

Amalgamated Industrial Union, Local 76B and its Divisions, Local 92-Local 76, U.F.W.A., AFL-CIO and University of New Haven

University of New Haven and Amalgamated Industrial Union, Local 76B and its Divisions, Local 92-Local 76, U.F.W.A., AFL-CIO, Petitioner. Cases 1-CB-4167 and 1-RC-15653

December 4, 1979

DECISION, ORDER, AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND PENELLO

On August 13, 1977, Administrative Law Judge Bruce C. Nasdor issued the attached Decision in this proceeding. Thereafter, the Charging Party Employer filed exceptions and a supporting brief.

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 record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings,¹ and conclusions² of the Administrative Law Judge and to adopt his recommended Order.

¹ The Charging Party Employer has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² The Charging Party Employer excepted, *inter alia*, to the Administrative Law Judge's dismissal of Objections 9 and 10 which alleged misconduct by the Petitioner's observer, Ivan Cordero. In dismissing these objections the Administrative Law Judge found that Cordero spoke to employees in Spanish, but that the Employer's observer, Majorie Deobil, did not know what he said. The Charging Party Employer correctly points out, however, that the Administrative Law Judge found and the record shows that Deobil asked Cordero to translate into English what he said to the employees, and that Cordero told Deobil that he was urging the employees to come in and vote. Deobil further testified that on two separate occasions an employee asked Cordero if another employee had voted yet, and that Cordero responded, "No." Cordero's testimony was essentially similar to Deobil's but he said that only one employee asked him if another employee had voted.

We do not condone such conduct by an election observer. However, we have held that conduct similar to Cordero's invitation to employees to come in and vote does not constitute electioneering. See *South Pacific Furniture, Inc.*, 241 NLRB 488 (1979), citing *General Shoe Corporation*, 77 NLRB 124 (1948), and *Milchem, Inc.* 170 NLRB 362 (1968). As to Cordero's giving out information on who had not voted, we note that he responded only when asked a direct question. There was no evidence that Cordero volunteered the information or actively kept a list of voters. In sum, we find no merit in the Employer's contention that Cordero's conduct violated *Milchem, Inc.*, 170 NLRB 362 (1968). See also *Century City Hospital*, 219 NLRB 52 (1975).

Member Penello agrees with the Administrative Law Judge that Employer's Objection 29 should be overruled, but Member Penello relies on his dissenting opinion in *Dayton Tire & Rubber Co.*, 234 NLRB 504 (1978), wherein he stated that he would not set an election aside on the basis of conduct not specifically alleged in a timely filed written objection.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

IT IS FURTHER ORDERED that the objections in Case 1-RC-15653 be, and they hereby are, overruled.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Amalgamated Industrial Union, Local 76B³ and its Divisions, Local 92-Local 76, U.F.W.A., AFL-CIO, and that, pursuant to Section 9(a) of the Act, the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

All full-time and regular part-time maintenance employees employed by the Employer at its West Haven, Connecticut, location; but excluding all office clerical employees, guards and supervisors as defined in the Act.

³ The election was conducted on May 12, 1978, pursuant to a Stipulation for Certification Upon Consent Election. The tally was 22 for and 15 against the Petitioner; there were 3 challenged ballots, an insufficient number to affect the results.

DECISION

STATEMENT OF THE CASE

BRUCE C. NASDOR, Administrative Law Judge: This case was heard at New Haven, Connecticut, on October 25 and 26, 1978.¹ The charge was filed by the University of New Haven (sometimes hereinafter referred to as the Employer) on June 7, 1978. A Report on Objections issued by the Regional Director for Region 1 on July 13, 1978, resulted in the issuance of an order consolidating cases and complaint and notice of hearing on July 18, 1978. The Report on Objections relates to an election conducted on May 12, 1978, as the result of the Union's petition filed on March 22, 1978. On May 17, the Employer filed timely objections to conduct of election and conduct affecting results of the election. The Regional Director's Report on Objections is in evidence as the General Counsel's Exhibit 1(a). The objections allege 28² separate occurrences. The Regional Director approved the withdrawal of Objections 12, 18, and 15. The complaint alleges a violation of Section 8(b)(1)(A) of the National Labor Relations Act, herein called the Act by conduct which is identical to the conduct alleged in Objec-

¹ All dates are in 1978 unless otherwise specified.

² Objection 29 is a catchall objection.

tions 1, 2, 3, and 5. With regard to Objections 4-29, the Regional Director concluded that they involved material issues of fact and issues of credibility which could appropriately be resolved at a hearing before an administrative law judge.

