Southern Health Corp. d/b/a Corydon Nursing Home *and* District Union Local No. 227, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, Petitioner. Case 25–RC–4968

January 29, 1973

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND KENNEDY

Pursuant to a Stipulation for Certification Upon Consent Election approved on April 17, 1972, an election by secret ballot was conducted on May 19, 1972, under the direction and supervision of the Regional Director for Region 25 among the employees in the unit described below. Upon the conclusion of the election, a tally of ballots was furnished the parties which showed that of approximately 22 eligible voters, 21 cast valid ballots, of which 12 were cast for the Petitioner, 9 were cast against the Petitioner, and 2 were challenged. The challenged ballots were insufficient in number to affect the results of the election. Thereafter, the Employer filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, the Regional Director conducted an investigation and, on August 28, 1972, issued and duly served on the parties his report and recommendations on objections, excerpted in pertinent part and attached hereto as Appendix A, in which he recommended that the objections be overruled in their entirety. Thereafter, the Employer filed exceptions to that portion of the Regional Director's Report on Objections overruling the Employer's Objection 1.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding 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 Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9(c)(1) and 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees of the Employer at its Corydon, Indiana nursing home, but excluding all office clerical employees, all professional employees, all guards and all supervisors as defined in the Act.

5. The Board has considered the Regional Director's Report, the exceptions,[1] and the entire record in this case, and hereby adopts the Regional Director's recommendation that the objections be overruled in their entirety.[2]

Accordingly, as the tally shows that the Petitioner has obtained a majority of the valid ballots cast, we shall certify it as the exclusive bargaining representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for District Union Local No. 227, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL–CIO, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit found appropriate herein for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment.

CHAIRMAN MILLER, concurring separately:

I agree with the majority's adoption of the Regional Director's recommendation to overrule the allegation in Objection 1 that the Petitioner misrepresented the facts in comparing the wages and benefits paid to employees of two other companies in the area with those the Employer paid.

I also concur in the result reached concerning the alleged last minute representation made by the Union with respect to the provisions of its own constitution relating to fines, assuming for this purpose, as did the Regional Director, that the Union's statement did misrepresent that document's terms in this regard. However, I rely on broader grounds than those referred to by the Regional Director.

In my concurring opinion in *Allis-Chalmers Manufacturing Company*, 194 NLRB No. 150, I found that a misrepresentation as to one isolated factual issue (as here, a union's misrepresentation of its fining policy) is not likely to have had a real impact on the

[1] The exceptions raise no material or substantial issues of fact or law which would warrant reversal of the Regional Director's findings and recommendations

[2] In the absence of exceptions, we adopt, *pro forma*, the Regional Director's recommendation to overrule Objections 2 and 3

outcome of the election where a wide variety of issues had been freely discussed in the election campaign, the majority vote in the election was substantial, and the employees in deciding how to vote did so upon an analysis of a wide variety of facts, their emotional reactions, and their experiences in a very real world.

The Employer here argues that this case is distinguishable from *Allis-Chalmers Manufacturing Company,* in that the results of the election here were closer and that the Union here injected the fine issue as a significant one in the latter stages of the campaign.

As I have indicated subsequent to the *Allis-Chalmers* decision, in my recent separate concurring opinion in *Bill's Institutional Commissary Corp.,* 200 NLRB No. 154 (Case 15–CA–329), I am becoming increasingly disenchanted by the attempts of this Board and of the courts to try to achieve campaign purity by a willingness to set aside elections on the basis of one or two alleged misstatements of facts made by one party or another during such campaigns. Too often such attempts succeed only in provoking lengthy litigation as to what was said, whether or not it was true, whether or not it is "material" if untrue, whether the subject matter was one peculiarly within the knowledge of the party making the statement, whether or not employees may have had independent knowledge bearing on the issue, and so on *ad infinitum,* if not *ad nauseam.*

Furthermore, my own practical experience in working in this field for over 2 decades before being appointed to this Board had tended to persuade me that election campaign materials have less impact on voting results than is commonly realized and that voters in Board elections both more frequently ignore such propaganda and are more capable of evaluating campaign material, both true and false, than this Board and the courts have realized. My conclusions seem to be supported by the first and preliminary results of the only empirical research study I know of which has been conducted in this area.[3]

For these reasons, I would exercise great restraint in these matters and would set aside elections only in those relatively rare instances in which a readily ascertainable pattern of the most egregious kind of clearly identifiable misrepresentations permeated the campaign so significantly that one would be compelled to conclude that voters of ordinary intelligence would have been incapable of forming a rational judgment on the basic issue of whether they wish to be represented by a labor organization (and, when appropriate, by which of competing organizations they would prefer to be represented).

