EFCO Corporation *and* Burnis R. Hood on Behalf of Certain Employees of EFCO Corporation, Monett and Aurora, Missouri, Petitioner and United Brotherhood of Carpenters & Joiners of America, District Council of Kansas City and Vicinity, AFL–CIO. Case 17–UD–18

August 27, 1970

DECISION ON REVIEW AND CERTIFICATION OF RESULTS

BY MEMBERS FANNING, MCCULLOCH, AND BROWN

On March 3, 1970, the Regional Director for Region 17 issued a Supplemental Decision and Direction of Third Election in the above-entitled proceeding, in which he voided and set aside a second election conducted under Section 9(e)(1) of the Act and directed that a third election be held.

Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Union filed a timely request for review of the Supplemental Decision, and the Petitioner filed a statement in opposition thereto. By telegraphic order dated May 26, 1970, the National Labor Relations Board granted the request for review and stayed the third election pending its decision on review.

The Board[1] has considered the entire record in this case with respect to the issues under review, and makes the following findings:

The deauthorization election herein contested was conducted on February 7, 1969, in the bargaining unit covered by the current agreement between the Employer and the Union.[2] Deauthorization was defeated. On February 14, 1969, the Petitioner filed timely objections alleging that the Union had engaged in misconduct affecting the results of the election. All objections except #3 were ultimately withdrawn and a hearing was ordered on this objection, which alleged that on several occasions prior to the deauthorization election, representatives of the Union promised various employees that union dues would be reduced if the Union won the election.[3]

The issue which precipitated the filing of the instant deauthorization petition was the level of union dues, which were set at $7.85 per month. This subject had been discussed frequently among employees and at Union meetings for a year or more prior to the election. In January 1969, about a month before the election, a meeting was held at which Business Agent Allen and Union Representative Edwards informed employees that, upon approval of the Union International and District Council, monthly dues might be reduced upon waiver of certain benefits currently being financed by the dues payments. Some 30–35 percent of the employees attended this meeting.[4]

At the hearing, the Petitioner produced six witnesses who testified about still other statements, attributed to Assistant Steward Stanley, which were made to them individually or overheard by them on the day before the election. The substance of these statements was that dues had been lowered to $5 per month. The next day, the petition to deauthorize the Union was defeated.

The Hearing Officer credited the Petitioner's witnesses and found that the Union was responsible for Stanley's remarks. The Hearing Officer further concluded that the announced reduction of dues immediately before the election so interfered with the free choice of the electorate as to require that the results of the election to set aside. The Regional Director adopted all the findings, conclusions, and recommendations of the Hearing Officer, and accordingly, set aside the second election and ordered that a third election be held.

The principal issue presented is whether the announcement of a dues reduction by the Union's representative on the eve of a deauthorization election so improperly influenced the outcome of the election as to require that the results be set aside.[5]

The Union argues that under *Primco Casting Corp.*, 174 NLRB No. 44, and *Dit-Mco Inc.*, 163 NLRB 1019, affd. 428 F.2d, 775 (C.A. 8), its conduct was lawful and did not constitute undue interference with the election. The Petitioner contends that the Union's conduct interfered with the election and argues that the cases upon which the Union relies are not controlling because they arose in the context of representation rather than deauthorization elections.

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[1] Pursuant to the provisions of Sec 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

[2] The tally of ballots showed that of 69 eligible voters, 31 cast ballots in favor of withdrawing the authority of the bargaining representative to require membership in the union as a condition of employment, and 35 voted against the proposition One ballot was void and two were challenged The challenges were not sufficient to affect the results of the election

[3] Objection #3 also alleged that the Union promised that wages would be increased if deauthorization were defeated During the course of the hearing, the Petitioner by counsel withdrew the portion of the objection relating to increased wages, and no testimony on that subject was adduced

[4] A dues reduction to $5 per month upon waiver of certain death benefits was in fact effected After the election, and some 2 weeks prior to the hearing, the Union presented forms implementing the reduction to its members for signature

[5] In view of our ultimate disposition of the principal issue, we find it unnecessary to reach or consider other questions raised by the Union in its request for review

In *Primco,* the Board found unobjectionable a union's discontinuance of a strike fund and refund of strike fund payments one week before a representation election. In *Dit-Mco,* the Board held that a union's waiver of initiation fees, whether or not conditioned upon the outcome of the election, did not constitute a basis for setting aside a representation election.

We have re-examined the principles underlying the decisions in *Primco* and *Dit-Mco* and, for the following reasons, have determined that these principles have like application in the context of deauthorization elections.

The logic of *Dit-Mco* is that waiver by a Union of a financial obligation—such as initiation fees—which could be avoided entirely by voting "no" does not coerce employees into voting "yes." This logic is applicable to the case before us. Here, as in *Dit-Mco,* unit employees could have avoided entirely the mandatory requirement to pay membership dues if a majority had voted in favor of deauthorizing the Union. The announcement of the dues reduction in no way affected the availability of the option to vote in favor of deauthorization. The Union's conduct is therefore comparable to the type of conduct found unobjectionable in *Dit-Mco.* Moreover, the financial inducement of a relatively small dues reduction could hardly be sufficient to sway the voter who objects, in principle, to the payment of any such fees.

The announced alteration in the dues structure was clearly designed to ensure the employees' continued support in the forthcoming election. In *Primco,* we pointed out that an otherwise permissible change in a union's position, made in response to legitimate employee demands, cannot be condemned as objectionable simply because it is motivated by the union's desire to present itself as a more attractive candidate. We also noted that the level and cost of services provided by the union are relevant considerations in the selection of a bargaining agent, and that a union is entitled to respond to its members' complaints with respect to service during the course of a campaign. Our reasoning in *Primco* is equally applicable here. The sole issue determined in a deauthorization election is whether union membership shall be mandatory or voluntary. The level and cost of union services are as relevant to this issue as they are in the initial selection of a bargaining agent. The certified union which wishes to retain mandatory authorization is as entitled to favorable self-presentation as is the union which is a candidate for certification in a representation proceeding. The alteration in the dues structure was an otherwise permissible exercise by the Union of its protected power to regulate its membership affairs in response to express employee complaints and involved a waiver of certain benefits paid for by higher dues. In view of these considerations, the preelection timing of the Union's conduct appears to us to be irrelevant.

Accordingly, we conclude, contrary to the Regional Director, that the Union's announcement of a dues reduction immediately before the election did not unduly interfere with the free choice of the electorate. Therefore, we hereby set aside his order vacating the second election and directing that a third election be held. As a majority of the electorate did not cast ballots in favor of deauthorization, we shall certify the results of the second election.

CERTIFICATION OF RESULTS

Upon the basis of the tally of ballots, and the entire record in the case, the Board certifies that:

1. A majority of the employees eligible to vote in the appropriate unit has not voted to rescind the authority of the United Brotherhood of Carpenters & Joiners of America, District Council of Kansas City and Vicinity, AFL–CIO, to maintain an agreement with Efco Corporation, Monett and Aurora, Missouri, requiring membership in such labor organization as a condition of employment, in conformity with Section 8(a)(3) of the Act, as amended.

2. The appropriate bargaining unit in which the election was conducted under Section 9(e)(1) of the Act comprises: All production and maintenance employees, including warehousemen and truckdrivers at the Monett and Aurora, Missouri, plants of EFCO Corporation, but excluding office clerical employees, inspectors, professional employees, guards, and supervisors, as defined in the National Labor Relations Act.