Upon the entire record, including my observation of the demeanor of the witness, and after due consideration of the briefs, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Employer is engaged at West Haven, county of New Haven, State of Connecticut, in the operation of a private coeducational institution of higher learning. The Employer, in the course and conduct of its business, annually receives revenues which it is free to use to defray operating expenses in excess of \$1 million, and at least \$50,000 of such revenues are received from points located outside the State of Connecticut. In the course and conduct of its business, the Employer annually purchases goods and materials valued in excess of \$50,000 directly from points located outside the State of Connecticut. The Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

III. THE EVIDENCE

What follows is a summary of the relevant testimony adduced from witnesses called by counsel for the General Counsel, counsel for the Regional Director, and counsel for Respondent.³

Robert Zgradden: According to Zgradden, he attended a union meeting on the second Saturday of April 1978. Enio Perrozzi, the union organizer, said that, if you signed an authorization card before the election, you would not have to pay a \$50 initiation fee, and, if you waited until after the Union got in and won the election, you would have to pay \$50.

He testified further that in August 1977 he was approached by two employees and asked to sign an authorization card for the Teamsters. According to Zgradden, that is the time the question of an initiation fee was first brought up, a \$150 fee. The Teamsters was rejected because of this huge amount, according to Zgradden.

Lloyd Diehl: Diehl testified that he spoke with Perrozzi in March or April 1978, in his house. Perrozzi told him that if he did not sign a card before the election he would have to pay \$50. Furthermore, according to his testimony, 2 weeks before the election employees Frank Coroso and Tony Morro told him that anyone who did not sign a card would have to pay \$50. On cross-examination he qualified his di-

rect examination by stating that Perrozzi and Morro told him that, if he signed a card at that time, he would not have to pay the \$50 initiation fee after the election and after a contract was negotiated.

August DiMarzo: DiMarzo testified that in March 1978 employee Morro asked him to sign an authorization card and told him that if he did not sign it then he would have to pay \$50. He testified further that before the election and on the evening after the election Morro told him that "they" were going to make him, Morro, steward. DiMarzo told Morro that there had to be "a vote on it." Morro agreed that this was true. A week after the election, employees Morrow and Coroso told him that he had to pay \$50 because he did not sign a card. He testified further that Ivan Cordero said "the same things as Tony Morro." "If you don't pay the \$50, you have to pay it after." DiMarzo testified that he never heard that Morro or Cordero was being paid by the Union for organizing or that they had any official position with the Union.

Marjorie Deobil: Deobil, an accountant in the University's business office, was the Employer's observer at the election. The election was held in the maintenancemen's lunchroom in the basement of the Employer's main building. The actual balloting took place in a storage room or closet. The polls were to be opened at 8 until 9 a.m. and reopened from 3 to 5 p.m.

Deobil testified that she saw Perrozzi talking to five or six employees at 8 a.m. but could not hear what he was saying. A few minutes before the polls opened at 8 a.m. the Board agent asked Perrozzi if he was going to come back after the polls closed. Perrozzi responded, "Do you want me to?" and the agent stated, "Yes, if you want to." The Board agent did not ask this of any of the Employer's representatives. According to the testimony, the Board agent talked to Perrozzi in a friendly manner and smiled at him and seemed to be cold and brisk towards employer representatives. During the afternoon session Deobil said "Hello" to the Board agent, and the Board agent said "Hello" to her "quickly."

Deobil testified further that a few minutes after 9 a.m. she asked the Board agent if the polls were to close at 9 o'clock, and the agent responded "yes." At the beginning of the morning session, the union observer asked if he should vote at the beginning or end of the session, and the Board agent said that it did not make any difference. The union observer voted prior to the end of the session.

Cordero was the Union's observer, and he spoke to other employees in Spanish. The witness does not know what he was saying to them.

During the first session an employee, Rossi, asked Cordero if employee Bob Screg had voted. Cordero responded negatively.

While the voting was in progress two female employees allegedly entered the voting area with pocketbooks, and a male employee carried a brown paper bag. During the last 20 minutes of the morning session, according to Deobil's testimony, the Board agent read a magazine and did not face the ballot box. Two people voted during this 20-minute interlude.

Deobil testified that a minute or two after 9 a.m. she asked the Board agent if the polls were not supposed to

³ Counsel for the General Counsel's motion to correct the transcript is hereby granted.

close at 9 o'clock. The Board agent took out a certificate⁴ and asked Cordero and Deobil to read it. Employee Lucius Gattison came in to vote. Cordero told him that the polls were closed, and Gattison asked what time they reopened. The Board agent told the employee Gattison the polls would reopen from 3 to 5 p.m. Gattison said he would come back. The agent said that he might as well vote now. Gattison voted at that time, finishing at 9:04 or 9:05 a.m.

