

American Beef Packers, Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, Petitioner. Case 18-RC-8110

January 21, 1971

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN MILLER AND MEMBERS BROWN
AND JENKINS

Pursuant to a Stipulation for Certification Upon Consent Election, an election was conducted by secret ballot on December 12, 1969, under the direction and supervision of the Regional Director for Region 18, among the employees in the stipulated unit. At the conclusion of the election the parties were furnished with a tally of ballots which showed that of approximately 307 eligible voters, 259 cast ballots, of which 110 were for the Petitioner, 137 for the Intervenor, Arthur L. Morgan Union, 2 against both labor organizations, and 10 were challenged.

On December 17, 1969, the Petitioner filed timely objections to conduct affecting the results of the election. In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and on March 12, 1970, issued and duly served on the parties his report and recommendations on objections affecting the results of the election in which he recommended, in material part, that certain objections be sustained and that a new election be directed. Thereafter, the Employer filed timely exceptions to the Regional Director's report and a supporting brief. In an order dated May 19, 1970, the Board adopted, *pro forma*, in the absence of exceptions, the Regional Director's recommendations that certain numbered objections be overruled and directed that a hearing be held before a duly designated Hearing Officer to receive evidence and determine the issues raised by Petitioner's Objections 5, 9, and 21. The Board reserved ruling on Objection 20 pending receipt of the Hearing Officer's report.

Pursuant to the said order a hearing was held on June 15 and 16, 1970, before Fannie M. Boyls, Trial Examiner, for the purpose of resolving the issues raised by the Petitioner's objections and the Employer's exceptions to the Regional Director's report. The Employer, the Petitioner, and the Intervenor participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues.

On August 18, 1970, the Trial Examiner issued and served upon the parties her report in which she recommended that Petitioner's Objection 5 be over-

ruled but that Petitioner's Objections 9 and 21 be sustained. Accordingly, the Trial Examiner further recommended that the election of December 12, 1969, be set aside and a new election be held. The Employer filed timely exceptions to the Trial Examiner's report and a supporting brief.

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.

2. The Petitioner and the Intervenor are labor organizations claiming 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. In accord with the agreement of the parties, the following employees of the Employer constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(c) of the Act: All production and maintenance employees of the Employer at its Oakland, Iowa, plant, excluding office clerical employees, salesmen, guards, and supervisors as defined in the Act.

5. The Board has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's report and the entire record in this case, including the Employer's exceptions and brief, and finds merit in the Employer's exceptions. We shall, accordingly, adopt the findings, conclusions, and recommendations of the Trial Examiner, only to the extent consistent herewith.

The Trial Examiner's Report sustains Objection 9 for reasons which we believe are unsound. The Employer, during the relevant period, continued its past practice of advising new employees that they did not have to join the Union if they did not want to, but furnishing them with a checkoff authorization form, making it clear that the signing of it was purely voluntary. The Trial Examiner, while not finding this coercive (a matter settled by our decision in *American Beef Packers, Inc.*, 180 NLRB No. 97), nevertheless sustains the objection upon the novel theory that "laboratory conditions" require an employer to take affirmative action to advise employees of a rival union's desire to represent employees. We will not set an election aside upon such an unwarranted expansion of our "laboratory conditions" requirement. We, therefore, overrule Petitioner's Objection 9.

As to Objection 21, the Trial Examiner committed an error of law, which requires a reexamination of her findings and recommendations. She confuses revocability with invalidity, finding that checkoff authorizations signed prior to a prior contract's expiration date and therefore prior to a period when revocability must be permitted became, not only revocable, but automatically revoked and *invalid* after the passage of the revocability period. The Trial Examiner proceeds to find that the Employer's honoring such a card constituted improper employer preference for the incumbent union.

Apart from the question of whether termination of employment invalidates an authorization for checkoff, a matter which we find unnecessary to pass on, we would not find that the Employer's honoring of such cards, in and of itself, upon an at least colorable claim of their validity, creates any need to run a new election.¹

There is evidence that one employee (Lynn Jacobsen) had dues deducted from his pay even though he had not signed a new card upon his being reemployed and that when he complained he was told "once you are in the Union, you can't get out." While we view this employer statement as improper, the fact that it affected only one employee in a unit of 307 eligible voters, and that it is the only conduct which may be said to be improper and which could be sustained by the evidence, leads us to the view that it could have had only a minimal impact on the election and was insufficient to warrant a new election. We therefore overrule Objection 21.

¹ Issues as to the continuing validity of checkoff authorizations have proved troublesome to the Board. See, e.g., the issue specifically left undecided in *Standard Oil Company of California*, 144 NLRB 520, compare *Thomas H. Marrow Trucking Co.*, 155 NLRB 271, fn 4. The Board

In view of our disagreement with the Trial Examiner on the disposition of Objections 9 and 21, we proceed to pass on the merits of Objection 20 which we found unnecessary to remand for hearing to obtain additional testimony. Petitioner's Objection 20 relates to a letter from an attorney in a distant city in which an election requested by the Petitioner was then pending. It requested information of the Arthur Morgan Union which might prove helpful in defeating the Petitioner's attempt to organize the plant in question. Morgan complied by sending a handbill which contained reprints of articles from various newspapers relating to strikes and work stoppages in other areas. We do not discern in this material, supplied to an attorney in another location, any matter which may have improperly influenced the election herein and, therefore, overrule the objection.

As the tally of ballots shows that the Intervenor has received a majority of the ballots cast, we shall certify it as the exclusive bargaining representative for the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid votes cast in the election has been cast for Arthur L. Morgan Union and that said labor organization is the exclusive bargaining representative of the employees in the unit found appropriate within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

hesitates to adjudge checkoff provisions defective for contract bar purposes in a representation proceeding *Gary Steel Supply Co.*, 144 NLRB 470. Nor are violations of the checkoff provisions of the LMRA necessarily unfair labor practices under our Act. *Salant & Salant, Inc.*, 88 NLRB 816