I do not regard the misrepresentations here, if such they were, to have been of that character. For these reasons, I would overrule the objections here.

[3] The National Labor Relations Board Voting Study A Preliminary Report; The Journal of Legal Studies, published by the University of Chicago Law School, Volume I, June 1972, p. 233, *et seq.*

APPENDIX A

THE OBJECTIONS

The [Employer's] Objections read in relevant part as follows:

1. *Material Misrepresentations of Facts by Petitioner.*

(a) On May 17, 1972, Petitioner sent a letter to the employees, obstensibly in response to a letter from the Employer dated May 8, 1972, in which the Petitioner misrepresented to the employees that Petitioner is prohibited from imposing fines upon its members under the terms of the union Constitution. A copy of such letter from Petitioner dated May 17, 1972, is attached to these objections as Exhibit A, and a copy of the Employer's letter of May 8, 1972, is attached as Exhibit B. In fact, under Article I, Section 4 of the Constitution of the international union, fines upon officers, organizers, representatives, and members of local unions are expressly authorized. In addition, Article V, Section 1 of the Constitution and By-Laws for the Government of Local Unions and District Unions Affiliated with the Amalgamated Meatcutters and Butcher Workmen of North America, AFL–CIO, authorizes executive boards of local unions to "fix an exact and appropriate penalty" in event of the preferring of charges against any member of the union. No restriction is found in either of such constitutions or by-laws which prohibits the imposition of fines upon members; and indeed, Article XII, Section 1 of the international constitution requires that no provision of any constitution of any local or district union may conflict with the provisions of the international constitution or local constitution.

(b) Petitioner accompanied such letter of May 17, 1972, with a comparison sheet purporting to show wages and benefits paid to employees of two other companies located in Corydon where Petitioner is collective bargaining agent. Such comparison sheet contained various misrepresentations, including the starting wage rate at each of such two locations, and the paid holiday, paid vacations, and maternity leave benefits at the A & P Grocery Co. Employer is advised that Petitioner and A & P Grocery Co. have negotiated a new collective bargaining agreement which may or may not embody certain of the additional benefits specified in such comparison sheet, but such agreement has not been approved by applicable governmental authorities; and Petitioner

has accordingly misrepresented to the Employer's employees that such benefits are presently in effect.

(c) Such misrepresentations of matters within Petitioner's special knowledge were made at a time when Employer did not have a reasonable opportunity to make an effective reply. Under applicable Board decisions, this constitutes grounds for setting the election aside. *E.g., Gouzoule d/b/a Calidyne Co.*, 117 NLRB 1026 (1957).

* * * * *

Objection 1

In substance, it is the Employer's contention that Petitioner's letter to employees and attachment thereto, issued on or about May 17, 1972 and attached hereto as Exhibit A,[3] are objectionable because the letter falsely states that Petitioner can not fine its members and because the attachment is so inaccurate a comparison of wages and other benefits as to constitute material misrepresentation sufficient to warrant setting aside the election. In regard to fines, the Employer relies on Article II, Section 4 of the Petitioner's international constitution and Article V, Section 1 of the Constitution and By-Laws for the Government of Local Unions and District Unions (including Petitioner).[4] Article II, Section 4 of the International constitution sets forth the powers of the international president to take action against local unions, officers or members who engage in activities specifically enumerated therein as (a) through (g). The section of the local and district union constitution relied on describes the procedure for charges and appeals, and is restated at Article VII, Section 1, of the Petitioner's constitution.[5] None of the three documents contain any express provisions for fines or discipline for conduct of members or locals except for items (a) through (g) referred to above and Section 3 of Article VII of the local's constitution.

Petitioner asserts that Exhibit A is in reply to the Employer's May 8 letter, (Exhibit F) and is a correct statement that members are not fined for working during a strike or crossing a picket line, that charges can only be brought against members for the reasons specifically enumerated in the international constitution, and that Article XXI, Section 1 of the international constitution[6] (not "XII" which relates to death benefits) precludes any conflicting action by local unions.

