

Admiral Petroleum Corporation and Local Union No. 653, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 1-RC-15300

February 23, 1979

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN FANNING AND MEMBERS JENKINS AND MURPHY

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 September 15, 1977, and the Hearing Officer's report, pertinent parts of which are attached hereto as an appendix, recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief and hereby adopts the Hearing Officer's findings and recommendations.

We note that our dissenting colleague would find, contrary to the Hearing Officer, that the pronoun conduct of Richard Ryde, a supervisor, was objectionable and would consequently set the election aside. The apparent basis for this view is that Ryde's actions could possibly have a coercive effect on some of the employees. However, the record provides no basis for such speculation as to the possible effects of Ryde's innocuous statements. The Hearing Officer properly analyzed all the evidence and applied the current standard.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Local Union No. 653, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was three for and two against the Petitioner; there was one challenged ballot, sufficient in number to affect the result. The Employer filed timely objections and on November 4, 1977, the Regional Director issued his Report on Objections and Challenged Ballot, recommending that the challenge be sustained, that Objections 2, 3, 4, and 5 be overruled, and that a hearing be directed on Objection 1. In an unpublished decision dated May 5, 1978, the Board adopted the recommendation that Objections 4 and 5 be overruled and adopted *pro forma* the recommendation that the challenge be sustained and that Objection 3 be overruled, but ordered a hearing to resolve factual issues raised by both Objections 1 and 2. (Member Jenkins would not have ordered a hearing on Objection 2.) Pursuant to notice, a hearing was held on May 31, 1978, and the Hearing Officer's report on objections and recommendations issued on June 15, 1978.

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, or other conditions of employment:

All regular full-time and part-time production and warehouse employees including truck drivers, employed at the Employer's Kingston, Massachusetts, location, excluding office clerical employees, guards and supervisors as defined by the Act.

MEMBER MURPHY, dissenting:

Contrary to my colleagues in the majority, I would set the election aside on grounds that Ryde's preelection conduct was coercive in nature and interfered with the employees' freedom of choice in selecting a bargaining representative.

Ryde was a "major" supervisor in the sense that he had a large degree of control over the employment conditions of all the employees in the bargaining unit. The conduct objected to involved Ryde's organizational activity and support of the Union. The Hearing Officer found that Ryde signed a union authorization card, told employees in the production area that he had done so, and told them he thought they all might be able to get better working conditions. Ryde stated to the part-time employees in particular that if the Union succeeded in its organizing campaign they might be able to get more regular hours and better pay. The Hearing Officer concluded, and the majority agrees, that Ryde's statements were merely expressions of his own thoughts and would not lead the employees to fear possible retribution at his hands in the event they rejected the Union. Therefore, the Hearing Officer concluded that "[w]hile the degree of supervisory authority may serve to exaggerate the coercive nature of a statement by making it more likely that a threat will in fact be carried out, it cannot be used to render objectionable a non-coercive statement of pro-union opinion, such as those made by Ryde." I disagree.

The Board has consistently held that supervisory participation in organizational activity can have two different objectionable effects on employees.² First, where "supervisors actively encourage employees to vote for the union and the employer takes no known stance to the contrary," the supervisory conduct might well imply to the employees "that the employer favors the union."³ The second conceivable effect of such supervisory activity involves the possibility that the supervisor's conduct could coerce an employee into supporting the union out of fear of

² *Stevenson Equipment Company*, 174 NLRB 865, 866 (1969).

³ *Flint Motor Inn Company d/b/a Sheraton Motor Inn*, 194 NLRB 733, 734 (1971); *Stevenson Equipment Company*, *supra*.

future retaliation by a union-oriented supervisor.

With regard to the question of whether Ryde's pro-union activity would lead employees to believe the Employer favored the Union, the Hearing Officer found that, although there was no evidence that the Employer conducted an antiunion campaign, "[w]hat is relevant is the substance of Ryde's statements, whether or not seen by the employees as reflecting the employer's position." However, *Stevenson, supra*, stands for the proposition that a supervisor's pro-union activity, if otherwise sufficient to have a tendency to interfere with the employees' free choice in the election, is objectionable unless the employer expresses a contrary position. In the instant case, the Employer had never spoken to the employees with regard to the Union, nor had it ever distributed any literature or sent any information to the employees concerning unionization. Consequently, it was not clear to the employees what the Employer's position was on unionization and, conceivably, the employees might well have been led to believe by Ryde's pro-union conduct that the Employer favored unionization. I find that the absence of a position taken by the Employer is, in view of the extent of Ryde's encouragement of the Union's organizing and his considerable supervisory authority,⁴ enough to find Ryde's conduct objectionable under the first *Stevenson* test.

