

Model Dye Southern, Inc. and International Ladies' Garment Workers' Union, AFL-CIO, Petitioner.
Case 11-RC-4676

November 23, 1979

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election¹ held on May 23, 1979, and the Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief, and hereby adopts the Regional Director's findings and recommendations only to the extent consistent herewith.

We find, contrary to the Regional Director, that the Employer did not interfere with the election by providing free soda pop and snacks to its employees on one occasion 5 days before the election.

The incident in question occurred on May 18, 1979, during the regularly scheduled break period for first- and second-shift employees. The Employer opened the vending machines and allowed employees access, without charge, to the machines. Employees could not recall a time when this had been done in the past. Except for the foregoing, the Regional Director found that the Employer did not otherwise engage in objectionable conduct.² We also note that

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 17 for, and 23 against, the Petitioner; there were 4 challenged ballots, an insufficient number to affect the results.

² No exceptions were filed to the Regional Director's recommendation that Petitioner's Objections 1, 2, 3, and 4(a) be overruled.

there is no indication that the use of the vending machines was a matter of concern to employees or that it was raised as an issue in the campaign.³

Under the circumstances, we find that granting employees free access to the vending machines on that one occasion 5 days before the election was, at most, a *de minimis* benefit that cannot reasonably be found to have impaired the voting choice of unit employees. Even if the Employer departed from its past practice by opening the vending machines, this single action, unaccompanied by any other objectionable conduct, does not furnish grounds for setting aside the election. We therefore overrule Petitioner's Objection 4(b).

Accordingly, as we have overruled all the objections and as the tally of ballots shows that the Petitioner did not receive a majority of the valid votes cast, we shall certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid votes have not been cast for International Ladies' Garment Workers' Union, AFL-CIO, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

³ In support of his recommendation that the election be set aside, even though the benefits granted by the Employer were of minimal value, the Regional Director cited *Performance Measurements Co., Inc.*, 148 NLRB 1657 (1964), and *M-W Education Corporation*, 223 NLRB 495 (1976). However, we find the Regional Director's reliance upon these cases inapposite.

In *Performance Measurements*, the employer promised employees a \$6 shoe allowance, and stated that payment would not be made until after the election. The Board noted that shoe damage had been a problem of long-standing concern to employees which the employer chose not to remedy until just before the election. In *M-W Education*, in addition to free lunches and a first-time, employer-catered Christmas party, the employer also made promises of benefits, interrogated employees, and instituted a change in the established system of evaluating employees which resulted in a general wage increase.