During the afternoon session, Cordero allegedly called out to employees in the hall in Spanish. Deobil testified that she did not understand what Cordero was saying in Spanish and asked him what he was saying. He responded that he was urging the employees to come in and vote. Furthermore, according to this witness, the Board agent never instructed Cordero not to engage in such conversation.

An unnamed employee asked Cordero if Santi had voted. Cordero checked the list and responded negatively.

After each session Deobil refused to sign the certification of conduct. Her testimony was that she refused to sign the certification upon advice from the Employer's attorney.

Santiago Malava: Malava testified that he was a janitor at the University. No one asked him to vote prior to the election. He spoke to Cordero who told him that there were no initiation fees, just monthly dues. According to Malava, Cordero never told him that he would have to pay an initiation fee if he did not sign a card.

When he voted, he asked in English "where is the booth," and that was the sole thing he said.

Antonio Perez: Perez, who cannot speak English, testified through a Spanish interpreter. He would not take the oath nor would he affirm. Perez is in the maintenance department of the University. He did not recall the Union's campaign to organize the maintenance employees of the Employer. He testified that he attended union meetings, and he knew who Enio Perrozzi was. Moreover, he remembered Perrozzi's speaking in English at the meetings. Having established that this witness who does not speak English and was in attendance at a meeting where a speech was made in English, counsel concluded the interrogation of the witness.

Robert T. Slovesky: Slovesky testified that he attended one union meeting prior to the election. According to his testimony, at the meeting Perrozzi said that employees who are already employed by the University would not have to pay an initiation fee. He never heard that anyone who did not sign any union card would have to pay an initiation fee at any time.

Forrest Felder: Felder testified that he attended two union meetings prior to the election. At the first meeting, Perrozzi allegedly stated, according to this witness, that there would not be an initiation fee for those already working at the University, but there would be a fee for those hired after the Union got in. This witness never heard that employees who did not sign union cards would have to pay initiation fees.

Julio C. Rivera: Rivera testified that he attended a union meeting during the campaign. At the meeting, "a black person" said that anyone who was working for the University at that time did not have to pay an initiation fee. He never heard that anyone who did not sign a card would have to pay an initiation fee. He voted on the day of the election,

and just before he voted he asked Cordero in Spanish if it was time to vote. Cordero responded that it was time and he could go in. The response was in Spanish, and nothing further was said.

Samuel Craft: Craft testified that he attended the second union meeting. At the meeting Perrozzi said that if the University hired new men and they joined the Union they would have to pay the \$50 fee. Craft stated that he never had a conversation with Zgradden about initiation fees.

Testimony of Samuel Taborelli: Taborelli, after his recollection was refreshed, testified that he attended one union meeting during the Union's organizational campaign. At the meeting Perrozzi mentioned nothing about an initiation fee. Taborelli testified further that Perrozzi told him at his home in March or April 1978 that he would not have to pay an initiation fee.

Sylvia Bonewicz: Bonewicz testified that she never heard that those people who did not sign union cards would have to pay a \$50 fee. She did hear that if the Union got in, a new employee would have to pay a \$50 fee. She did not know who she heard this from, probably one of her coworkers.

Lucius Gattison: Gattison testified that he asked Cordero and two women if it was the right room in which to vote. Someone told him it was and that he could vote at 5 p.m. He asked if he could vote at that time, and they said yes, so he voted. According to his testimony, he looked at the clock on the wall, and it was 9 a.m. or 1 minute after when he voted. He told "a woman" that he appreciated her letting him vote because he would not have to come back in the afternoon, which would have created a problem for him.⁵

He testified that no one ever told him that he would have to pay a \$50 initiation fee if he did not sign a union authorization card.

Enio Perrozzi: Perrozzi, an organizer for the Union for 4 years, testified that he held two meetings with employees at the labor temple in New Haven, Connecticut. The first meeting was held March 18, 1978, and the second meeting was held on April 15, of the same year. According to Perrozzi, he had been aware, prior to any meeting, of a union policy that any employees in a bargaining unit and on the *Excelsior* list would not pay initiation fees, whether or not they signed a union authorization card. Moreover, after an election is won, and if a contract is negotiated, new hires who are in the unit must pay an initiation fee. He testified further that this policy has remained unchanged to date.

