

**Evans Rotork, Inc. and International Association of Machinists and Aerospace Workers, District Lodge 49, Local Lodge 519, AFL-CIO Petitioner. Case 28-RC-3534**

June 20, 1979

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

Pursuant to authority granted 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<sup>1</sup> held on October 27, 1978, and the Acting Regional Director's report, the pertinent portions of which are attached hereto as an appendix, recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs,<sup>2</sup> and hereby adopts the Acting Regional Director's findings and recommendations.<sup>3</sup>

Objection 2 filed by the Employer with respect to conduct affecting the election herein stated as follows:

The Union leaders disrupted the election by offering to employees who signed cards and agreed to vote for the Union a waiver of initiation fees and dues, but employees who failed to sign cards and vote for the Union would be required to pay initiation fees and dues.

In support of this objection the Employer submitted an executed statement by one of its employees. In his statement the employee stated that Houston B. Quick, a representative of the Petitioner, informed approximately 10 employees<sup>4</sup> in attendance at a meeting on October 25, 1978, that "the Union was moving

into a new company and that all initiation fees would be waived for those employees who joined 'up front.'" As a result of further investigation, a second employee who had attended the same meeting stated that Quick had told the employees at this meeting that anyone who joined within a reasonable period after the election would not have to pay initiation fees. In addition, the Acting Regional Director's report relies on statements from another witness who indicated that Quick told employees that those who wanted to join need pay only dues (and no initiation fees) until the time that a collective-bargaining agreement was reached, and those of two other witnesses who stated that Quick told them that those employees who are now working would not have to pay initiation fees.

Even assuming, *arguendo*, that our dissenting colleague is correct in stating that an offer to waive initiation fees for employees who join "up front" is ambiguous and objectionable under *Savair*,<sup>5</sup> we find that the administrative investigation has resolved all substantial and material issues of fact, and the evidence relied on by the Acting Regional Director clearly shows that the scope of the Petitioner's waiver was sufficiently clarified at this meeting to render the "up front" statement unobjectionable.<sup>6</sup> The administrative investigation in this case obtained statements from four other witnesses who heard Quick unambiguously state that the waiver would be applicable to employees who joined the Union after the election. Such clarification regarding the applicability of the waiver renders it entirely unreasonable for an employee to have interpreted the "up front" colloquialism in a manner that would be objectionable in *Savair*. While our dissenting colleague correctly points out that the Acting Regional Director did not specifically conclude that what the other employees heard was intended to clarify the "up front" reference, we would not require the Petitioner to have specifically defined the phrase "up front" before we would find that the ambiguous waiver was adequately clarified.

Although we share our dissenting colleague's concern regarding the Acting Regional Director's reliance on the unsworn and unsigned supplemental statement from the employee who had originally executed the statement regarding the "up front" comment by Quick,<sup>7</sup> we disagree with the inference that this Board generally may not consider unsigned, unsworn statements during administrative investigations

<sup>1</sup> The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 32 for, and 25 against, the Petitioner; there were no challenged ballots.

<sup>2</sup> In its supplement and second supplement to exceptions, the Employer contends that a hearing is warranted herein under *General Knit of California, Inc.*, 239 NLRB 619 (1978), specifically asserting in its supplement to exceptions that the Petitioner made "egregious" misrepresentations prior to the election concerning the Employer's financial condition. We find this contention without merit. Thus, the Employer did not allege that Petitioner had made such misrepresentations in its objections, the Acting Regional Director did not refer to any such misrepresentations as having been discovered during the course of his investigation, and the Employer did not raise these misrepresentations in its initial exceptions to the Acting Regional Director's report. Furthermore, the Employer merely asserts that the Petitioner made such "egregious" misrepresentations regarding the Employer's financial condition at some unspecified time prior to the election and has offered no evidence in support of its assertions.

<sup>3</sup> In the absence of exceptions thereto, we adopt, *pro forma*, the Acting Regional Director's recommendation that the Employer's Objection 3 be overruled.

<sup>4</sup> Respondent employed approximately 70 employees who were eligible to vote in the representation election.

<sup>5</sup> *N.L.R.B. v. Savair Manufacturing Co.*, 414 U.S. 270 (1973).

<sup>6</sup> See *Inland Shoe Manufacturing Co., Inc.*, 211 NLRB 724 (1974).

<sup>7</sup> In its exceptions to the Acting Regional Director's report, the Employer asserts that the employee referred to has failed to sign the second statement prepared by the Board agent, that the second statement contains statements that are contrary to the first statement, and that the Board agent did not accurately depict in the second statement the employee's version of the events involved.

regarding objections to an election. Furthermore, the Acting Regional Director's reliance on the statements of several other witnesses clearly shows that the dissent errs in stating that the finding regarding the extent of the waiver could only have been reached by relying on the unsigned, unsworn affidavit. Consequently, we need not rely on the second unsworn, unsigned statement to reach the conclusion that the waiver here was not objectionable. The fact that some employees who heard the "up front" statement in isolation might have subjectively interpreted it to mean that they would have to become a member of the Union prior to the election in order to have their initiation fees waived would clearly be an unreasonable interpretation of the union representative's statements in view of the totality of the circumstances, including the evidence submitted from the other employees. Accordingly, we conclude that the Acting Regional Director correctly overruled this objection.

#### CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for International Association of Machinists and Aerospace Workers, District Lodge 49, Local Lodge 519, AFL-CIO, 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 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 production, maintenance, shipping and receiving employees, clerical employees, salesmen, truckdrivers, and draftsmen employed by the Employer at its 5530 North 51st Avenue, Glendale, Arizona, location; excluding confidential secretary, watchmen, guards and supervisors as defined in the Act.

