remedy.[19] We do not, in any event, regard the mere possibility that a union will abuse the opportunity to communicate with employees in their homes as sufficient basis for denying this opportunity altogether. See *Martin* v. *Struthers*, 319 U.S. 141; *Staub* v. *City of Baxley*, 355 U.S. 313.[20]

The argument is also made (by the Employer in the *Excelsior* case) that under the decisions of the Supreme Court in *N.L.R.B.* v. *The Babcock & Wilcox Company*,[21] *and N.L.R.B.* v. *United Steelworkers of America (Nutone Inc.)*,[22] the Board may not require employer disclosure of employee names and addresses unless, in the particular case involved the union would otherwise be unable to reach the employees with its message. We disagree. We think that the issue presented by

[19] See *Poinsett Lumber and Manufacturing Company*, 116 NLRB 1732; *Orleans Manufacturing Company*, 120 NLRB 630, 634; *Plant City Welding and Tank Company*, 119 NLRB 131, 133–134.

[20] Another argument made against disclosure of employee names and addresses in connection with an election proceeding is that a union might petition for an election with no real intention of participating therein, but solely to obtain employee names and addresses, intending, on receipt thereof, to withdraw the election petition and utilize its newly acquired information as a basis for further organizational efforts. We think that the likelihood of such misuse of the Board's processes is minimized by our practice of requiring at least a 30 percent showing of representation before further processing the usual RC (union) petition, and also by our practice of imposing (absent a showing of good cause to the contrary) a 6-month ban on entertaining an election petition filed by a union which has withdrawn from an election after a hearing has been held or a consent-election agreement approved by the Regional Director. See *Campos Dairy Products, Limited*, 107 NLRB 715. In any event, in view of the importance of disclosure for a fair and free election, we *do not* regard the bare possibility that *some* unions may misuse the information disclosed as grounds for our denying *all* unions (as well as employees who seek to unseat unions, see footnote 14, *supra*) access to employee names and addresses.

[21] 351 U.S. 105.

[22] 357 U.S. 357.

these cases is distinguishable from that presented in *Babcock* or *Nutone* and that, even assuming the availability of other avenues by which a union *might* be able to communicate with employees, we may properly require employer disclosure of employee names and addresses so as to *insure* the opportunity of all employees to be reached by all parties in the period immediately preceding a representation election.

Initially, as we read *Babcock* and *Nutone*, the existence of alternative channels of communication is relevant only when the opportunity to communicate made available by the Board would interfere with a significant employer interest—such as the employer's interest in controlling the use of property owned by him. Here, as we have shown, the employer has no significant interest in the secrecy of employee names and addresses. Hence, there is no necessity for the Board to consider the existence of alternative channels of communication before requiring disclosure of that information. Moreover, even assuming that there is some legitimate employer interest in nondisclosure, we think it relevant that the subordination of that interest which we here require is limited to a situation in which employee interests in self-organization are shown to be substantial. For, whenever an election is directed (the precondition to disclosure) the Regional Director has found that a real question concerning representation exists; when the employer consents to an election, he has impliedly admitted this fact.[23] The opportunity to communicate on company premises sought in *Babcock* and *Nutone* was not limited to the situation in which employee organizational interests were substantial; i.e., in which an election had been directed; we think that on this ground also the cases are distinguishable. Finally, both *Babcock* and *Nutone* dealt with the circumstances under which the Board might find an employer to have committed an unfair labor practice in violation of Section 8 of the Act, whereas the instant cases pose the substantially distinguishable issue of the circumstances under which the Board may set aside an election. "[T]he test of conduct which may interfere with the 'laboratory conditions' for an election is considerably more restrictive than the test of conduct which amounts to interference, restraint, or coercion which violates Section 8(a)(1)."[24] Whether or not an employer's refusal to disclose employee names and addresses after an election is directed would constitute "interference, restraint, or coercion" within the meaning of Section 8(a)(1) of the Act, despite the existence of alternative channels of

[23] Section 9(c)(1); see also Board's Rules and Regulations and Statements of Procedure, Series 8, as amended, Section 101.18. We also require disclosure when an election is directed pursuant to an employee petition to decertify a currently recognized union or to rescind the authority of such a union to enter into a "union-shop" agreement. See footnote 14, *supra*. In these situations, the employee interest, though opposed to union representation or membership, is also required to be substantial before an election will be directed. See Section 9(c)(1)(A)(ii), 9(e)(1); and Board's Rules and Regulations and Statements of Procedure, Series 8, as amended, Section 101.18 and 101.27.

[24] *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782, 1786–1787; see also *General Shoe Corporation*, 77 NLRB 124, 126–127.

communication open to the union, is a question on which we express no view because it is not before us. However, we are persuaded, for the reasons previously stated, that disclosure is one of the "safeguards necessary to insure the fair and free choice of bargaining representative by employees" [25] and that an employer's refusal to disclose, regardless of the existence of alternative channels of communication, tends to interfere with a fair and free election. Thus *Babcock* and *Nutone*, which dealt with the substantially different issue of whether the employers' conduct violated 8(a)(1), are, for this reason also, inapposite.