At the March 18, meeting one of the employees asked if there was an initiation fee. Perrozzi testified that he responded that there was no initiation fee for the employees presently on the payroll, and that, after a contract was signed, all new hires would have to pay the initiation fee. He testified that he learned of this policy from the union manager, Joseph Farrell, and he believes that in the Union's bylaws it is stated that the union manager has the discretion of whether or not to charge initiation fees.

According to Perrozzi, another question regarding initiation fees was raised at the second union meeting. He responded the same as he had at the first meeting. He never at any time stated that those employees who did not sign their

⁴ Certification of conduct of election.

⁵ Deobil testified that the ballot box had not been sealed, and there had not been an announcement that the polls were closed.

authorization card prior to the election would have to pay initiation fees. Perrozzi testified that he never spoke to Diehl regarding initiation fees. Perrozzi testified that upon learning of Diehl's attitude⁶ he spoke to Diehl on three occasions. On those occasions Perrozzi only spoke to Diehl about union benefits. He specifically denies telling Diehl that if he did not sign a card before the election he would have to pay an initiation fee.

Perrozzi testified that he had no conversation with Morro regarding Morro being a shop steward. Nor did he tell anyone that Morro would be appointed a steward after the election. Moreover, according to his testimony, stewards in his local are elected rather than appointed.

He testified that at the first union meeting Bobby Head, business agent for the Union, in response to a question from the floor, stated that there was no initiation fee. Perrozzi also testified that he told Cordero that there was no initiation fee for employees who were on the payroll and in the unit at the time of the election. He testified that at the second meeting he told the assembled employees that there would be no initiation fee for the original group until the contract was consummated and ratified and that the initiation fee is charged only for new people who are hired after the contract has been signed.

Perrozzi testified further that Cordero was not paid by the Union for organizing or for being its observer at the election. Cordero did not speak at any union meetings, and all literature to employees was sent over Perrozzi's signature. Perrozzi never advised Cordero to speak to employees with regard to the policy of when initiation fees are paid. He specifically testified that it never came to his attention that Cordero was saying anything to employees concerning the initiation fee policy.

At the preelection conference on May 12, 1978, Perrozzi testified that he merely greeted employees with the word "hello."

Bobby Head: Head had been employed by the Union as a business agent for 9-1/2 years. He testified that the Union's policy with respect to initiation fees has always been to waive such fees for newly organized employers. The waiver applies to all those members who are in the unit prior to the execution of a collective-bargaining agreement. According to Head, the policy was communicated to him 9 years ago by the then business manager, Anthony Patrone. No one has advised him that the policy has ever been changed, and this policy was adhered to with respect to the employees at the University of New Haven.

Head attended the second union meeting where a question was raised concerning initiation fees. According to Head, Perrozzi responded to the question by stating that there would not be any initiation fee for employees who were in the bargaining unit at that time, and that there would be a fee after a contract had been ratified.

Ivan Cordero: Cordero, a maintenance employee, testified that he acted as the Union's observer during the election. During the election, Grossi asked him if Zgradden had voted. Cordero told him no. According to this witness, there were no other occasions wherein he was asked whether a person voted. He testified that the only other voter he

talked to during the election was Rivera. According to Cordero's testimony, Rivera passed by in the hall and asked in Spanish if it was time to vote. Cordero responded yes, and Rivera came in the the voting place, voted, and left immediately.

On the day of the election he arrived outside the lunchroom where the election was to be conducted at 7:30 a.m. He stayed in this hallway area for 20 minutes and saw Perrozzi talking to employer representatives, not employees. Before Gattison voted no one stated that the polls were closed.

Cordero testified that he met Perrozzi more than 1 year prior to the date of the hearing when Perrozzi was at his home discussing the Union with his wife. Perrozzi gave him blank union authorization cards to distribute. He gave cards to Morro and Pagan. According to Cordero, Morro returned a few signed cards. Cordero stated that, when he asked people to sign cards, he did not tell them he was working for the Union or that he was paid by the Union for organizing. Prior to the election, there was no organizing committee, and he attended union meetings but did not speak at the meetings to the assembled group.

Cordero testified that Perrozzi told him that the employees do not have to pay initiation fees, but after the contract new people hired would have to pay a \$50 fee. Furthermore Cordero told employees, pursuant to what he learned from Perrozzi, that people who were working did not have to pay an initiation fee. He specifically denied telling anyone that if they did not sign a card they would have to pay an initiation fee.

According to Cordero, at the second union meeting, Perrozzi explained that university employees did not have to pay an initiation fee but only had to pay dues. Perrozzi continued that, if the Union won the election and a contract was executed, new people who were hired had to pay a \$50 fee.

