

Firestone Steel Products Company, a Division of Firestone Tire and Rubber Company and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Petitioner. Case 25-RC-6649

March 31, 1978

DECISION AND ORDER DIRECTING HEARING

BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties and approved by the Regional Director for Region 25 of the National Labor Relations Board on June 28, 1977,¹ an election by secret ballot was conducted in the above-entitled proceeding on July 28, under the direction and supervision of said Regional Director. Upon the conclusion of the election, a tally of ballots was furnished the parties in accordance with the Board's Rules and Regulations, Series 8, as amended.

The tally of ballots shows that there were approximately 425 eligible voters and that 409 ballots were cast, of which 207 votes were cast for and 154 against the Petitioner, and 48 ballots were challenged. The challenged ballots are not sufficient in number to affect the results of the election.

On August 4, 1977, the Employer filed timely objections to the election. Pursuant to Section 102.69 of the Board Rules and Regulations, Series 8, as amended, an investigation was conducted under the direction and supervision of the Regional Director, and, on October 31, 1977, he issued and duly served on the parties his Report on Objections and notice of hearing. In his report, he recommended that the Employer's Objections 1, 2, 4, 6, and 8 be overruled in their entirety and that Objection 3A be overruled only insofar as it relates to alleged Petitioner threats to force the Employer to discriminate against employees who did not support Petitioner. The Regional Director ordered that a hearing be held with respect to the issues raised by Objections 3A, 3B, 5, and 7.

Thereafter, on November 28, 1977, the Employer filed timely exceptions to the Regional Director's report, requesting that the Board set aside the Regional Director's recommendation that Objections 2 and 6 be overruled, and that these objections be included in the notice of hearing. The Petitioner filed

an answering brief. On January 26, 1978, the Employer offered to submit additional evidence which previously had been unavailable to it in support of its exceptions. This evidence was accepted on January 30, 1978. On February 6, 1978, the Petitioner filed a response to the Employer's offer of submission.

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 objections, the Regional Director's report, the exceptions, and the additional materials herein submitted and hereby adopts the Regional Director's findings, conclusions, and notice of hearing² to the extent consistent herewith.

In support of its Objections 2 and 6, the Employer claims that certain named employees who were members of the UAW In-Plant Organizing Committee were agents of the Petitioner and that objectionable statements were made by them during the course of the election campaign. Specifically, the evidence underlying the Employer's Objection 2 purports to show that employee Doug Abner fostered a rumor that an unpopular supervisor, who no longer worked for the Employer, would be returning after the election regardless of the outcome. The Employer contends that this misrepresentation by an agent of the Petitioner interfered with the election. In addition, in support of its Objection 6, the Employer alleges that five members of the employee organizing committee, including Abner, were engaged in soliciting authorization cards and, during the course of such solicitations, made statements to other employees regarding the waiver of initiation fees in contravention of the *Savair* doctrine.³

In his report, the Regional Director overruled these objections on the basis of information obtained during his investigation of the matter. In part, he overruled these objections based on the finding that the employee organizers were not agents of the Petitioner, and that their statements were not attributable to the Petitioner. In addition, he noted that the alleged misrepresentation regarding the return of the supervisor is insufficient grounds to set aside the election according to the standards set forth in both *Shopping Kart Food Market, Inc.*,⁴ and *Hollywood Ceramics Company, Inc.*⁵ Finally, the Regional Director noted that no *Savair* violation had occurred due in part to the fact that UAW Organizing Representative Rex Wiseman had announced the Petitioner's

¹ All dates are in 1977 unless otherwise stated.

² In the absence of exceptions, the Regional Director's disposition of the objections not specifically excepted to are hereby affirmed.

³ *N.L.R.B. v. Savair Manufacturing Co.*, 414 U.S. 270 (1973).

⁴ 228 NLRB 1311 (1977).

⁵ 140 NLRB 221 (1962). The Regional Director found that the statements regarding the supervisor were not objectionable under this standard because the information could not be viewed as being within the exclusive knowledge of the Petitioner.

initiation fee waiver policy which was consistent with *Savair*.