MEMBER TRUESDALE, dissenting in part:

Contrary to my colleagues, I would not certify the Petitioner at this time. Rather, I would remand this proceeding for a hearing with respect to the Employer's Objection 2.

In Objection 2, the Employer alleged that Petitioner had offered to waive initiation fees and dues for employees who signed cards and agreed to vote for the Union in violation of *N.L.R.B. v. Savair Manufacturing Co.*<sup>8</sup> In support of this objection, the Employer submitted the sworn affidavit of employee Laney which stated that a union official had told a group of employees that "the union was moving into

a new company and that all initiation fees would be waived for those members who joined 'up front.'"

During the investigation of this objection, the Board agent took an unsigned, unsworn supplemental statement from Laney. This statement purportedly clarified what Laney had understood by the union official's reference to a waiver of fees for members who joined "up front." The supplemental statement indicated that the union official informed the employees that they would not have to pay the initiation fee if they joined the Union after the election, but that new employees or present employees who decided to join "later down the road" would have to pay the fee. In addition to Laney's second statement, the Board agent also took statements from other employees who attended the same meeting. These employees stated variously that the Union would waive initiation fees for "anyone who joined within a reasonable period after the election"; "until the time that a collective bargaining agreement was reached"; and for those "employees now working" for the Employer.

Based on Laney's "clarification" and on the other employees' statements, the Acting Regional Director found that there was no evidence indicating that the waiver was applicable only to employees who joined the Union prior to the election and that all witnesses agreed that the offer to waive initiation fees was open for some time after the election. He therefore recommended that Objection 2 be overruled.

Contrary to my colleagues, I conclude that the Employer's Objection 2 raises substantial and material issues of fact which can best be resolved by a hearing. Thus, Laney's sworn affidavit alleges that the Petitioner offered to waive initiation fees for employees who joined "up front." This offer in itself is ambiguous, and, if made, would be objectionable under *Savair*, unless subsequently clarified by the Petitioner. See, *Inland Shoe Manufacturing Co., Inc.*, 211 NLRB 724 (1974). In this regard, I am at a total loss to understand my colleagues' conclusion that Laney's unsigned, unsworn statement constitutes a reliable clarification of his sworn affidavit. Furthermore, I see no basis for concluding that the versions given by the other employees demonstrate that the union official subsequently clarified his alleged "up front" statement. These versions merely appear to be different accounts of what the union official said. Thus, I point out that the Acting Regional Director did not conclude that these other versions in any way clarified the statement attributed to the union official by Laney. Instead, he found that all witnesses agreed that the waiver was open until after the election—a finding which he could reach only by relying on Laney's unsigned, unsworn statement. Finally, that the versions of the other witnesses are inconsistent with Laney's sworn affidavit, in my view, clearly pres-

<sup>8</sup> 414 U.S. 270 (1973).

ents a credibility conflict which properly must be resolved at a hearing.

For the foregoing reasons, I would remand this proceeding for a hearing with respect to the substantial and material issues of fact raised by the Employer's Objection 2. I therefore dissent.

#### APPENDIX

##### Objection 2

The employee statement furnished by the Employer in support of Objection 1 also contains evidence to support Objection 2. In that statement, the witness stated that Quick told employees at the October 25th meeting that the Union was moving into a new company and that all initiation fees would be waived for those employees who joined "up front." In a supplemental statement, the employee witness clarified what Quick meant by "up front." He stated that Quick told the employees that the waiver of initiation fees would not be applicable indefinitely and that new employees hired after the election and those who joined "later on down the road" will be levied initiation fees. According to this witness, Quick did not define "later on down the road" but Quick did state that employees who joined right after the election would not have to pay initiation fees. Finally, the witness stated that Quick's remarks meant to him that, if the Union won, the employees would be pressured to join the Union promptly or soon after the election to save their initiation fees.

Another witness who attended this same meeting stated that Quick told them that anyone who joined within a rea-

sonable period after the election would not have to pay initiation fees.

A third witness testified that Quick told employees that employees who wanted to join need pay only dues (and no initiation fees) until the time that a collective-bargaining agreement was reached.

Two other witnesses stated that Quick told them that those employees who are now working would not have to pay initiation fees.

Quick stated that he does not recall mentioning initiation fees at the October 25th meeting. However, according to Quick, it is the Petitioner's policy not to assess initiation fees to employees of new companies that Petitioner is organizing.

It is well established that a Union may waive initiation fees for all eligible voters prior to an election as long as it also waives such fees for a period of time after the election. *Rounsaville of Tampa Inc.*, 227 NLRB 1079; *Allied Metal Hose Company, Inc.*, 219 NLRB 1135; *GTE Lenkurt, Incorporated*, 215 NLRB 321. None of the witnesses testified that the waiver of initiation fees was applicable only to those who joined the Union before the election. All witnesses agree that the offer to waive initiation fees was applicable for some period of time after the election. Accordingly, I do not find that the Petitioner's offer to waive initiation fees constitutes grounds for setting the election aside. *Smith Company of California, Inc.*, 215 NLRB 530; *Endless Mold, Inc.*, 210 NLRB 159.

Contrary to the Employer's contention, there is no evidence that agents of the Petitioner told employees that the Petitioner would waive initiation fees only for those employees who voted for the Petitioner.

Based on the foregoing, I recommend that Objection 2 be overruled.