With regard to the second possible effect of Ryde's pro-union activity, i.e., the employees' possible fear of retaliation in the event the Union lost the election, the majority, in adopting the Hearing Officer's report, concludes that Ryde's activity was not objectionable since his statements to the employees were not such as to lead the employees to fear possible retribution. The Hearing Officer also found that Ryde did not give any indication to employees that he would use his authority to punish those who did not support the Union. These conclusions, however, do not take into account some of the factual circumstances of the situation.

It is clear that the employees were aware that, after the election, they would continue to be directly supervised by Ryde, and this fact might well have caused them concern about the consequences of his displeasure should the Union be defeated. Similarly, fear of possible harassment or discrimination against them could have influenced the employees to vote for the Union.⁵

In particular, the majority appears to have failed to consider that in this case the factors constituting objectionable conduct under the second *Stevenson* test are especially compelling with regard to the regular part-time employees, Steve DeMeure and Bobby Morris. DeMeure and Morris were students who

would normally call in to Ryde on their lunch hour at which time Ryde would tell them whether he had work available for them. The frequency and the amount of time that these part-time employees worked were determined by the production schedule which Ryde established. Ryde also had complete discretion as to whether production needs should be fulfilled by using the part-timers or scheduling overtime for full-time employees. Consequently, it is clear that Ryde in fact determined what the hours for DeMeure and Morris would be, or, indeed, whether they would work at all. Thus, it is obvious that Ryde's ability to affect the employment status of these regular part-time employees was considerable.

Furthermore, Ryde occasionally drove DeMeure and Morris home after work and admitted using these trips to speak in favor of the Union. Both DeMeure and Morris were well aware of Ryde's opportunities to affect their employment status. Considering the nature of the occasions on which Ryde spoke to these two employees in the light of the above factors, it is unreasonable to find that Ryde's conduct was not coercive. While the statements themselves may not have been threatening in substance, they were in the nature of promises of increased work and pay if the Union won, and the surrounding circumstances may have reasonably caused DeMeure and Morris to feel threatened with the prospect of not being called for work if the Union lost the election.

Given the fact that Ryde's conduct could reasonably have been perceived as coercive to the employees, and in light of the lack of evidence to indicate the Employer's opposition to the Union, I find that Ryde's conduct reasonably tended to interfere with the employees' freedom of choice and thereby constituted objectionable conduct. Accordingly, I would set aside the election and direct that a second election be held.

⁴ Ryde was the only person from the front office who worked in the backroom and was the only supervisor in the backroom.

In *Flint Motor Inn, Inc. d b a Sheraton Motor Inn, supra*, the Board set aside an election based on the conduct of a supervisor who had solicited authorization cards, had actively and outspokenly advocated union representation, and was active in the organizational campaign. The Board found that, while the supervisor did not give any indication to employees that he would use his authority as a supervisor to punish those who failed to support the union, his considerable authority and his outspoken support of the union gave rise to "a reasonable possibility that [his] conduct could coerce an employee into supporting the Union."

APPENDIX

Objection No. 2:

The parties stipulated at the hearing that Richard Ryde was, at all material times, a supervisor within the meaning of the Act. He was plant foreman, in

charge of the production area of the Employer's plant where five employees, including himself, worked. Ryde was in charge of employing and scheduling casual and part-time employees according to the amount of orders to be filled¹ and would participate in the employment of full-time employees. He was also in charge of assigning work and granting overtime to all the production employees. About 50 percent of Ryde's time was spent doing nonsupervisory production work.

[Employer President] Yekhtikian's office was in another part of the plant, but he would be in and out of the production area a few times each day. His relationship with the employees was a fairly friendly one and employees with problems or grievances would sometimes go to him, sometimes to Ryde.