Cordero testified that Perrozzi never told him that he, Cordero, was going to be the head of an organizing committee and to communicate or transmit messages to other employees for him. Cordero never took messages from employees to Perrozzi and never gave employees' addresses and telephone numbers to Perrozzi, nor did Perrozzi ever ask him to do so. Cordero never told employees that if they did not sign cards they would have to pay \$50.

Conclusions and Analysis

Counsel for the General Counsel contends that the statement to Diehl that unless he signed an authorization card for the Union before the election he would have to pay a \$50 initiation fee and similar statements to employees at the April 15 meeting are unfair labor practices within the precepts enunciated in *N.L.R.B. v. Savair Manufacturing Co.*, 414 U.S. 270 (1973). Counsel recognizes that in *Savair* such interference with employees' free choice constituted objectionable conduct and argues further that dicta support the proposition that such conduct also constitutes an unfair labor practice. Perhaps this argument would succeed if the record supported the allegations of the complaint, but such is not the case. Diehl, in my opinion, is not to be credited. On cross-examination, he vacillated and admitted at one

⁶ Diehl did not sign a union card, was not interested in a union, and did not want the Union to represent him.

point that Perrozzi and Morro told him that his payment of an initiation fee was predicated on whether he signed a card before or after a contract was negotiated. Moreover, his testimony conflicted with his affidavit in that he was not sure whether Perrozzi used the phrase "before the election." Even more striking is my impression that Diehl had a serious hearing impairment and was not able to hear me when I spoke directly to him. I faced him during the hearing, and it appeared to me that he had minimal hearing only on his left side. I credit the testimony of Perrozzi and conclude that he did not tell Diehl that if he did not sign a card before the election he would have to pay an initiation fee.

I also credit the testimony of Perrozzi and the corroborative testimony of Head with respect to the meeting on April 15 that Perrozzi responded to a question from the floor that there would not be any initiation fee for those who were in the bargaining unit, and that after a contract was negotiated and signed new hires would have to pay an initiation fee. This testimony was also corroborated by several witnesses who were called to testify by counsel for the Regional Director. In this regard I specifically discredit Robert Zgradden, who testified contrary and at variance with the majority of witnesses whom I consider to be impartial. Accordingly, I recommend that the allegations of the complaint be dismissed and that Objections 1, 2, 3, and 5 be overruled.

There was no evidence that the Union induced employees to vote for it by promising its supporters reduction in dues; I therefore recommend overruling Objection 4.

DiMarzo testified that Morro and Cordero told him that if he did not sign a card he would have to pay \$50 "after," and that Morro and Coroso "told him the same" after the election. DiMarzo had a very real language problem, and in my opinion he did not understand what Morro, Cordero, and Coroso told him any more than he understood the questions propounded to him at the hearing. Moreover, I conclude that Morro, Cordero, and Coroso were not agents of the Union.

Objections 6 through 15⁷ relate to the election process and the Union's conduct at or near the polls on the day of the election. Witness Deobil testified that she saw Perrozzi talking to employees but did not hear what he was saying. His testimony was that he was merely greeting them by saying hello, and there is no evidence to the contrary. I therefore recommend overruling Objections 6 and 7. I further recommend overruling Objection 8 on the same basis.

⁷ Objections 12, 15, and 18 were withdrawn with the approval of the Regional Director.

The evidence relating to Objections 9 and 10 was that Cordero spoke to employees in Spanish, but Deobil did not know what he said to them. This does not constitute conduct which would warrant setting an election aside. I therefore recommend that Objections 9 and 10 be overruled. No evidence was presented relating to Objection 11. I therefore recommend that it be overruled.

There is no evidence to support Objections 13 and 14. I therefore recommend that they be overruled. Objections 16 through 28 allege improper conduct on the part of the Board agent during the election process. The evidence adduced in this regard is pure trivia. If, in fact, the Board agent was friendly to Perrozzi and smiled but seemed "cold" and "brisk" towards employer representatives or said "Hello" to Deobil quickly, this is no basis for setting an election aside. Nor is reading during the polling improper conduct warranting setting the election aside. I therefore recommend overruling Objections 16 through 29. Objection 29 being a catchall objection encompassing Objections 1 through 28. In summary, I recommend that the allegations of the complaint be dismissed, that all of the objections be overruled, and that the Union be certified as the exclusive bargaining representative of the employees in the appropriate unit.

CONCLUSIONS OF LAW

1. The Employer, University of New Haven, is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The allegations of the complaint that the Union has engaged in conduct violative of Section 8(b)(1)(A) of the Act has not been supported by substantial evidence.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following:

ORDER⁸

It is recommended that the complaint herein be, and it hereby is, dismissed in its entirety.

⁸ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.