

Zeigler Refuse Collectors, Inc. and Chauffeurs, Teamsters and Helpers Local Union No. 430 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner.
Case 4-RC-13292

September 27, 1979

DECISION AND CERTIFICATION OF
REPRESENTATIVE

BY CHAIRMAN FANNING AND MEMBERS JENKINS
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 election held on September 15, 1978, and the Hearing Officer's report recommending disposition of same. We agree with the Petitioner that the alleged conduct objected to by the Employer is insufficient to set aside the election.

The Employer timely filed four objections to the conduct of the election. On November 16, 1978, the Regional Director for Region 4 issued a report and recommendation finding no merit to objections 3 and 4 but recommending that a hearing be held on objections 1 and 2. The Board, on January 22, 1979, issued a Decision and Direction¹ adopting the Regional Director's recommendation and remanding the case to him for further action. On February 21, 1979, a Hearing Officer conducted a hearing at York, Pennsylvania, and on April 9, 1979, filed his report in which he recommended that the election be set aside and a second election be directed. We do not accept the Hearing Officer's recommendation and find that, even assuming the correctness of the Hearing Officer's factual findings and credibility resolutions,² the Employer has not demonstrated a sufficient factual foundation for the setting aside of the election.

The Hearing Officer finds "only minimal evidence concerning Petitioner's knowledge or participation in

¹ Not reported in bound volumes of Board Decisions.

² We do not accept the Hearing Officer's finding that Martin Morthland's recantation on cross-examination should not be credited. Morthland expressly denied that employees Knight and Barry and Larry Leisenring intimidated him with physical threats 1 week before the election. Furthermore, Morthland impeached his credibility by substantially wavering on the approximate date of the threatening encounter. The Hearing Officer speculates that Morthland recanted only in order to end his "ordeal" on the stand, but that is only speculation and no basis for rehabilitating Morthland.

threats against employees concerning how they were going to vote." Furthermore, the most severe threats he attributes to prounion employees are: If employees did not sign authorization cards, "they would not work for the Employer anymore"; "Whoever didn't give \$20.00 and sign union authorization cards was going to 'get their asses kicked'"; "You had better be voting for the Union if you know what is good for you"; "If you vote no for the Union; me, Russ Knight and Barry Leisenring gets fired; we are going to kick your ass."

We do not agree with the Hearing Officer that the above gives rise "to a pervasive sense of apprehension among prospective voters."³ Inasmuch as the Hearing Officer has found "minimal" evidence connecting these campaign incidents with the Petitioner in any way, and such incidents did not relate directly to the election vote or create a general atmosphere of fear and confusion, we find that there is no basis for setting aside the election.⁴ We shall, therefore, overrule the Employer's Objections 1 and 2, and shall order that the Petitioner be certified.

CERTIFICATION OR REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Chauffeurs, Teamsters and Helpers Local Union No. 430 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that, pursuant to Section 9(a) of the Act, the said 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 rear load drivers and loaders employed at the Employer's Rear Load Division located at 1020 N. Hartley Street, York, Pennsylvania; but excluding all front-end and roll off drivers, office clerical employees, guards, and supervisors as defined in the Act.

³ E.g., *Price Brothers Company*, 211 NLRB 822 (1974).

⁴ The Hearing Officer incorrectly relies on *Sonoco of Puerto Rico, Inc.*, 210 NLRB 493 (1974), and *Diamond State Poultry Co., Inc.*, 107 NLRB 3 (1953), in support of his conclusion that the election ought to be set aside. In both those cases the election environment was pervaded by immediate and serious physical coercion. In the instant case, there was no violence only generalized verbal threats which, unlike the Hearing Officer, we do not consider "numerous," of the character familiar to the playgrounds as well as the shop. The alleged intimidators in this case engaged in mere campaign bravado and "heated statements" reflecting an "overzealous partisanship rather than meaningful threats." *American Wholesalers, Inc.*, 218 NLRB 292 (1975).