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.

In objection No. 5, Petitioner asserted that the Employer held a "captive audience" meeting of its employees at which it campaigned against union representation and denied Petitioner an opportunity to be represented at such meeting. The Regional Director's investigation revealed that on August 17, 1964, the Employer posted a notice that a meeting relating to the forthcoming representation election would be held on August 19. On August 18, Petitioner sent a telegram to the Employer challenging the Employer's plant manager to debate the relevant issues at the meeting. The request was refused, and the meeting was held as scheduled, with attendance voluntary and employees paid for time spent in attendance. The Regional Director held that the Employer's denial of Petitioner's request to participate in the August 19 meeting was not grounds for setting aside the election "since the evidence fails to establish that the Employer in any way diminished the effectiveness of the Petitioner's normal channels of communication and contact with employees."

DECISION DENYING REQUEST FOR REVIEW

McCULLOCH: Pursuant to the Regional Director's Decision and Direction of Election, an election by secret ballot was conducted by the Regional Director on June 6, 1963, in a unit appropriate for collective bargaining. After the election, the parties were furnished with a tally of ballots which showed that, of approximately 1,312 eligible voters, 1,227 cast valid ballots, of which 571 were for the Petitioner and 656 against. There were 24 challenged ballots and 2 void ballots. Petitioner filed timely objections to conduct affecting the results of the election. The Regional Director, after investigation, issued a Supplemental Decision and Certification of Results of Election, overruling all the objections and certifying the results of the election. Petitioner filed a timely request for review of that portion of the Regional Director's Supplemental Decision wherein the Regional Director overruled objection No. 2.

In this objection, Petitioner alleges (and the Employer does not deny that the Employer made a campaign speech to its employees at a meeting held on company premises during working time 2 days before the election. The Employer urged the employees to vote against union representation and denied Petitioner's request, made a day or two previously, for equal time to present its position at that meeting. Petitioner failed to submit evidence that the Employer had a rule prohibiting union solicitation during nonworking time or that other effective channels of communication were not available to Petitioner. In the absence of such evidence, the Regional Director held the objection did

not raise grounds for setting aside the election.[1] As noted, Petitioner filed a timely request for review of the Regional Director's disposition of this objection.

On April 2, 1965, the Board, having determined that the Employers' denial of the Petitioners' requests for an opportunity to reply to the preelection campaign speeches 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 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 where an employer makes an antiunion speech on company time and premises, in the period immediately preceding an election, and the union involved is not afforded the opportunity, which it seeks, to reply under similar circumstances?

II. If an opportunity to reply is appropriate, what should be the crucial period? For how long a period prior to a scheduled election may an employer make such a speech, without granting the union involved an opportunity to reply?

III. What are the relevant factors in determining whether an opportunity to reply is necessary? For example, is the size of the unit material?

The Board also invited certain interested parties to file briefs *amicus curiae* and participate in oral argument. This invitation was accepted by the Chamber of Commerce of the United States and American Federation of Labor-Congress of Industrial Organizations. The National Association of Manufacturers 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 General Electric, the National Labor Relations Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The Petitioner 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 Section 9(c)(1) and Section 2(6) and (7) of the Act.

[1] In support of his conclusion, the Regional Director cited *N.L.R.B.* v. *United Steelworkers of America (Nutone, Inc.)*, 357 U.S. 357; *Livingston Shirt Corporation, et al.*, 107 NLRB 400; *The May Department Stores Company, d/b/a The May Company*, 136 NLRB 797.

4. The parties stipulated, and we find, that all production and maintenance employees, including shipping and receiving employees employed by the Employer at its glass plant in Somerset, Kentucky, excluding all office clerical employees, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

In each of the cases before us, the Employer, shortly before a scheduled representation election, made a noncoercive speech to assembled employees, urging them to vote against union representation. The speeches were made on company premises and the employees were paid for time spent in attendance. In each case, the Petitioner requested an opportunity to reply under similar circumstances—on company premises with employees paid by the employer for time spent in attendance—and its request was denied. In each case, the Petitioner argues that the Employer's denial of its request prevented the holding of a fair and free election. Hence, Petitioners argue, the elections subsequently held, in which the employees voted against union representation, should be set aside and new elections conducted.

