York Furniture Corp. and Imperial Frame Corporation *and* Upholsterers' International Union of North America, Local 300, AFL–CIO, Petitioner. Case 12–RC–2890

April 16, 1968

DECISION ON REVIEW AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS BROWN, JENKINS, AND ZAGORIA

On January 18, 1968, the Regional Director for Region 12 issued a Supplemental Decision, Order, and Direction of Second Election in the above-entitled proceeding, wherein he sustained Petitioner's objection no. 4 and on that basis set aside the election.[1] All other objections filed by the Petitioner had been previously withdrawn. Thereafter, the Employer filed its "exceptions and supporting brief," which the Board treated as a request for review of the Regional Director's Supplemental Decision, asserting that he erred in sustaining objection no. 4. The Employer subsequently filed a letter supplementing its request.

On February 9, 1968, the National Labor Relations Board by telegraphic order granted the request for review. Thereafter, the Petitioner filed a brief on review.

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.

The Board has considered the entire record in this case with respect to the issues under review, including the briefs, and makes the following findings:

Objection no. 4 alleged that the Employer made material and substantial misrepresentation which the Petitioner had inadequate opportunity to correct prior to the election.

The election was scheduled for November 17, 1967, between the hours of 3:30 and 4:30 p.m. The Regional Director's investigation revealed that, at the end of the workday on November 13, the Employer mailed to each employee a letter in both English and Spanish, the second paragraph of which read:

> You do not have to believe me. Ask the union agents if they are interested in your welfare if they cannot collect dues from you. *I understand that the union is now collecting $5.00 a month dues from employees at other companies, but that the dues are soon to be raised to $7.50 a month.* You should understand that when union dues are paid, it is deducted from what you work for—the company is not allowed by law to pay your dues for you. [Emphasis supplied.]

The Petitioner stated, in support of its objection, that dues are not being raised and that the letter is in this regard untrue. The Employer stated that he received the information concerning the Petitioner's dues from another employer. The other employer, the brother of the Employer's president, informed the Board investigator that he had acquired the information about the Petitioner's dues from some of his employees, whom he chose not to identify.

The Regional Director concluded that the statement in the letter with respect to an increase in dues constitutes a misrepresentation, whether deliberate or not, and that such misrepresentation was "a matter of utmost concern to voting employees, and therefore one which may reasonably be expected to have a significant impact on the election." The Petitioner stated that it did not see a copy of the letter until about 1 p.m. on November 16, the afternoon before the election, and did not then have time to prepare a reply in both Spanish and English which could possibly reach the employees before the election. The Regional Director agreed with the Petitioner that under the circumstances it did not have a reasonable period of time in which to try to refute a last minute material misrepresentation. Accordingly, he sustained the objection and set the election aside. The Employer contends that the statement, even if untrue, does not warrant setting aside the election. We agree.

We regard the statement in issue as one based not on the Employer's own knowledge but rather on hearsay. Whether or not a dues increase was in the offing was a matter within the knowledge of the Petitioner, and it is reasonable to suppose that, before accepting as fact the Employer's second-hand account, the employees would have inquired of the Petitioner itself as to the matter. Indeed, inasmuch as the Employer's letter was mailed 4 days before the election, it is clear that employees had ample opportunity to make inquiry of the Petitioner. For these reasons, we conclude that the employees

[1] A corrected tally of ballots showed that of approximately 64 eligible voters, 63 cast ballots, of which 29 were for, and 26 against, the Petitioner, and 8 were challenged. During the course of the investigation, the Petitioner requested permission to withdraw its challenges as to seven of the ballots which the Board agent had ruled were valid "NO" votes. The Regional Director granted the withdrawal request. He also sustained the remaining challenge.

could reasonably evaluate the statement as to a planned dues increase as campaign propaganda and that its impact was not such as would warrant setting aside the election, under the principles set forth in *Hollywood Ceramics Company, Inc.*, 140 NLRB 221. Objection no. 4 is therefore overruled.

Accordingly, as the Petitioner has failed to secure a majority of the valid votes cast, we shall certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots has not been cast for Upholsterers' International Union of North America, Local 300, AFL–CIO, and that said organization is not the exclusive representative of all the employees in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.