The precise constitutional powers of the Union in levying fines need not be determined. Assuming arguendo that Petitioner is authorized by its constitution to fine members for breaking strike, in evaluating claims of misrepresentation it must be remembered that not all misrepresentations warrant setting aside an election, and that to justify a new election the misrepresentation must be of a type that could reasonably be expected to have affected the results of the election. *Chemitrol Chemical Co.*, 190 NLRB No. 56; *Jeffrey Mfg. Co.*, 180 NLRB No. 108, *Cross Baking Co.*, 186 NLRB No. 28; *Follet Corp.* 160 NLRB 506; *Wiley Mfg. Co.*, 174 NLRB No. 30; and the Board has long recognized that distortions, inaccuracies and half-truths are insufficient to constitute objectionable conduct, *Hollywood Ceramics Co.*, 140 NLRB 221. As the Board pointed out in the latter case "even where a misrepresentation is shown to be substantial, the Board may still refuse to set aside the election if it finds upon consideration of all the circumstances that the statement would not be likely to have a real impact upon the election.["] In context as the underscored statements of the Employer and union documents in controversy[7] establish the conflict between the Union and the Employer dealt with the power of the Union to fine employees who broke strike.

It is contrary to common experience to imply that employees designating a union to represent them and achieve a contract through strike or other actions will be majorly concerned by the fact that the union has the power to penalize their fellow employees who break strike and defeat their efforts to obtain a contract. Thus not only was the union's ability to fine its members for breaking strike a minor issue in the specific campaign actually conducted by the

[3] The remainder of Petitioner's campaign literature is attached as Exhibits B and C. The Employer's literature is attached hereto as Exhibits D through H [Exhibits omitted from excerpt, except for Exhibit F]

[4] Said Sections are attached hereto as Exhibits I and J, respectively [Exhibits omitted from excerpt]

[5] Section attached hereto as Exhibit K [Exhibit omitted from excerpt]

[6] Section attached hereto as Exhibit L. [Exhibit omitted from excerpt.]

[7] Thus in its May 8 letter the Employer asserted.

Even more shocking is the very great powers which unions have to *fine* and *discipline* their members and make it stick. (underscoring in text) *One recent example is a situation in which 13 employees 6 of whom were women earning between $1 66 and $1 88 an hour went back to work during a strike in order to support themselves and their children Their union fined these people* about *$500 00* apiece and made it stick *In still another situation, one employee was fined $1800 00 and another was fined $2000 00 by their union because they chose to violate a union rule by crossing a picket line*

and the Union's reply is likewise in context directed to the question of fines for breaking strike.

Mr Ragland stated in his letter to you of May 8 [1] that *the union fined people for crossing a picket line* What union was he talking about [2] It was not this union because under our union constitution we cannot fine anyone [3] *If he tells you that it was this union [who fined the employees mentioned in the employees May 8 letter] then he is lying again*

Taken in isolation statement (2) implies the Union was without power to fine members. However in the context of the employer's letter of May 8 which fairly implied that if they voted for the Union the employees could be fined for crossing the picket line and statements (1) and (3) which dealt with the question of whether the Union had or could fine employees for crossing the picket line, the thrust of the Union's remarks was that any suggestions that employees had, could or would be fined for breaking strike was false.

parties (having been mentioned only in the Employer's May 8 letter and the Union's reply), but also it is contrary to common experience to consider it a determinative issue in deciding an employee's vote. Additionally even if the issue were material, the factual context in which it occurred is indistinguishable from the situation in which the Board has held a generalized misrepresentation concerning a union's ability to fine members not to constitute proper cause to set aside an election. *Chemitrol Co.*, 190 NLRB No. 56.

For the reasons set forth above it is the opinion of the undersigned, the letter complained of is not a sufficient ground to justify a new election, particularly since the possibility of fines for violation of union rules was not, in any real sense, a significant campaign issue in the pre-election campaign. In any event, propaganda of the nature complained of is well within the ability of the electorate to evaluate, especially when it has been repeatedly forewarned by the Employer to discount Petitioner's pre-election statements and evaluate them carefully . . . and the fact unions do have some disciplinary procedures for infractions of membership rules is so widely known as to be within the realm of public knowledge.

With reference to the "Comparison Sheet" attached to Exhibit A, the current collective bargaining agreements between Petitioner and ARPAC Company, Inc., and A & P Grocery Co.[8] reflect the following information in relation to the alleged misrepresentations.

