

In the Matter of HUDSON MOTOR CAR COMPANY, EMPLOYER *and* HUDSON LOCAL #154, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), PETITIONER

Case No. 7-UA-1193.—Decided March 25, 1949

DECISION
AND
CERTIFICATION OF RESULTS

Following the filing of a petition, pursuant to Section 9 (e) (1) of the National Labor Relations Act, as amended, an election was conducted herein under the direction and supervision of the Regional Director for the Seventh Region. Upon the conclusion of the election, the Regional Director served upon the parties a Tally of Ballots which showed that a majority of eligible voters had voted in favor of authorizing the Petitioner to enter into an agreement with the Employer which requires membership in such Petitioner as a condition of continued employment.

Thereafter, the Employer filed objections to the conduct of the election. The Regional Director investigated the objections and served upon the parties a Report on Objections in which he recommended that the objections be overruled. Subsequently, the Employer filed exceptions to the Regional Director's Report.

The Employer contends that the election results should be set aside upon the grounds that (a) the employees should have been asked specifically on the ballot whether they desired a "maintenance of membership" type of union security in view of the existing collective bargaining contract containing such a clause, and (b) the propaganda material used by the Petitioner impaired the employees' free choice in the election.

(a) *The form of the ballot*

On January 20, 1948, the Employer and the Petitioner entered into a collective bargaining contract to terminate on August 1, 1950. The contract contained a "maintenance of membership" clause "*subject to the requirements established by Section 8 (a) (3) of the Labor Management Relations Act of 1947.*" [Emphasis supplied.] The Peti-

tioner had not, before signing the bargaining agreement, secured authorization in the manner prescribed by the amended Act, for the signing of an agreement containing a union-security provision. However, after signing the contract, the Petitioner filed the present petition. In accordance therewith, an election was held in which the employees were asked the customary question in such Board elections:

Do you wish to authorize the union named below [Petitioner] to enter into an agreement with your employer which requires membership in such union as a condition of continued employment.

The Employer contends that the form of the question used in the balloting referred only to a "union shop" and that the employees should have been given the opportunity of indicating whether they preferred a "maintenance of membership" provision.

Section 8 (a) (3) of the Act permits an Employer to make an agreement with a labor organization "to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment * * * (ii) if, following the most recent election held as provided in Section 9 (e) the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to authorize such labor organization to make such an agreement. . . ." Section 9 (e) (1) provides that upon the filing of an appropriate petition by the statutory bargaining representative "alleging that 30 per centum or more of the employees within a unit claimed to be appropriate for such purposes desire to authorize such labor organization to make an agreement with the employer of such employees requiring membership in such labor organization as a condition of employment in such unit, upon an appropriate showing thereof the Board shall, if no question of representation exists, take a secret ballot of such employees, and shall certify the results thereof to such labor organization and to the employer."

The question propounded to the employees in this election is phrased in the language of Section 9 (e) (1). Its purpose and effect is not to authorize a "union shop" exclusively, but to permit any form of lawful union security upon which the parties may agree in collective bargaining. This may be a "union shop," "maintenance of membership," or any other lawful type of union security which the parties may agree upon.¹ The point is that an election under Section 9 (e) (1) is intended to confer *general authority* upon the bargaining representative to make an agreement containing a union-security provision permitted by the proviso clause to Section 8 (a) (3). Whether the

¹ See H. R. Rep. No. 510, 80th Cong., 1st Sess. 41 (1947).

agreement shall contain such a clause, and its precise form, are left to be determined by the parties in the collective bargaining. Hence, the Regional Director properly refused to ask the employees whether they specifically desired to authorize a "maintenance of membership" type of union security. Accordingly, we find this objection of the Employer to be without merit. It is hereby overruled.

(b) *The propaganda material issued by the Petitioner*

The burden of the Employer's complaint against the preelection material released by the Petitioner is that it contained various misstatements of the issue presented by the election,² and used inflammatory statements in order to get out the vote. However, examination of this material indicates that it was in the nature of legitimate campaign propaganda. Such literature, we have held, does not prevent employees from exercising their free and secret choice at the polls.³ Accordingly, we find this objection to be without merit. It is hereby overruled.

CERTIFICATION OF RESULTS

IT IS HEREBY CERTIFIED that a majority of employees eligible to vote have voted to authorize the Petitioner to make an agreement with the Employer requiring membership in such organization as a condition of employment, in conformity with Section 8 (a) (3) of the Act, as amended.

MEMBERS HOUSTON and MURDOCK took no part in the consideration of the above Decision and Certification of Results.

² For example, some of the Petitioner's literature indicated that the issue was whether the employees were for or against the Union, and that an affirmative vote was necessary to preserve the Petitioner's "union shop."

³ See *Matter of Champion Spark Plug Company, Ceramic Division*, 80 N. L. R. B. 47; *Matter of NAPA New York Warehouse, Inc.*, 75 N. L. R. B. 1269; *Matter of Stonewall Cotton Mills*, 75 N. L. R. B. 762; *Matter of Maywood Hosiery Mills*, 64 N. L. R. B. 146.