

In the Matter of THE UNIVIS LENS COMPANY, EMPLOYER *and* DWIGHT LUDWICK, PETITIONER *and* UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, LOCAL 768, CIO, UNION

*Case No. 9-RD-20.—Decided April 19, 1949*

DECISION  
AND  
ORDER SETTING ASIDE ELECTION

On July 23, 1948, pursuant to a Decision and Direction of Election issued by the Board on June 29, 1948,<sup>1</sup> a decertification election by secret ballot was conducted under the direction and supervision of the Regional Director for the Ninth Region among the employees in the unit found appropriate in said Decision. Upon completion of the election, a Tally of Ballots was issued and duly served by the Regional Director upon the parties concerned. The Tally reveals that of approximately 650 eligible voters, 574 cast valid ballots, of which 272 were for the Union and 302 against. In addition, 13 ballots were challenged.

On July 27, 1948, the Union filed Objections to Conduct Affecting the Results of the Election. Thereafter, on August 6, 1948, following an investigation, the Regional Director issued a Report on Objections in which he found that the objections did not raise substantial and material issues with respect to the election and recommended that the objections be dismissed. On August 13, 1948, the Union filed Exceptions to his Report.

On August 19, 1948, the Board, having duly considered the matter, decided that the Union's objections raised substantial and material factual issues regarding the conduct of the election, and consequently ordered a hearing upon these Objections before a hearing officer to be designated by the Board.<sup>2</sup> Thereafter, the Employer filed a motion to

<sup>1</sup> Unpublished.

<sup>2</sup> This order directed the hearing officer to prepare and cause to be served upon the parties, a Report containing findings of fact and recommendations to the Board as to the disposition of the Objections. The parties were given 5 days within which to file exceptions to the Report. See *Matter of Minnesota Mining & Manufacturing Company*, 81 N. L. R. B. 557.

82 N. L. R. B., No. 155.

strike the Union's Objections and the Exceptions to the Regional Director's Report, contending in substance: (1) that a true copy of the Union's Exceptions was not served upon the Employer in accordance with Section 203.61 of the Board's Rules and Regulations;<sup>3</sup> and, (2) that, as the Union is not in compliance with Section 9 (f), (g), and (h) of the Act, the Board should not consider its objections to the conduct of the decertification election and exceptions to the Regional Director's Report.

On August 26, 1948, the Board denied the motion upon the ground that it raised no substantial issues not considered at the time the hearing was directed. The Employer renewed its motion at the hearing and it was denied by the hearing officer. The propriety of the hearing officer's ruling is now before us for consideration.

Regarding the first contention, while the copy of the Union's exceptions served upon the Employer might have been technically defective, the Employer was not prejudiced thereby, as the Board had a true copy of the exceptions before it for consideration when it ordered the hearing and the Employer could readily have obtained such a copy from the Regional Office.<sup>4</sup>

Secondly, the Board will entertain objections to conduct affecting the results of a decertification election and exceptions filed by a non-complying union, because in a decertification proceeding, unlike a case involving an affirmative petition for certification, the union is not attempting to avail itself of the Board processes, but is made a necessary party by virtue of the Petitioner's claim that the Union no longer represents a majority of employees in the appropriate unit. We have held that, as the question concerning representation in a decertification case is raised by individuals and not by a labor organization, Section 9 (f) and (h) of the Act does not prevent the Board from proceeding with the investigation and resolving the representation question by conducting an election in which a non-complying union's name appears on the ballot.<sup>5</sup> Once having made the union a necessary party and placed its name on the decertification ballot, we can perceive no valid reason for curtailing its right to participate in the later steps of the investigative process, which includes the right to file objections and exceptions. Furthermore it is incumbent upon the Board itself to de-

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<sup>3</sup> The names of certain employees whom the Union alleged were contacted by some of the Employer's foremen were blanked out from the copy of the exceptions received by the Employer.

<sup>4</sup> At most, this contention of the Employer was based upon the premise that the deletion of the names of the employees involved would have hampered it in the presentation of its case, as it was not apprised of the prospective union witnesses at the hearing on the Objections and Exceptions. However, we are satisfied from an examination of the record that the Employer was informed sufficiently in advance as to the identity of the union witnesses and was given every opportunity completely and fully to present its case.

<sup>5</sup> *Matter of Harris Foundry & Machine Company*, 76 N. L. R. B. 118.

termine that every election held under Board auspices is conducted fairly and properly, and that the results represent the freely expressed desires of the employees. In order to perform this function, consideration must be given to objections which allege matters calculated to prevent the maintenance of standards essential to the conduct of a valid election.<sup>6</sup> Accordingly, we affirm the ruling of the hearing officer in denying the motion of the Employer.

A hearing on the Union's objections was held from September 13 to September 24, 1948, inclusive, before Horace A. Ruckel, hearing officer of the National Labor Relations Board. All parties appeared and participated. In accordance with the Board Order, the hearing officer on December 31, 1948, issued and caused to be served upon all parties concerned a Report, containing his findings and a recommendation that the Union's objections to the election be sustained and the election set aside. On January 14, 1949, the Employer filed Exceptions to the hearing officer's findings and recommendations and, on January 29, 1949, submitted a brief in support of its Exceptions.<sup>7</sup> The Union, on February 4, 1949, filed a brief in support of the hearing officer's Report and on February 10, 1949, the Employer filed a reply brief.

The Board has reviewed the rulings of the hearing officer and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the hearing officer's Report, the Employer's briefs and Exceptions,<sup>8</sup> the Union's brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the hearing officer, insofar as they are consistent with the findings and conclusions set forth below.