While we are in agreement with the Regional Director that a hearing is not warranted with regard to the issues raised by these two objections and that they have been properly overruled, we do not rely on certain findings made by the Regional Director in support of his conclusions. In his report, the Regional Director characterized a statement made by Abner in an affidavit as a "conclusory statement," found that the "preponderance of the evidence" indicated that Abner and the other members of the In-Plant Committee were not agents of the Petitioner, and that "no evidence was proffered or adduced in the course of the investigation which would discredit the testimony" of the Petitioner's witnesses. While such statements may properly issue from a trier of fact, whose responsibility it is to weigh the evidence and resolve credibility conflicts, such considerations should not influence a Regional Director's denial of a hearing on the issues involved, since the proper test to be used by the Regional Director is to determine whether "substantial and material factual issues" have been raised by the objections.⁶

However, without regard to weighing of evidence and the resolution of credibility conflicts, we agree with the Regional Director that no substantial or material factual issue has been raised with respect to these objections which would warrant setting aside the election, and that therefore these issues have been properly excluded from the Regional Director's notice of hearing. The investigation conducted by the Regional Director and the supplementary evidence submitted by the Employer reveal the following:

During the course of the Petitioner's organizing campaign, Doug Abner and 122 other employees had become members of the Petitioner's In-Plant Organizing Committee and wore campaign buttons indicating their membership. Five or more employees, including Abner, solicited other employees to sign authorization cards both before and after the petition was filed. With respect to Abner alone, the evidence reveals Abner had been active in prior attempts to organize the Employer's employees and that Petitioner's International Organizing Representative Rex Wiseman initially contacted Abner at the start of Petitioner's organizing drive and enlisted his support. Wiseman conducted the first meeting with the employees on May 4, about a week after his first contact with Abner. Abner and seven other employees were in attendance at this meeting, and at least five of them, including Abner, received a number of authorization cards to be passed out to the other employees. In addition, Abner passed out some of his

cards to other employees, who in turn attempted to get signatures from their fellow employees. In all, Abner secured approximately 35-40 signed authorization cards. During the course of the campaign, Abner was a prominent advocate for the Union, attended all except 1 of approximately 10 meetings conducted by Petitioner's Representative Wiseman; and both he and Wiseman, among others, were engaged in handbilling at the entrance to the Employer's plant. During the course of the Regional Director's investigation, Abner completed an affidavit concerning the circulation of the rumor about the return of the unpopular supervisor in which he stated:

During the entire campaign, whenever I talked to employees about things for the Union, I was careful to talk only about things which I had discussed with the Organizing Committee and the UAW representatives, I did not make any arguments which were not approved and authorized by the UAW representatives.

Finally, the Employer offered evidence to show that during the campaign Abner and other named employees made statements in violation of *Savair* when they were engaged in soliciting authorization cards from fellow employees. Specifically, the Regional Director found that the Employer's witnesses testified Abner and the others:

[I]ndicated, either explicitly or with words which arguably could be interpreted as indicating, that the employee had to sign the authorization card prior to the election in order to keep from paying an initiation fee to join the UAW if Petitioner won the election . . . [and] that an employee had to vote for the Union to save the cost of initiation fees.

In his report, the Regional Director noted that the evidence did not indicate that Wiseman or other regular representatives of Petitioner were aware of these alleged statements by Abner and the others, and that those who allegedly made the statements denied doing so. In addition, the Regional Director cited the wide circulation of handbills distributed by the Petitioner and the employees. These handbills contain the following statements:

It is the POLICY in Region 3 of the UAW (Indiana and Kentucky) to extend to ALL employees of an appropriate unit in the plant at the time of an N.L.R.B. election the opportunity to

⁶ Sec. 102.69 of the Board's Rules and Regulations.

join the UAW WITHOUT paying an Initiation Fee. You WILL have this opportunity.

and:

It is the policy in UAW Region No. 3 to not require the payment of monthly union dues until after a contract is negotiated and accepted by the workers. *This will also apply to you.*

Furthermore Wiseman stated at one of Petitioner's meetings, in response to a question by an employee, that employees would not have to pay initiation fees.

In agreeing with the result reached by the Regional Director in overruling these objections without a hearing, we note that membership on an in-plant employee organizing committee is insufficient by itself to make an employee an agent of a union,⁷ particularly here, where, prior to the election, 123 employees out of a unit numbering approximately 425 persons had been made members of the In-Plant Committee. Another factor cited by the Employer, that is, that the employees involved had been engaged in card solicitation, has likewise been found not to be sufficient to show agency status.⁸ With regard to the affidavit signed by Abner in which he claimed that he did not make any statements that were not "approved" or "authorized" by the Petitioner, we note that such a general statement does not raise a substantial issue of fact, inasmuch as the statement lacks specificity and at most indicates that Abner merely sought to avoid incorrect statements in making arguments for the Petitioner. In any event, we have previously held that claims of agency status made by an employee who is the purported agent do not establish such a relationship,⁹ and that this principle is plainly applicable where an employee makes a generalized claim that his statements have been "authorized" or "approved."