The Board has not, since its decision in *Livingston Shirt Corporation*, *supra*, held an employer's denial of a union's request to reply to a preelection speech to be grounds for setting aside an election or finding an unfair labor practice to have been committed except where the employer has maintained either an unlawful no-solicitation rule or a broad no-solicitation rule of the sort allowed retail department stores (prohibiting union solicitation on nonworking time in areas of the store open to the public).[2] The Unions (as we shall hereafter refer to Petitioners and *amici curiae* supporting them) recognizing this, and conceding that neither Employer had an unlawful or a broad no-solicitation rule, argue that existing Board law is inadequate, that *Livingston Shirt* should be overruled, and that the Board should return to the doctrine of *Bonwit Teller, Inc.;*[3] i.e., that regardless of the breadth of the employer's no-solicitation rule, an antiunion speech on company time and premises, combined with a denial of a union request to reply, is grounds for both setting aside a subsequent representation election[4] and finding an unfair labor practice to have been committed.[5] Indeed, the Unions urge us to go significantly beyond the *Bonwit Teller* doctrine. Thus, it is argued that, whenever the Board has directed an election, representatives of the union involved should

[2] *The May Department Stores Company, etc*, 136 NLRB 797, enforcement denied 316 F. 2d 797 (C.A. 6); *Montgomery Ward & Co, Inc*, 145 NLRB 846, enfd as modified 339 F. 2d 889 (C.A. 6); *S. & H Grossinger's, Inc.*, 156 NLRB 233.

[3] 96 NLRB 608, remanded 197 F. 2d 640 (C.A. 2), cert. denied 345 U S 905

[4] See, e.g., *National Screw & Mfg. Co. of Calif.*, 101 NLRB 1360, *Metropolitan Auto Parts, Incorporated*, 99 NLRB 401; *Onondaga Pottery Company*, 100 NLRB 1143.

[5] See, e g, *The Gruen Watch Company, The Gruen National Watch Case Company*, 103 NLRB 3; *Onondaga Pottery Company*, 103 NLRB 770; *Metropolitan Auto Parts, Incorporated*, 102 NLRB 1634; *Higgins, Inc.*, 100 NLRB 829.

be allowed to campaign on the empower's premises, so long as they do not interfere with production. At the very least, it is argued, the union should have access to the employer's premises for campaign purposes whenever the employer uses those premises to campaign against the union—whether by mass speeches, individual solicitation, or distribution of literature. Otherwise, the Unions assert, the employer has such an advantage over the union in communicating his side of the organizational question as to interfere substantially with prospects for a fair and free election.

These arguments were, of course, made at a time when we had not yet decided *Excelsior Underwear, Inc., and Saluda Knitting Inc.*, 156 NLRB 1236. Thus the Union's allegations as to the effect of employer campaigning on company premises were necessarily predicated on the assumption that a union engaged in efforts to communicate with employees prior to a Board election might not even know the names or addresses of some of those employees. That assumption, as a result of our decision in *Excelsior*, is no longer valid. Henceforth, whenever an election is directed by the National Labor Relations Board or a Regional Director (except for the Section 8(b)(7)(C) expedited election, see *Excelsior*, *supra*, at footnote 14), and whenever the parties consent to an election all parties to the election will have available to them, within a very few days, the names and addresses of all eligible voters.

In light of the increased opportunities for employees' access to communications which should flow from *Excelsior*, but with which we have, as yet, no experience, and because we are not persuaded on the basis of our current experience that other fundamental changes in Board policy are necessary to make possible that free and reasoned choice for or against unionization which the National Labor Relations Act contemplates and which it is our function to insure we prefer to defer any reconsideration of current Board doctrine in the area of plant access until after the effects of *Excelsior* become known. Accordingly, we shall deny the request for review in *McCulloch*. In *General Electric*, we reject Petitioner's exception to the Regional Director's recommendations with respect to objection No. 5 and shall certify the results of the election.

[The Board denied the request for review of the Regional Director's Supplemental Decision in *McCulloch Corporation*, Case No. 21–RC–8228, and certified in *General Electric Co.*, Case No. 9–RC–5965, that in the election conducted on August 26, 1964, a majority of the valid ballots was not cast for International Union of Electrical, Radio and Machine Workers, AFL–CIO.]

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