Cadillac Evening News *and* Mildred McGinn, Petitioner *and* Graphic Arts International Union, AFL-CIO-CLC. Case 7-RD-1564

August 24, 1979

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND TRUESDALE

Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director for Region 7 on February 12, 1979, an election by secret ballot was conducted on February 22, 1979, under the Regional Director's direction and supervision, among the employees in the appropriate unit. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that there were approximately 28 eligible voters and 28 cast ballots, of which 15 were for, and 12 against, the Union. One ballot was challenged, an insufficient number to affect the result. Thereafter, the Employer filed a single timely objection to conduct affecting the results of the election.

Pursuant to Section 102.69 of the National Labor Relations Boards Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and, on March 30, 1979, issued and duly served on the parties his report and notice of hearing on objection to the election. A hearing on objection to the election. A hearing was held before Hearing Officer Marion Muma on April 12, 1979.

Subsequently, the Hearing Officer issued her report in which she recommended that the Employer's objection be sustained and a second election directed. Thereafter, the Union filed exceptions and a supporting brief, and the Employer filed an answering brief.

Pursuant to the provision 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.

Upon the entire record in this case the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The labor organization involved claims 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 Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees employed by the Employer at its Cadillac, Michigan, facility, including news department employees, composing department employees, pressroom employees, circulation department employees, advertising department employees, and accounting department employees; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

5. In its objection, the Employer contends that a statement made the night before the election by Union Agent Donald R. Hackel which represented the Union's dues to be approximately $1.25 less than they actually were was a substantial misrepresentation which may reasonably be expected to have had a significant impact on the election. The Hearing Officer concluded that Hackel's statement fell within the test outlined in *General Knit of California, Inc.*,[1] and recommended that the election be set aside and a new election directed. We disagree.

The facts are not in dispute. The Union was certified as the bargaining agent for the employees in the instant bargaining unit on January 26, 1978. Thereafter, negotiating meetings were held between February 22, 1978, and January 9, 1979. At various employee meetings held by the Union prior to the election and prior to the commencement of negotiations, the director of organizing, Norm Warnke, reviewed the existing union dues structure and advised employees that they would each pay a $1.50-per-month International group service fee or dues if they were set up as an International group. Wanke relayed the same information to a number of employees at a meeting held on August 16, 1978, the same day the Union agreed with the Employer that the bargaining unit would become an International group. At some point prior to November 1, 1978, a member of the employee bargaining committee received from an International representative of the Union an outline of the existing dues structure as of that date, which included the International group service fee in the amount of $1.50.

On February 21, 1979, at 5:30 p.m., an employee meeting was held by the Union and attended by seven of the eligible employees. Special Representative Hackel reviewed the current dues structure as he knew it, and estimated that "in a sample situation" dues would amount to "about $4.50 or $5.00 per month." He did not mention the International group service fee which, in fact, had been reduced to $1.25 at that time. All parties agreed and stipulated that the omission was not deliberate but was due to Hackel's

[1] 239 NLRB 619 (1978).

lack of familiarity with International groups and their dues structure. Save for the omission, Hackel's $4.50 to $5.00 estimate of the dues was reasonably accurate. The election was held the following day.

The single issue to be considered is whether Hackel's omission of the $1.25 International group service fee warrants setting aside the election. The formula to be applied in making such a determination is whether there has been a misrepresentation (1) which involves a substantial departure from the truth, (2) at a time which prevents the other party or parties from making an effective reply, (3) so that the misrepresentation may reasonably be expected to have a significant impact on the election.[2]

In applying this test, we find that Hackel's omission of the International group service fee was not substantial and could not reasonably be expected to have had a significant impact on the election. In concluding otherwise, the Hearing Officer relied heavily on our decision in *The Trane Company*,[3] where we found that a $1 misrepresentation in monthly dues made on the eve of the election, when combined with another misrepresentation concerning an employee's obligation to pay dues in order to retain his job, warranted setting aside the election. However, the *Trane* precedent should not be applied in a vacuum. As we stated in *Hollywood Ceramics*, we may not set aside an election if we find "upon consideration of all the circumstances that the statement would not be likely to have had a real impact on the election."[4] The *Trane* case should not be read to determine whether an absolute monetary amount of misrepresentation is substantial or insubstantial; we must look at the alleged misrepresentation in the context of the entire election.

In this light, *Trane* is not controlling. In *Trane*, the effect of the misrepresentation of the monthly dues amount was compounded by a second misrepresentation regarding the obligation of all employees to pay dues to keep their jobs. Here, Hackel's omission of the $1.25 service fee stands alone. In addition, significant economic changes have occurred since *Trane* was decided in 1962; inflation alone would serve to make the dollar amount much less important today. Finally, it is significant that Representative Hackel's presentation of the dues structure was a rehash of a subject that had been discussed with the employees on many previous occasions. Although Hackel did specifically enumerate the components of the dues structure, he did not attempt to predict exactly what monthly dues would be. Rather, he referred to a "sample situation" with a 50-cent variance. Thus, the impact of his omission on the seven employees present was lessened both by his sketchy presentation and by the more definitive information that the Union had previously conveyed to the employees. And, as indicated above, the effect of the misstatement is significantly less than it would have been had it occurred in 1962 when *Trane* was decided.

Under all these circumstances we find that the single misrepresentation objected to by the Employer could not reasonably have had a significant impact on the results of the election. Accordingly, we reverse the Hearing Officer's recommendation to hold a second election and hereby certify the Union as the exclusive bargaining representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Graphic Arts International Union, AFL-CIO-CLC, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit found appropriate herein for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

MEMBER PENELLO, concurring:

I agree with my colleagues that the misrepresentation alleged in the Employer's objection does not warrant setting aside the election, but so find for the reasons set forth in *Shopping Kart Food Market, Inc.*,[5] the principles of which I still adhere to. See my dissenting opinion in *General Knit of California, Inc.*[6]

[2] *General Knit of California, supra; Hollywood Ceramics Company, Inc.*, 140 NLRB 221 (1962).

[3] 137 NLRB 1506 (1962). The Hearing Officer also relied on the closeness of the election results and thereby departed from established Board precedent. See *Modine Manufacturing Company*, 203 NLRB 527, 531 (1973), enfd. 500 F.2d 914 (8th Cir. 1974).

[4] 140 NLRB at 224.

[5] 228 NLRB 1311 (1977).

[6] 239 NLRB 619 (1978).