Ryde participated in the union campaign in the summer of 1977 by signing a union authorization card and talking in favor of the union to the employees in the production area. He told them that he had signed a card, but he himself did not solicit any cards. He told them he thought that they all, including himself, would be able to get better working conditions and that the part-time employees might be able to get more regular hours and perhaps better pay. These discussions were of a conversational nature. Ryde spoke to the employees about his thoughts about the union three or four times over the course of the summer.

No evidence was presented about the opinions about the union held or communicated by Yekhtikian, [employee agent] O'Leary or any other agent or employee of the Employer.

Objection No. 2:

The Board has consistently held that "mere supervisory participation in a union's organizing campaign does not, without a showing of possible objectionable effects, warrant setting aside an election." *Gary Aircraft*, 220 NLRB 187 (1975). The leading case, *Stevenson Equipment Company*, 174 NLRB 865 (1969), set forward two areas of inquiry relevant to a showing of such objectionable effects. The first is the degree to which employees may infer from the supervisory conduct that the employer favors the union. In the instant case, Ryde expressed his own thoughts about the effect that union representation might have on his own working conditions and those of the other employees. Although there is no evidence that higher management disagreed with his position, there is also no evidence that any employees might have believed that Ryde was speaking on behalf of higher management. In fact, because Ryde spent about 50 percent

of his time working with the other employees at non-supervisory duties and was on the eligibility list for the election, employees may well have assumed that Ryde was speaking as one employee to another.

The Board has not had occasion to consider a case where, as here, there is no evidence about the position taken by any supervisor other than the prounion supervisor. It is my conclusion that the election should not be set aside even though there is no evidence that the employer conducted an antiunion campaign. What is relevant is the substance of Ryde's statements, whether or not seen by the employees as reflecting the employer's position. It is clear that an employer may, in the course of a union organizing campaign, express an opinion that a union would not benefit its employees and the employer is opposed to a union. Just so, an employer may communicate a prounion opinion. As the Supreme Court stated in *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969):

[An] employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a "threat of reprisal or force or promise of benefit."

The communications in the instant case do not contain such unlawful or objectionable elements. Rather, Ryde only expressed his own opinions that the union might benefit himself and the other employees. As such, they do not constitute grounds for setting the election aside.

The second conceivable effect of such supervisory activity noted in *Stevenson* is "found in the implications of the continuing relationship between the supervisor and the employees," 171 NLRB at 866; namely, the possibility that such conduct could coerce an employee into supporting the union out of fear of future retaliation by a union-oriented supervisor. In analyzing this second effect, the Board has looked not only to the substance of the supervisory conduct, but also to other factors which would tend to exaggerate the effects of coercive prounion statements.

I find that given the totality of the circumstances, Ryde's activity was not objectionable under this second *Stevenson* test. Ryde's statements in favor of the union were hardly "so marked or inordinate as to lead the employees to fear possible retribution at [his] hands in the event that they rejected the union." 174 NLRB at 866. They were not threatening in nature nor did he give any indication to employees that he would use his authority to punish those who did not support the union. *Turner's Express, Inc.*, 189 NLRB

¹ Ryde had informed the part-time employees that their hours depended on the amount of orders that the Employer had.

108 (1971). It is true that Ryde was a "major" supervisor in the sense that he had a large degree of control over the employment conditions of all the employees in the bargaining unit. In *Flint Motor Inn Co., d/b/a Sheraton Motor Inn*, 194 NLRB 733 (1971), the Board emphasized the extensive authority of the prounion supervisor, in its decision to set aside the election. The present case is distinguishable, however, in that the statements in *Flint*, e.g., that if the employees did not vote for the union, the Company might cut wages, were threatening statements, regardless of the degree of authority of the supervisor who made them. While the degree of supervisory authority may serve to exaggerate the coercive nature of a statement by making it more likely that a threat

will in fact be carried out, it cannot be used to render objectionable a noncoercive statement of prounion opinion, such as those made by Ryde. See also *Willet Motor Coach, Inc.*, 227 NLRB 882 (1977).

It is also noted that unlike the situation in *Flint*, employees in the instant case had a friendly relationship with the president of the company, Yekhtikian, and were able to go either to him or to Ryde with their grievances and problems. There is no evidence that they did not feel they could appeal to Yekhtikian in the event of any unlawful reprisal against them for opposing the union.

I conclude, therefore, that under neither *Stevenson* test can it be said that Ryde's conduct unreasonably influenced the employees' choice, thereby requiring that the election be set aside.