1. *Starting Wage Rate:* A & P—$2.10 effective April 30, 1972;ARPAC—$2.00 increasing to $2.17 after 45 days probationary period

2. *Paid Holidays:* A & P—7 plus 1 days pay in lieu of a personal holiday;ARPAC—7

3. *Paid Vacations:* A & P—1 year employment = 1 week vacation; A & P—3 years employment = 2 weeks vacation; A & P—8 years employment = 3 weeks vacation; (effective Jan. 1, 1972) 15 years employment = 4 weeks vacation; (effective Jan. 1, 1973) 20 years employment = 5 weeks vacation; ARPAC—(as shown on "Comparison Sheet")

4. *Maternity Leave:* A & P—"*Section 2. Maternity* Female employees with one (1) year or more of continuous service shall upon written request be granted a pregnancy leave of absence without loss of seniority for job security. A statement from the employee's attending physician must accompany the request outlining the date the leave should become effective.

Prior to returning to work a statement from the employee's attending physician will be required listing the date the employee may safely return to work. Such notice must be given to the Store Manager fifteen (15) days prior to her returning to work.

In returning to work she shall be returned to the store from which she left, provided her length of service is greater than employees in the same job classification that work in the store."

ARPAC—(as shown on "Comparison Sheet")

It can thus readily be seen that the "Comparison Sheet" is a substantially accurate reflection of the contents of the collective bargaining agreements in question and nothing in Exhibit A purports to constitute any more. Thus, beginning wage rate, holidays and vacations are substantially correctly reported and the maternity leave section in the A & P agreement has no limitation on the length of such leave, although Petitioner advises that store policy allows only 9 months maternity leave.

Accordingly, I find that the Comparison Sheet does not contain material misrepresentations or warrant setting aside the election. Whether or not the A & P agreement has been "approved by applicable government authorities" is immaterial since the "Comparison Sheet" is what it purports to be, a compilation of negotiated wages and benefits secured by the Petitioner.[9]

For reasons set forth above it is recommended Objection 1 be overruled.

[8] The ARPAC contract is effective November 1, 1971, through October 31, 1974. The A & P contract is effective October 31, 1971, through October 29, 1973.

[9] It should be noted that the A & P contract on which the comparison chart is based was not fully approved by governmental wage stabilization authorities which limited wage increases to 7% and fringe benefits to 3.9% and that the parties are currently renegotiating the contract to conform to these guide lines. The ARPAC contract was however fully implemented. In the absence of any express claim that the quoted benefits were implemented rather than contractual rates and in view of the fact that the ARPAC rates are substantially accurate and in the absence of evidence that the A & P contract ultimately negotiated in accordance with the prescribed guidelines will substantially differ from the factual representations made in Exhibit A, the undersigned cannot conclude the comparison sheet represents an objectionable misrepresentation within the *Hollywood Ceramics* rule This is particularly so in view of the fact that one of the two contracts referred to was substantially accurate and not reviewable by governmental authority. To the extent the A & P contract provided for more there was no implication that the voters could reasonably expect more than that which prevailed under the ARPAC contract which the Union found acceptable Additionally, since the antecedent contract provided (1) a rate range of $2.02 to $4.38 (except for student employees who received $1.75), (2) the same vacation benefits for employees with less than 15 years service and (3) seven holidays, and the Employer (A) does not employ employees with 15 years service or a student employee classification, (B) the student employee classification was eliminated from the new A & P contract and (C) a seven per cent wage increase was in fact approved, the comparison sheet is a substantially accurate representation of the contract ultimately to be implemented at A & P.

Exhibit A

May 17, 1972

Dear Employee of Corydon Nursing Home:

I would like to take this opportunity to point out some of the *misleading* statements that Mr. Ragland has made to you in his three letters dated May 2, 8, and 11.

In Mr. Ragland's letter dated May 2, he stated how much Union dues are a year—why didn't he tell you how much they are a week? Well, I will tell you—Union dues would be $1.25 per week for full-time employees and part-time employees would only pay $1.04 per week. As you can see by the enclosed certificate, you will pay *no dues* until we have a signed contract with the Nursing Home. In addition, you will *not* pay any initiation fee whatsoever. This Agreement is given to you in writing with our seal and signature.

Mr. Ragland stated in his letter to you of May 8 that the Union fined people for crossing a picket line. What Union was he talking about?? It was not this Union because under our Union Constitution we cannot fine anyone. If he tells you that it was this Union, then he is lying again. We are going to bring this mistruth and other lies that have been told to the attention of the National Labor Relations Board (U. S. Government).