Finally, we wish to state our reasons for rejecting the approaches to the disclosure issue suggested by questions II and III in the notice of hearing. We do not limit the disclosure requirement to the situation in which the employer has mailed antiunion literature to employees' homes (question II) because we believe that access to employee names and addresses is fundamental to a fair and free election regardless of whether the employer has sent campaign propaganda to employees' homes.[26] We do not limit the requirement of disclosure to furnishing employee names and addresses to a mailing service (question III) because this would create difficult practical problems and because we do not believe that the union should be limited to the use of the mails in its efforts to communicate with the entire electorate.[27]

Inasmuch as the rule we have here announced is to be applied prospectively only (see footnote 5, *supra*), we reject Petitioners' exceptions to the Regional Directors' recommendations with respect to objection No. 2 in both *Kellogg* and *Excelsior*. As we have also rejected the Petitioner's remaining exceptions in *Excelsior*, we shall accept the Regional Director's recommendation and certify the results of that election. With respect to *Kellogg*, while we have rejected the Joint Petitioners' exception to the Regional Director's recommendation as to objection No. 2, the Employer has filed exceptions to the Regional Di-

[25] *N L R B* v. *A J. Tower Company*, 329 U.S. 324, 330; see also *N.L.R.B.* v *Waterman Steamship Corporation*, 309 U.S. 206, 226.

[26] Compare *The May Department Stores Company, d/b/a The May Company*, 136 NLRB 797, enforcement denied 316 F. 2d 797 (C A. 6), *Montgomery Ward & Co., Inc.*, 145 NLRB 846, enfd in part 339 F. 2d 889 (C A. 6).

[27] See *S & H Grossinger's, Inc.*, 156 NLRB 233. See also *Eldersveld and Dodge, Personal Contact or Mail Propaganda. An Experiment in Voting Turnout and Attitude Change* in Katz, *Public Opinion and Propaganda*, pp. 532, 541 (1954), *Karsh, Diary of a Strike*, p. 106 (1958); Klapper, *The Effects of Mass Media*, part 2 at 9–14 (1949)

In the briefs and arguments of the Employers and *amici curiae* supporting the Employers, much has been made of Board decisions setting aside representation elections because an employer or his agents called on all or a majority of employees in their homes in the period preceding the election. See, e g, *Peoria Plastic Company*, 117 NLRB 545. The argument is made that it would be inequitable for the Board to preclude employers from visiting employees in their homes and at the same time insist that unions be furnished with employee names and addresses so that they may engage in home visits The short answer to this argument is that employers are free to communicate with their employees in the plant; a union, as a practical matter, is severely limited in its efforts at inplant communications See *Plant City Welding and Tank Company*, 119 NLRB 131, 133–134; see also footnote 10, *supra*.

rector's recommendation that the election be set aside on the basis of two campaign letters sent by the Employer and that a new election be directed. We have read the letters of the Employer in their entirety and the Union's propaganda and conclude that, under all the circumstances, the Employer's letters could clearly be evaluated by the employees as partisan electioneering and do not warrant setting the election aside.[28] Accordingly, we shall also certify the results of that election.

[The Board certified, in *Excelsior Underwear Inc. and Saluda Knitting Inc.*, Case No. 11–RC–1876, that a majority of the valid ballots was not cast for Amalgamated Clothing Workers of America, AFL–CIO, and that this labor organization is not the exclusive representative of the employees in the unit heretofore found appropriate, and also, certified, in *K. L. Kellogg & Sons*, Case No. 21–RC–8055, that a majority of the valid ballots was not cast for International Union of Operating Engineers, Local No. 3, AFL–CIO, and International Union of Operating Engineers, Local Union No. 12, AFL–CIO, and that these labor organizations are not the exclusive representative of the employees in the unit heretofore found appropriate.]

[28] Member Brown would accept the Regional Director's findings and recommendation.

General Electric Co. *and* International Union of Electrical, Radio and Machine Workers, AFL–CIO

McCulloch Corporation *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW–AFL–CIO. *Cases Nos. 9–RC–5965 and 21–RC–8228. February 4, 1966*

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

GENERAL ELECTRIC: Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted by the Regional Director on August 26, 1964, among the employees in the unit described below. After the election, the parties were furnished with a tally of ballots which showed that of 72 eligible voters, 70 cast valid ballots, of which 31 were for the Petitioner and 39 against. Petitioner filed timely objections to conduct affecting the results of the election. After investigation, the Regional Director issued and served upon the parties his report and recommendation on objections in which he recommended that the objections be overruled and that a certification of results of election be issued. Petitioner filed exceptions only to the Regional Director's recommendation with respect to objection No. 5.