

**Romac Containers, Inc. and Renee Zubik, Petitioner and Textile Workers Union of America, AFL-CIO and its Local Union No. 1806.** Case 8-UD-41

May 3, 1971

**DECISION ON REVIEW AND ORDER DIRECTING REGIONAL DIRECTOR TO OPEN AND COUNT CHALLENGED BALLOTS**

BY CHAIRMAN MILLER AND MEMBERS FANNING AND JENKINS

Pursuant to a letter directing an election issued by the Acting Regional Director for Region 8 of the National Labor Relations Board on August 14, 1970, an election by secret ballot was conducted in the above-entitled proceeding on August 28, 1970, under the direction and supervision of the Regional Director. Upon the conclusion of the election, a tally of ballots was furnished the parties in accordance with the Board's Rules and Regulations.

The tally of ballots showed that there were approximately 95 eligible voters and 71 cast ballots, of which 30 were cast in favor of withdrawing the authority of the Union to require, under its agreement with the Employer, that membership in the Union be a condition of employment. Twenty-five were cast against the proposition and 16 ballots were challenged.

The Employer, Union, and Petitioner each filed timely objections to the conduct of the election. The Employer's and Petitioner's objections related in part to the number of eligible voters which, if changed substantially from the number on the tally, would make the challenged ballots sufficient to affect the results of the election.

On November 4, 1970, the Regional Director issued and served on the parties his Decision, Order, and Certification of Results of Election, in which he overruled all objections except those by the Employer and Petitioner relating to the number of eligible voters. With respect to the 16 challenged ballots, he found that 14 voters were ineligible as temporary summer students and therefore should be excluded from the number of eligible voters, and that the remaining 2 voters were eligible but their ballots could not affect the results of the election.

On the basis of his rulings, the Regional Director found that there were 65 eligible voters and that 57 of them cast ballots, of which 30 were cast in favor of the proposition on the ballot and 25 were cast against. The two challenged ballots cast by eligible voters were not opened.

Because the majority of those *eligible to vote* did not cast their ballots in favor of the proposition on the ballot, the Regional Director in effect certified that the Union's authority to make a union-security agreement

had not been rescinded.<sup>1</sup> Thereafter, the Employer filed a timely Request for Review, with supporting brief, of the Regional Director's conclusion that the 14 summer students were ineligible voters.

On February 10, 1971, the Board issued a telegraphic Order granting the Employer's Request for Review. By letter the Employer waived its right to file a further 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.

The Board has considered the entire record in the case with respect to the issues on review and makes the following findings:

The Employer contends in its brief that the summer students whom the Regional Director ruled ineligible to vote were required to join the Union under the union-security provisions of the current collective-bargaining agreement and were therefore within the bargaining unit and eligible to vote.

The instant deauthorization election was conducted in a unit of all employees at the Employer's Cleveland, Ohio, plant, excluding office clerical employees, professional employees, guards and supervisors. This is the same unit for which the Union was certified as the collective-bargaining representative on November 23, 1969, and for which the parties shortly thereafter entered into a 3-year collective-bargaining agreement. This agreement contained a union-security clause that required all employees hired by the Employer after 30 days of employment to become and remain members of the Union, together with a provision for employer checkoff of union membership dues (including initiation fees) on written authorization of the employee.

About June 29, 1970, the Union and Employer agreed that the union-security provisions of the collective-bargaining agreement should become applicable to students working during the summer. Accordingly, the Union, with the approval of the Employer, posted the following notice on the plant bulletin board signed by union and employer representatives;

June 29, 1970

**FOR THE BENEFIT OF THE COLLEGE STUDENTS:**

There has been some discussion as to whether or not you the college students that are working only during the summer months will have to join the union, the answer is yes. We have a Contract to abide by and that contract states we are a union shop and after 30 days you are required to be a

<sup>1</sup> The proviso to Section 8(a)(3) of the Act requires the vote of a majority of the employees *eligible to vote* in a bargaining unit covered by a union-security agreement in order to rescind the authority of the collective-bargaining representative to make such an agreement.

member in order to remain an employee. Even tho you will pay an initiation fee this year, you will not be required to pay again next summer, unless, you fail to take a withdrawal card from the union. Mr. Ridgeway has given me permission to quote him in saying, That should the Company need help again next summer and if there are jobs available in the plant that you qualify for, you can be assured your jobs will have first priority for the following summer work. All he asks, that you give them some consideration and write to him or Mr. James Schunck a few weeks before school lets out in order to confirm your job and as to whether these jobs will be available again for the summer of 1971.

Upon leaving your employment to return to school, you may obtain withdrawal cards from the steward on your prospective shifts:

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Should you be one of the less fortunate ones that will not be able to resume work here at the Romac Containers, Inc. because of no openings for the summer, your withdrawal cards will help you if you seek and obtain work with another firm that has the Textile Workers Union of America in the Cleveland area. Your withdrawal card will assure you of being a member and another initiation fee will not be required in order to work in their shop. Most student employees joined. As of August 31, 1970, only two, hired before the end of July 1970, had not.

The challenged employees are full-time employees working during their summer recesses from college or nurses' training. Two had been employed during the summer of 1969. None have worked during the year for the Employer. All received holiday pay and the same wage scale as permanent employees. All had left their jobs with the Employer by September 25.

The Regional Director found that while most of the student employees joined the Union, there was no evidence that the Union compelled them to, the union-security clause was, "at best, only loosely enforced against students" and that, like other student summer employees whom the Board finds ineligible to vote in

representation matters, the challenged students were ineligible in this election.

We agree with the Regional Director that the Board generally excludes summer students from the appropriate unit because their work is temporary and that they are therefore ineligible to vote in the usual case when the parties contest their status. However, such generalization is not applicable here. It is well settled that the unit for a deauthorization election must be coextensive with the contractual unit.<sup>2</sup> While the unit as defined in the instant contract does not specifically exclude or include summer students, it is clear that on or about June 29, 1970, they were in fact merged into the contractual unit. Thus, as noted above, the parties bargained and agreed that the union-security provisions of the contract would be applicable to summer students, the latter were advised that they were required to join the Union,<sup>3</sup> and all but two joined.

Accordingly, we find, contrary to the Regional Director, that the 14 summer students involved were eligible to vote in the deauthorization election and we shall order the Regional Director to open and count their ballots as well as the challenged ballots of Wanda Rafferty and Linda Young, whom the Regional Director found were eligible to vote. We further find that there were 79 employees eligible to vote in the election.

#### ORDER

It is hereby ordered that, as part of his investigation to ascertain whether the employees wish to withdraw the authority of their bargaining representative to require, under its agreement with the Employer, that membership in the Union be a condition of employment, the Regional Director for Region 8 shall, pursuant to the Board's Rules and Regulations, within 10 days from the date of this Order, open and count the 16 challenged ballots and thereafter prepare and cause to be served upon the parties a revised tally of ballots, including therein the count of such ballots, and to proceed further in accordance with the Board's Rules and Regulations.

<sup>2</sup> *Hall-Scott, Inc.*, 120 NLRB 1364; *Publicker Chemical Corporation*, 117 NLRB 257.

<sup>3</sup> There is no statutory or public policy which prohibits parties from agreeing to include summer students in bargaining units. See *B. J. Carney Company*, 157 NLRB 1285, 1287.