In making the finding that Abner and the other employees were not acting as agents of the Petitioner, we have taken into consideration the fact that Rex Wiseman, Petitioner's regular organizer, was present at the entrance to the Employer's plant and had engaged in handbilling of employees. In addition, he was the individual in charge of the Petitioner's meetings during the course of the organizing campaign and was readily accessible. We therefore find distinguishable cases such as *Local 340, International*

Brotherhood of Operative Potters, AFL-CIO (Macomb Pottery Company), 175 NLRB 756 (1969), where the agency status of an employee organizer was premised on the fact that no regular union officials were present during the campaign and that the union acted solely through employees operating pursuant to written instructions. Accordingly, even assuming, *arguendo*, that Abner and the others had made statements impermissible under *Savair* standards, the evidence shows that these statements are not attributable to the Petitioner in this situation. In reaching this conclusion, we note the lack of any specific evidence that Wiseman, the regular organizer, had instructed employees to make such statements, was aware of them, or ratified them.

We find particularly significant the fact that Wiseman had expressly stated that no initiation fees would be collected from the present employees and that leaflets had been widely circulated stating that no such fees would be collected. We therefore find inapposite such cases as *J. C. Penney Company, Inc.*, 214 NLRB 445, 452 (1974), where improper statements by employee organizers had not been countered by unambiguous announcements of a proper waiver of initiation fees under *Savair* standards, as had occurred here. Rather, we find applicable those cases which hold that even though statements made during the course of an election campaign may have been violative of the *Savair* standards, if viewed in isolation, such statements will not cause the election to be set aside where all of the circumstances indicate that the employees were unambiguously informed that the initiation fees were waived in a manner consistent with *Savair*.¹⁰

Finally, we agree with the Regional Director for the reasons stated by him that any remarks made by Abner concerning the return of the unpopular supervisor are insufficient to constitute objectionable conduct which would warrant setting aside the election or taking the issue to a hearing.¹¹

ORDER

It is hereby ordered that Employer's Objections 1, 2, 4, 6, and 8 be overruled in their entirety and that Objections 3A be overruled insofar as it relates to alleged Petitioner threats to force the Employer to

⁷ *Owens-Corning Fiberglas Corporation*, 179 NLRB 219, 223 (1969); *International Ladies' Garment Workers' Union, AFL-CIO (Georgetown Dress Corporation)*, 214 NLRB 706 707-708 (1974), enforcement denied 537 F.2d 1239 (C.A. 4, 1976); *Tennessee Plastics, Inc.*, 215 NLRB 315, 319 (1974), enf'd. 525 F.2d 670 (C.A. 6, 1975); *Mike Yurosek & Sons*, 225 NLRB 148, 149-150 (1976).

⁸ *Jefferson Food Mart, Inc., d/b/a Call-A-Mart*, 214 NLRB 225, 228 (1974); *J. C. Penney Company, Inc.*, 215 NLRB 24 (1974); *Allied Metal Hose Company, Inc.*, 219 NLRB 1135 (1975).

⁹ *Buflor-Pelzner Division, Inc.*, 169 NLRB 998 (1968).

¹⁰ *Western Refrigerator Co., Subsidiary of the Hobart Manufacturing Co.*, 213 NLRB 227 (1974); *Peabody Solid Waste Management DeWald*, 214 NLRB 817 (1974); *Smith Company of California, Inc.*, 215 NLRB 530 (1974); *Rounsaville of Tampa, Inc.*, 227 NLRB 1079 (1977). Cf. *Jefferson Food Mart, Inc., d/b/a Call-A-Mart*, *supra*.

¹¹ Chairman Fanning and Member Jenkins would affirm the Regional Director on the basis of the standards enunciated in *Hollywood Ceramics, supra*. Member Penello would affirm the Regional Director for the reasons set forth in *Shopping Kart Food Market, Inc., supra*.

discriminate against employees who did not support Petitioner.

IT IS FURTHER ORDERED that a hearing be held to resolve the issues of fact and credibility raised by Objections 3A, 3B, 5, and 7.

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 issues. 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 each of the other parties 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 ALSO FURTHER ORDERED that the above-entitled matter be, and it hereby is, referred to the Regional Director for Region 25 for the purpose of conducting such hearing, and that the said Regional Director be, and hereby is, authorized to issue notice thereof.