

Wagner Electric Corporation, Chatham Division and Local 102, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 22-RC-3571

September 22, 1967

DECISION, ORDER, AND DIRECTION OF
SECOND ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND ZAGORIA

Pursuant to a Stipulation for Certification upon Consent Election, an election by secret ballot was conducted by the Regional Director for Region 22 on March 23, 1967, among employees in the stipulated unit. After the election, the parties were furnished a tally of ballots which showed that of approximately 523 eligible voters, 465 cast ballots, of which 243 were for the Petitioner, 203 were for the Intervenor,¹ 11 were against the participating labor organizations, and 8 were challenged. Thereafter, the Employer and the Intervenor filed timely objections to conduct affecting the results of the election.

In accordance with National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and, on April 28, 1967, duly served on the parties his report on objections to the election, in which he recommended that the objections to the election be overruled in their entirety and that the Petitioner be certified as the collective-bargaining representative of the employees in the appropriate bargaining unit. Thereafter, the Employer and the Intervenor filed timely exceptions to the Regional Director's report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
2. The labor organizations involved claim to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
4. The parties stipulated, and we find, that the following employees of the Employer constitute a

unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed at the Employer's plant at 630 West Pleasant Avenue, Livingston, New Jersey, excluding salaried technical employees, professional employees, office clerical and sales employees, and guards and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report, the recommendations, and the entire record in this case, including the Employer's and Intervenor's exceptions, and makes the following findings:

The Petitioner's preelection campaign included mailing to eligible employees a certificate of group insurance supplying \$500 life, up to \$1,000 accidental death, and \$100 funeral expense coverage, and a number of leaflets describing the policy and its application to employees who joined the Petitioner. The Employer contends that all these materials interfered with the election, while the Intervenor relies on the mailing of the group insurance certificate and other items sent with it.

There is no dispute as to the basic facts of the Petitioner's campaign insofar as this aspect is concerned.² On February 2, 1967, Petitioner distributed a leaflet which stated that "Signing up with Local 102 will also automatically give you a \$500 Life Insurance issued by Conn. General Life Ins. Co. with an additional \$100 Funeral Expense Benefit Rider. You will also be entitled to Benefits from the International Union." On February 14, another leaflet advised employees that all who had signed up with the Petitioner "are covered by a Life Insurance policy of \$500 plus a \$100 Funeral expense benefit." And, on February 22, another leaflet stated that "THE ONLY BENEFIT OF SIGNING UP NOW IS THAT YOU AS A MEMBER NOW WILL BE COVERED FOR UNION BENEFITS SUCH AS \$500 LIFE INSURANCE, \$1000 ACCIDENTAL DEATH, EYEGLASS SERVICE, LEGAL SERVICE AND OTHER BENEFITS."

On March 9 and 10, after it received the *Excelsior* list, the Petitioner mailed a leaflet and three enclosures: (1) the leaflet specifically stated that the insurance company "has informed us that they will cover all Wagner Livingston Employees who are signed up in Local 102 as of March 1, 1967, provided that the enclosed Beneficiary card is filled out and mailed back promptly"; (2) one booklet was entitled "Your Group Insurance Plan" and summarizes the terms of the policy and the requirements for coverage, which include 60 days of permanent full-time work, but does not sum-

¹ Local Union No 2195, International Brotherhood of Electrical Workers, AFL-CIO, intervened and participated in the entire proceeding

² In view of our decision on this issue, we find it unnecessary to consider the Intervenor's exception to the Regional Director's rejection of the contention that the Petitioner's announcements over a sound truck interfered with the election

Like the Director, we find no merit in the Intervenor's position that a cocktail party held by the Petitioner within a week of the election constituted an attempt "to buy votes with canapes and unlimited liquor." *The Golub Corp.*, 159 NLRB 355, 362, *Morris Seidman, et al, d/b/a Southwester Co.*, 111 NLRB 805, 814, 816.

marize the definitions of the certificate of insurance which provides for coverage of such employees when they are in a collective-bargaining unit represented by the Petitioner who work for an employer who contributes or makes payroll deductions for the coverage; (3) a second booklet was the Certificate of Insurance containing all the terms of the policy; and, finally, (4) there was a printed business reply postal card on which to supply information concerning the insured and a designation of beneficiary, the last line of which (before the signature) stated "This form also requests membership in" the Petitioner.

The Regional Director found no misrepresentation by the Petitioner and no threats of reprisal or illegal promise of benefits. In recommending that the objections be overruled, he cited the recent decision in *Dit-Mco, Inc.*, 163 NLRB 1019, which involved a waiver of union dues and initiation fees, and observed that although the objection here is not based on the same waiver as was involved in *Dit-Mco*, the Board's reasoning in that case can apply here. The Regional Director further found that the life insurance policy was merely an incident of membership and that Petitioner would be remiss if it did not extend to new applicants the benefits to which all members were entitled. Again citing *Dit-Mco*, the Regional Director stated that the sole difference between the affected employees here and other members of the Petitioner is that for a limited period of time they were not obligated to pay union dues and initiation fees, an inducement held to be harmless in the cited case. He, accordingly, recommended that the objection be overruled since it did not raise a substantial and material issue affecting the results of the election.

We do not agree with the Regional Director's analysis of the problem presented by the objections here, for we perceive a substantive distinction between this gift of life insurance coverage and a waiver of initiation fees, with which the Regional Director equates it. Where there is a waiver of initiation fees, there is no enhancement of the employees' economic position, but merely an avoidance of a possible future liability. Moreover, such waiver is a customary practice in organizing campaigns. In contrast, the gift of immediate life insurance coverage is a tangible economic benefit and is most unusual.

It is our view that the gift of life insurance coverage to the prospective voters is more akin to an employer's grant of a wage increase in anticipation of a representation election than it is to a waiver of union initiation fees and that it subjects the donees to a constraint to vote for the donor union. In this connection it is noted that coverage was automatic and required no physical examination or medical report. We conclude that by such a gift the Petitioner destroyed the atmosphere which the Board seeks to preserve for its elections in order that employees may exercise freedom of choice on representation questions. Accordingly, we shall set aside the election and direct that a second election be held.

ORDER

IT IS HEREBY ORDERED that the election in this case conducted on March 23, 1967, be, and it hereby is, set aside.

[Direction of Section Election³ omitted from publication.]

³ An election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 22 within 7 days after the date of issuance of the Notice of Second Election by the Regional Director. The Regional Director shall make the list available to all parties to the election. No ex-

tension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed *Excelsior Underwear Inc.*, 156 NLRB 1236.