The record shows that a meeting was held shortly after May 18, 1948, attended by the Employer's officials and supervisors, to decide what action should be taken regarding a strike which had occurred at the Employer's Dayton, Ohio, plant on May 5, 1948, and the Em-

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<sup>6</sup> Cf. *Matter of Woodmark Industries, Inc.*, 80 N. L. R. B. 1105, where the Board of its own motion considered objections to the conduct of an election, filed by a labor organization not a party to or entitled to participate in the election, where such objections concerned matters of Board policy.

<sup>7</sup> The Employer's request for oral argument is denied, as the record and papers filed herein adequately present the issues and positions of the parties.

<sup>8</sup> Among the Employer's exceptions is one objecting to the "overruling" by the hearing officer of its motion that the testimony of two union witnesses be stricken from the record because it was the subject of unfair labor practice charges (9-CA-64) filed with, and dismissed by, the General Counsel. The hearing officer did not specifically overrule this motion. The Employer bases its contention upon the Board's decision in *Matter of Times Square Corporation*, 79 N. L. R. B. 361. However, the *Times Square* case involved a question of eligibility to vote in an election, whereas this case is concerned with whether or not an election should be set aside. In any event, the testimony of the two witnesses in question could be excluded without affecting the conclusions reached by the hearing officer. In fact, in his Report he discredits practically all their testimony.

ployer's relationship to the Union and its employees. As a result of this meeting, the foremen were instructed to visit all the employees whom they supervised; to answer any questions they might have; to find out if they intended to return to work after the strike; to offer financial assistance if needed; and to urge them to vote in any election the Board might conduct. Generally, the foremen made 3 series of visits to the homes of employees. On such occasions, offers of financial assistance were extended to the employees and arrangements were made for approximately 95 loans through the Third National Bank and Trust Company of which the Employer's president was a director.

The hearing officer found that the Employer's foremen, "in the same interview and in the same context in which [they] ascertained the needs of the employees and promised them financial assistance, urged them to vote against the Union." The record contains ample evidence to support this finding. Thus, almost all of the approximately 650 employees were interviewed by the foremen during 3 successive periods: after May 18, 1948; about June 18, for approximately 2 weeks; and, shortly after July 4. The election was directed on June 29 and conducted on July 23, 1948. There is no serious contention that during the first and second visits offers of financial assistance were not made by the foremen to the employees. The Employer admits that its general program during the periods in question was to have the foremen ascertain if the employees required financial assistance and to urge them to vote. The Employer's secretary in charge of employee relations testified that offers of financial aid were extended during the first and second visits.<sup>9</sup> The record reveals that the majority of witnesses presented by either the Union or the Employer stated that they were urged to vote by the foremen during the period of the first and second visits.<sup>10</sup> As the employees were in fact urged to vote against the Union,<sup>11</sup> it is apparent that, at least during the period of the first and second visits, the foremen must have discussed this subject with them during the very same interviews in which offers of financial assistance were being made.

The hearing officer concluded that the juxtaposition of the offers of assistance and the exhortations to vote against the Union, "even though the one was not explicitly conditioned upon the other," to-

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<sup>9</sup> He was not sure about the third series of visits

<sup>10</sup> Most of these witnesses testified to having been urged to vote during the period of the second series of visits, which was 3 days after the hearing on the petition for decertification at a time when the Employer could reasonably anticipate that an election would be held.

<sup>11</sup> We adopt the portion of the hearing officer's finding to the effect that the employees were urged to vote against the Union, as it is based upon his credibility resolutions. See *Matter of Southeastern Industries, Incorporated*, 82 N. L. R. B. 209.

gether with the "extreme campaign methods"<sup>12</sup> of the Employer, prevented the employees from freely selecting a bargaining representative. He therefore recommended setting aside the election upon the basis of the doctrine announced by the Board in *Matter of General Shoe Corporation*.<sup>13</sup> We do not find that the facts involved herein necessarily present a *General Shoe* situation.<sup>14</sup> However, we believe that offering financial assistance simultaneously with the solicitation of employees to vote against the Union would reasonably have led the employees to conclude that they were being offered an economic benefit conditioned upon their voting in a manner desired by the Employer. This activity on the part of the Employer in offering to its employees financial assistance, where it might appear to be offered as an alternative to union affiliation or support, constitutes coercive conduct or a promise of benefit of the type which we would find a violation of Section 8 (a) (1) of the Act if it were presented to us in an unfair labor practice proceeding.<sup>15</sup> It follows that such conduct, which occurred so shortly before the election as to have been calculated to have an effect upon the action of the employees at the polls, interfered with their free exercise of the right to choose a bargaining representative. Accordingly, we shall set the election aside. We shall direct a new decertification election at such time as the Regional Director advises us that the circumstances permit a free choice among the employees herein concerned.

### ORDER

IT IS HEREBY ORDERED that the election held on July 23, 1948, among the employees of the Univis Lens Company of Dayton, Ohio, be, and it hereby is, set aside.

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<sup>12</sup> On July 23, 1948, many of the Employer's officials and foremen were in two rooms of a hotel located opposite the polling place in which the election was held. The plant superintendent and other supervisors were stationed at the entrances to the building in which the voting was taking place. The former had a list of eligible voters and employees' names were checked off as they entered the building. The names of those who had not yet voted were sent up to the officials and foremen who telephoned these people, urged them to vote and offered transportation to the polls.

<sup>13</sup> 77 N. L. R. B. 124.

<sup>14</sup> Nor, in view of our finding hereinafter, do we deem it necessary to pass upon the question as to whether the Employer's other campaign conduct adverted to by the hearing officer exceeded the bounds of permissible election activity.

<sup>15</sup> *Matter of Union Products Company*, 75 N. L. R. B. 591, 593; *Matter of The Bailey Company*, 75 N. L. R. B. 941, 942