

Albert Trostel Packings, Ltd. and Industrial Workers Union, Local No. 8, affiliated with the Laborers' International Union of North America, AFL-CIO, Petitioner. Case 30-RC-2889

May 4, 1977

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS JENKINS, MURPHY, AND WALTHER

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 the Employer's objections to an election held on August 20, 1976,¹ and the Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the Employer's exceptions and brief, and hereby adopts the Regional Director's findings and recommendations.

The Employer filed two objections to the election, both of which the Regional Director recommended overruling. We agree.²

In its Objection 1,³ the Employer objected to the conduct of one employee who told two other employees that the Petitioner paid him (Pohle) and another member of the in-plant organizing committee (Mohr) \$1,000 for "pushing the Union."⁴ The Employer averred that the "payment" constituted an unreasonable and excessive economic inducement and also represented an undue influence on other employees by creating an impression of financial gain for union support. We conclude otherwise for the following reasons as well as those set forth by the Regional Director, with the exception noted below.

No evidence was presented or disclosed to show that Pohle, Mohr, or any other employee was either promised or paid any money by Petitioner. Thus, as stated by the Regional Director, the cases relied on by the Employer where there was an economic inducement or promise thereof are inapposite here.

Further, the statement by Pohle that he received \$1,000 was made to only two employees, who were believed to be anti-Petitioner, as a way of "rubbing in" what was felt would be their disappointment if the Union won. As found by the Regional Director,

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 127 for, and 112 against, the Petitioner; there was 1 void ballot and no challenged ballots.

² Member Walther agrees that Objection 2 should be overruled. As set forth in his separate dissenting opinion, however, he would sustain Objection 1 and direct a second election.

³ The relevant portion of the Regional Director's report commenting on this objection is attached to this Decision as an appendix.

⁴ The Regional Director found that employee-members of the organizing

this would antagonize these two employees, rather than induce them to vote for Petitioner.

The Regional Director found that rumors did circulate among employees that Pohle and Mohr received money for their efforts on behalf of Petitioner. While discussion of the rumor by Pohle and Mohr with other employees was not isolated,⁵ it is clear that both Pohle and Mohr denied the rumor whenever they were asked about it in a serious manner, and responded jokingly to employees whenever they were asked about the rumor in a jocular vein. Accordingly, there is no basis for finding, as our dissenting colleague does, that Pohle and Mohr fostered the rumor.

In sum, we agree with the Regional Director that the Employer's objections are not meritorious. We will therefore certify the Petitioner as the exclusive representative of the employees in the unit found appropriate.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for Industrial Workers Union, Local No. 8, affiliated with the Laborers' International Union of North America, AFL-CIO, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, said labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

All production and maintenance employees, including plant clerical employees, of the Employer at its 901 Maxwell Street, Lake Geneva, Wisconsin location; but excluding office clerical employees, professional employees, managerial employees, technical employees, guards and supervisors as defined in the Act.

MEMBER WALTHER, dissenting:

I do not agree that Objection 1 is unmeritorious.

The Regional Director found that there was no evidence to show that Pohle or Mohr were either promised or paid any money by Petitioner. He found, however, that rumors that they were so paid did circulate among the employees during the campaign and that Pohle and Mohr were queried by

committee acted as agents of Petitioner during the campaign. According to the two employees addressed, Pohle further told them that he and Mohr would be paid an additional \$1,000 if Petitioner won the election.

⁵ This is the one respect in which we differ with the Regional Director on this objection for he found Pohle's statement isolated. To the extent this could be taken to mean discussion of the statement was isolated, we disagree with the Regional Director but this disagreement does not negate our reliance on the Regional Director's other findings and on his overall recommendation herein.

fellow employees about the rumor. At times the two denied receiving money and at other times, when asked about it in an allegedly jocular manner, they responded allegedly jokingly, without denying the rumor but instead indicating its validity. For example, they indicated that they had been "looking at a new Monte Carlo." Also, to at least the two employees noted above, who were considered anti-union, Pohle himself volunteered the rumor as a way of "rubbing in" what was felt would be disappointment by those employees at an impending union victory. The Regional Director concluded that the probable impact upon those who had the rumor "rubbed in" would have been anti-Petitioner in effect. Further concluding that the Pohle remark to the two employees was isolated in nature and that there was no evidence of actual economic inducement by Petitioner, the Regional Director concluded that there was no merit to the Employer's objection.