In the letter issued by Mr. Ragland dated May 11, we find even more misstatement of facts. He said a bulletin was issued on March 6, 1972, in which they promised you a wage increase in July. As you know, the bulletin was not put on the board until some time in April—over a month later and after the Union already had a majority of the employees signed up. Ask yourself, "Why was this bulletin so late in going up?" Also, in this letter of May 11, Mr. Ragland stated that the Union cannot give you anything. I am enclosing a comparison sheet of two places of business whose employees we represent in Corydon, Indiana. Compare the information listed with your present wages and benefits. Wouldn't you like to be making these wages and have these benefits at only a cost to you of $1.25 per week? IT DIDN'T TAKE A STRIKE TO GET THESE WAGES AND BENEFITS AT EITHER OF THESE TWO COMPANIES LISTED ON THE COMPARISON SHEET, EITHER! So, don't be mislead by Mr. Ragland; he has forgotten to tell you a great many things. Such as, if you vote this Union in and after one year, if we have not done a good job for you, you can vote the Union back out—this is the LAW!

Give us a chance to prove to you what we can do—I know you will like us!

Remember—a Union is like insurance; if something happens to you, you wish you had it! So, be protected by a strong Union. VOTE YES on MAY 19—for yourself, your family and the future.

Sincerely,

Organizing Committee
DISTRICT UNION LOCAL 227

Exhibit F

May 8, 1972

The Butchers' union may tell you that you need it here to "protect" you because you are being mistreated by the management of this nursing home.

First of all, we don't believe this is true. We have always attempted to be fair with our employees and believe that we have been fair. We have no doubt made our share of mistakes, but we have always respected you as employees and tried to treat everyone fair and impartially.

Now, however, I want to give you some facts as to how some unions have treated their members and let you form your own opinion as to how "fair" you believe they have been.

If this union follows the same path as almost every other union follows, the very first thing they will seek from us if they win the election will be a promise to *fire* you unless you join the union and pay money to them. Ask yourself what kind of security and freedom you really have under these circumstances?

Even more shocking is the very great power which unions have to *fine* and *discipline* their members and make it stick.

One recent example is a situation in which 13 employees, 6 of whom were women earning between $1.66 and $1.88 an hour, went back to work during a strike in order to support themselves and their children. Their union fined these people about *$500.00* apiece and made it stick. In still another situation, one employee was fined *$1,800.00* and another employee was fined *$2,000.00* by their union because they chose to violate a union rule by crossing a picket line.

In my opinion, those employees needed to be protected a lot more from their union than they did from their employer.

I ask you not to give up your freedom and the right to speak and think for yourself. Vote "NO" at the union election.

Sincerely,

David Ragland
President

C O M P A R I S O N S H E E T

A & P GROCERY & ARPAC POULTRY PLANT

AS COMPARED WITH

CORYDON NATIONAL NURSING HOME

	A & P GROCERY CO. Corydon, Ind.	ARPAC, INC. Corydon, Ind.	CORYDON NURSING HOME
Wages Per Hour	$2.10 - $3.67	$2.17 - $2.99	$1.60 - $1.75
Holidays	8 paid	7 paid	NONE
Vacations	1 yr. = 1 wk. 3 yrs. = 2 wks. 8 yrs. = 3 wks. 15 yrs. = 4 wks. 20 yrs. = 5 wks.	1 yr. = 1 wk. 5 yrs. = 2 wks. 12 yrs. = 3 wks. 18 yrs. = 4 wks.	1 yr. = 1 wk. And That's All!
Jury Duty Pay	Yes	Yes	No
Funeral Leave	3 Days	2 Days	None
Maternity Leave	Up to 9 Months	Up to 6 Months	? ? ? ? ? ?
Seniority	Yes	Yes	None
Overtime	Time & one-half over 40 - Double time Sundays.	Time & one-half over 40 - Double time Sundays.	Time & one-half over 48 hours.
Breaks	Two 15 min., pd.	Two 10 min., pd.	? ? ? ? ?
Minimum Call In Pay	Yes	Yes	None
Life Insurance	$6,500	$2,000	None
Medical & Health Insurance	All paid by Company	One-half paid by Company	NO INSURANCE WHATSOEVER.
Sick Pay	Yes	Yes	None
Pension Plan	Yes	Yes	None
Injury on Job Pay	Yes	Yes	Yes
Uniforms Furnished	Yes	Yes	No
ARBITRATION	Yes	Yes	No! ! !
JOB PROTECTION	Yes	Yes	No! ! !

Don't you think that it is worth a $1.25 per week to receive the Union wages and benefits that the Union Companies of Corydon, Indiana pay their employees?

REMEMBER -- In order to get the above Union wages and benefits the A & P and ARPAC EMPLOYEES DID NOT HAVE TO STRIKE.

ON MAY 19, 1972 "VOTE YES" FOR YOURSELF, YOUR FAMILY & YOUR FUTURE!