

LOF Glass, Inc. and United Glass & Ceramic Workers of North America, AFL-CIO, CLC, Petitioner. Case 11-RC-4751

May 9, 1980

DECISION ON REVIEW

**BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND PENELLO**

On November 28, 1979, the Regional Director for Region 11 issued a Supplemental Decision, Order, and Direction of Second Election in the above-entitled proceeding in which he sustained part of Petitioner's Objection 1 to conduct affecting the results of an election,¹ overruled part of Petitioner's Objection 1 and its Objections 2 through 9, set the election aside, and directed a second election. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review on the ground that the Regional Director erred in finding merit in Petitioner's Objection 1 and in setting the election aside. By telegraphic order dated December 27, 1979, the request for review was granted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issue under review and hereby affirms the Regional Director for the following reasons.²

On two occasions, both shortly before the election, the Employer read a statement to assembled employees regarding the effects of union representation on certain existing company policies. The statement alleged that once the Union Petitioner became the employees' bargaining representative:

. . . the right and the freedom of each of you to come in and settle matters personally would be gone. Every employee's affairs would then be handled by the persons who got themselves appointed as shop stewards and committee men for the Union.

The Regional Director, relying primarily on *Robbins & Myers, Inc.*, 241 NLRB No. 11 (1979), found that the above was a material misrepresentation regarding the employees' statutory right to present their own grievances to their employer

without the intervention of the bargaining representative. Although *Robbins & Myers* may be distinguishable, we agree with the Regional Director's conclusion, and his recommendation that, as such misrepresentation occurred at a time when the Union did not have an opportunity to make an effective response, the election should be set aside.³

In *Robbins & Myers*, the employer told employees that when a union "comes on the scene the employees lose all rights for direct communication with the Company," a somewhat broader statement than the one made here. 241 NLRB No. 11, sl. op., p. 6. Also, in *Robbins & Myers*, the Board found that such a misrepresentation, taken together with other misrepresentations, constituted a proper basis for setting aside an election, but recognized that "in some circumstances each of the misrepresentations made here might not warrant setting aside the election." 241 NLRB No. 11, sl. op., p. 10. Despite these differences, we conclude that the Employer's misrepresentation here is serious enough to have interfered with the employees' free choice.

The Employer maintained an "open door" policy pursuant to which employees had been permitted and even encouraged to bring their grievances to management personally. Employees, according to the Employer, regularly and frequently availed themselves of this opportunity. The Employer's parent corporation, Libbey-Owens-Ford Company, has a number of collective-bargaining agreements with Petitioner which contain provisions for grievance procedures requiring the presence of a union representative when a grievance is presented, and providing for arbitration. The Employer argues that its statement was intended to inform employees that under such contracts its "open door" policy could no longer exist. Nonetheless, the statement remains a serious misrepresentation of the employees' right under Section 9(a) of the Act to present their own grievances and have them adjusted without reference to any contractual procedures as long as the substance of the adjustment is not inconsistent with the contract.⁴ See *Tipton Electric Company and Professional Furniture Company*, 242 NLRB No. 36, ALJD, sec. III,B,1,(a) (1979); *Han-Dee Pak, Inc.*, 232 NLRB 454, 458-459 (1977). That employees frequently made use of the Employer's "open door" policy makes its reputed loss something that they well could consider a signifi-

¹ The tally of ballots for the election showed that of approximately 549 eligible voters 255 cast valid ballots for, and 272 cast valid ballots against, Petitioner. There were no challenged ballots.

² We affirm the Regional Director's overruling of Petitioner's other objections, as Petitioner did not request review thereof.

³ In its request for review, the Employer did not contest the Regional Director's finding with respect to the Union's opportunity effectively to respond.

⁴ Sec. 9(a) recognizes the compatibility of the employees' right to present grievances and the union's opportunity to have a representative present.

cant reason to reject union representation.⁵ In these circumstances, we find that the misrepresentation made here was at least as serious as that in *Robbins & Myers*, and is sufficient to warrant setting aside the election.⁶

Accordingly, as we have affirmed the Regional Director, we shall, and hereby do, remand the case to him in order that he may conduct the second election pursuant to his Direction of Second Election, except that the payroll period for determining

⁶ In so finding, we do not decide whether the similar misrepresentation in *Robbins & Myers* would have been sufficient standing alone.

eligibility shall be that ending immediately before the date of this Decision on Review.

MEMBER PENELLO, dissenting:

For the reasons expressed in my dissenting opinions in *Robbins & Myers, Inc.*, 241 NLRB No. 11 (1979), and *General Knit of California, Inc.*, 239 NLRB 619 (1978), in which I noted that I adhere to the sound principles enunciated in *Shopping Kart Food Market, Inc.*, 228 NLRB 1311 (1977), I would overrule the Union's Objection 1 and certify the results of the election.