As stated, I disagree. It is clear that if Pohle or Mohr received even the first \$1,000 this would constitute an excessive payment for whatever services they may have rendered Petitioner.⁶ While there is no evidence either way as to whether or not the two actually received the \$1,000, it is clear, although my colleagues in the majority are unwillingly to so find, that, acting as agents of Petitioner, they fostered the rumor that they did indeed receive money. This rumor was clearly widespread at the Employer's plant. Unlike the Regional Director, I find the fostering of the rumor by Petitioner's agents as objectionable as the payment itself. For, while the rumored payment may have antagonized some, as the Regional Director reasoned, it could just as easily have persuaded others that similar extraordinary payments could be had by those who supported Petitioner, and could have therefore served as an inducement to vote for Petitioner. Under these circumstances, I would set aside the election and order that a new election be held.

⁶ See, e.g., *Teletype Corporation*, 122 NLRB 1594 (1959); *Collins & Aikman Corporation*, 160 NLRB 1750 (1966), *enfd.* 383 F.2d 722 (C.A. 4, 1967).

APPENDIX

Objection No. 1

In support of this objection, the Employer offered the testimony of two employees, Marie Voss and Patti Jo Sumner. They testified that on August 19, Organizing Committeeman² Jack Pohle, told them that he and another committeeman, Dan Mohr, each received \$1,000 for working on Petitioner's behalf and would each receive an additional \$1,000 should Petitioner win the election. Pohle admits telling Voss

² It is clear that employee members of the Organizing Committee acted as agents of Petitioner during the campaign and Petitioner does not contend otherwise.

and Sumner that he and Mohr each received \$1,000 for "pushing the Union," but he did not recall telling them he and Mohr would each receive an additional \$1,000.

With respect to that part of this objection alleging that Pohle's statement was circulated among employees, Voss and Sumner testified that they made and kept a pact not to repeat to their coworkers what Pohle had told them. Investigation, however, disclosed that rumors to the effect that Pohle and Mohr had received money for their efforts on behalf of Petitioner did circulate among employees during the campaign.

Investigation further disclosed that Pohle and Mohr were faced with just such rumors by their coworkers on several occasions both before and after the election. It was in response to the rumors that Pohle approached Voss and Sumner on August 19. Pohle testified that he said what he did to Voss and Sumner as a joke, in a teasing yet ostensibly serious way, because he believed them to be anti-Petitioner, and he wanted to "rub-in" what he felt would be their disappointment resulting from a victory by Petitioner at the upcoming election. The rumors came to Pohle and Mohr most often in the form of questions from their coworkers. Questions were asked such as, "What are you getting out of this?" or "What are you going to do with the \$1,000?" Pohle and Mohr tailored their response to suit the tone of the questioner. If the inquiry was made in a serious way, the response would be a denial of the rumor. If the question was asked as a joke, the in-kind response might be, "I've been looking at a new Monte Carlo." Of the several employees interviewed in this regard, only Voss and Sumner gave substance to the rumors as a result of a response from either Pohle or Mohr. There was no evidence that either Pohle or Mohr told anyone other than Voss and Sumner that they, or any other employee, had or would receive money from Petitioner.

In the statement filed in support of Objection 1, the Employer relies on the following cases: *General Cable Corp.*, 170 NLRB 1682; *Teletype Corp.*, 122 NLRB 1594; *Collins & Aikman Corp. v. N.L.R.B.*, 383 F.2d 722; *Plastic Masters, Inc. v. N.L.R.B.*, 512 F.2d 449; and *N.L.R.B. v. Savair Mfg. Co.*, 414 U.S. 270, 279, *fn.* 6 (1973). In the above-listed cases, the common thread of violative conduct was promising or conferring of economic inducement. In the instant case, no evidence was presented or uncovered to show that Pohle, Mohr or any other employee was either promised or paid money by Petitioner. Therefore, I find those cases relied on by the Employer to be inappropriate and distinguishable

here. As to Pohle's statement to Voss and Sumner, it appears that its net effect would have been to antagonize these two known antiunion adherents. Under such circumstances, it would have been unreasonable for Voss and Sumner to interpret Pohle's statement as an inducement to vote for the Petitioner. Therefore, I find the reliance on the above-cited cases misplaced.

It is most unlikely that the impact of Pohle's statement interfered with the free choice of the voters. By all accounts, Pohle's statement was made to only two employees, only one of whom was eligible to vote,³ in a unit of approximately 260, and it was not repeated. Furthermore, Pohle's interest does not appear to be one of offering inducement, a

³ Voss was hired subsequent to the eligibility date of July 16, and as a consequence, she was not eligible to vote.

proposition supported by the manner in which he and Mohr handled the rumors. If there was any calculation on Pohle's part, it was that the talk of being recompensed for his campaign service would inspire resentment among Voss and Sumner. This would chill, rather than encourage, their support for the Union.

Based on the foregoing, particularly the isolated nature of Pohle's statement and the probable negative impact that statement and the rumors had on Petitioner's chances, I conclude that the conduct here objected to was without prejudice to the Employer. Accordingly, I shall recommend that it be overruled.