

**Federal Paper Board—Carton Division, Employer-Petitioner, and United Paperworkers International Union.** Case 11-RM 223

August 25, 1978

DECISION AND ORDER DIRECTING  
HEARING

BY CHAIRMAN FANNING AND MEMBERS JENKINS  
AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election, a secret-ballot election was conducted on February 2, 1978,<sup>1</sup> among the employees in the appropriate unit. Upon the conclusion of the balloting, the parties were furnished with a tally of ballots which showed that of approximately 130 eligible voters 130 cast ballots, of which 67 were for, and 63 against, the Union.

Thereafter, the Employer timely filed four objections to the election and a copy thereof was duly served on the Union.

In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation and on March 30 issued and duly served on the parties his report in which he recommended that Objections 1,<sup>2</sup> 3, and 4 to be found lacking in merit and overruled and a hearing be held to resolve material and substantial issues raised by Objection 2. The Employer filed exceptions to the Regional Director's report and a supporting brief, requesting the Board to sustain Objection 1 and order a new election.

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.

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 Union is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for

<sup>1</sup> All dates below refer to 1978.

<sup>2</sup> The Employer alleges that the Union promised Joyce Green and two other employees, who were engaged in negotiations on behalf of the Union, payment for worktime lost during negotiations only if the Union won the election.

the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees and truckdrivers at the Employer's Wilmington, North Carolina, plant, excluding office clericals, guards, professional employees, and supervisors as defined in the Act.

5. The Board has considered the Employer's objections, the Regional Director's report, and the Employer's exceptions and supporting brief, and hereby adopts the Regional Director's findings and recommendations, except as modified herein.

In the absence of exceptions thereto, we adopt, *pro forma*, the Regional Director's recommendation that Objections 3 and 4 be overruled and that a hearing be held with respect to Objection 2.

Contrary to our dissenting colleague, we also agree with the Employer that Objection 1 raises substantial and material issues in view of the absence of evidence as to (1) past practice regarding payment by the Union for wages lost by employees who engaged in negotiations, and (2) the circumstances under which Green was allegedly persuaded to drop her opposition to the Union. We shall therefore order that the scope of the hearing be extended to include said objection.

ORDER

It is hereby ordered that a hearing be held for the purpose of receiving evidence to resolve the issues raised by the Employer's Objections 1 and 2.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting such hearing shall prepare and cause to be served on the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said objections. Within the time prescribed by the Board's Rules and Regulations, any party may file with the Board in Washington, D.C., eight copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing the same shall serve a copy thereof on the other party and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board will adopt the recommendations of the Hearing Officer.

IT IS FURTHER ORDERED that the above-entitled matter be, and it hereby is, referred to the Regional Director for Region 11 for the purposes of arranging such hearing and that said Regional Director be, and he hereby is, authorized to issue notice thereof.

MEMBER JENKINS, dissenting in part:

Contrary to my colleagues in the majority, I would

not order a hearing with respect to the Employer-Petitioner's Objection 1. Assuming *arguendo* that evidence adduced at a hearing would establish the Employer's factual contentions with regard to this objection, I would still not find that these events constitute conduct warranting setting the election aside.

Essentially this objection involves statements made by the Union to former employee-members of its negotiating committee, apparently after the election petition had been filed, to the effect that they would be reimbursed for wages lost while they were engaged in negotiations only if the Union won the election. It is apparent that these statements were addressed to the fact that if the Union won the election, a contract were negotiated, and dues were subsequently collected, a local union treasury would be established from which lost wages could be repaid. There is no suggestion that these employees had not in fact lost wages during the time they were involved in negotiations or that these employees were offered or were expecting reimbursement for anything more than the actual amount of wages actually owing. In

view of these considerations, the discussions of lost wages can hardly be characterized as objectionable promises of benefits conditioned on the election outcome. Satisfaction of a preexisting obligation is not a promise of a benefit. In addition, while it may be correct to state that repayment of lost wages was conditioned on the election outcome, it is equally clear that it was also conditioned on voluntary employee membership in the Union and the subsequent collection of dues or assessments to establish a local union treasury. It is thus readily apparent that the Employer's Objection 1 refers to conduct which constitutes no more than truthful representations of objective facts and the contingencies that necessarily flow therefrom. The arguments advanced by the Employer-Petitioner in its exceptions and brief do nothing to controvert the existence of a bona fide lost wage liability, the correctness of the amounts of wages contemplated as owing, or the truthfulness of the Union's representations in regard thereto.

Since I view the alleged conduct unobjectionable, I would not order a hearing to be held with respect to Objection 1.