

**Loubella Extendables, Inc. and Los Angeles Joint Board of the International Ladies' Garment Workers' Union, AFL-CIO. Case 21-RM-1574**

September 26, 1973

**DECISION ON REVIEW, ORDER, AND DIRECTION OF SECOND ELECTION**

BY MEMBERS FANNING, KENNEDY, AND PENELLO

Pursuant to a Decision and Direction of Election issued by the Regional Director for Region 21 of the National Labor Relations Board on November 22, 1972, an election by secret ballot was conducted in the above-entitled proceeding on December 18, 1972. Upon the conclusion of the election, a tally of ballots was furnished the parties which showed that of approximately 23 eligible voters, 13 cast ballots for, and 10 against, the Union. Thereafter, on December 22, 1972, the Employer-Petitioner filed timely objections to the election on the ground that the Union had improperly waived back dues and initiation fees for four employees immediately before the election.

In accordance with National Labor Relations Board Rules and Regulations, the Regional Director investigated the objections and on February 5, 1973, issued and served on the parties his Supplemental Decision and Certification of Representative, in which he overruled the objections in their entirety.

Thereafter, on March 5, 1973, the Employer-Petitioner filed a timely request for review of the Supplemental Decision, on the grounds that the Regional Director erred in overruling the objections. By telegraphic order dated April 9, 1973, the Board granted the request for review and stayed the certification.

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.

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

As noted above, the Employer's objections relate solely to the waiver of initiation fees and dues by the incumbent Union for certain employees within the bargaining unit. The Regional Director overruled the objections, finding this case to be indistinguishable from *DIT-MCO*<sup>1</sup> and other related cases<sup>2</sup> where we have held the waiver of dues, initiation fees and other fees by a union in an organizational campaign to be

unobjectionable. We disagree.

The undisputed facts in this case show that pursuant to a June 1971 certification, the Employer and the Union entered into a collective-bargaining agreement in April 1972,<sup>3</sup> containing a union-security provision. In July, the Union discovered that one employee, who was employed at the time the contract was executed, had failed to become a member. Thereupon the Union insisted that the employee become a member and pay all delinquent dues from the time the contract was executed. During July, September, and October, the Employer hired four new employees, all of whom had worked more than 30 days prior to the election, and had, accordingly, become subject to the terms of the union-security clause. However, prior to the instant election, three of these employees had neither paid initiation fees or dues, nor executed a check-off authorization. The fourth did execute a checkoff authorization and on the basis thereof the Union unsuccessfully attempted to cause him to pay his initiation fee.<sup>4</sup>

On December 15, 3 days before the election, the Union held two meetings with the eligible employees. At the first meeting, the Union's shop steward stated that the four newly hired employees would not have to pay the initiation fee or back dues if the Union won the election. At the second meeting, the Union's director of organization reaffirmed what the steward had said and added that the Union had never charged the Employer's employees an initiation fee.<sup>5</sup> After the election, the Union requested the Employer to commence checking off current dues for the newly hired employees.

On the basis of the foregoing, we are satisfied that prior to the December 15 meeting, the Union deemed the four newly hired employees to be obligated under the contract to pay their initiation fees and delinquent dues and the employees could reasonably have expected the Union to demand payment thereof. In our opinion, the Union's expressed willingness, on the eve of the election, to forgive this obligation if it won the election, constitutes a grant of financial benefit which is indistinguishable from other grants of immediate benefit which we have found to be objectionable union conduct.<sup>6</sup> Accordingly, we shall sustain the

<sup>3</sup> Unless otherwise specified, all dates hereinafter are in 1972.

<sup>4</sup> The initiation fee is \$27.50; dues are \$6 per month.

<sup>5</sup> It appears that the Union had earlier waived its initiation fee for employees employed on the date the contract was executed. During the postelection investigation, the Union attributed its November demand for the initiation fee to a clerical inadvertence.

<sup>6</sup> *General Cable Corporation*, 170 NLRB 1682; *Wagner Electric Corporation, Chatham Division*, 167 NLRB 532. *DIT-MCO* and similar cases relied on by the Regional Director are inapposite in that they do not involve accrued dues and fees.

Contrary to the dissent, we find this case distinguishable from *Andal Shoe, Inc.*, *supra*. In *Andal*, the union in its pre-election campaign offered to take into

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<sup>1</sup> *DIT-MCO, Incorporated*, 163 NLRB 1019.

<sup>2</sup> *Andal Shoe, Inc.*, 197 NLRB 1183, *EFCO Corporation*, 185 NLRB 220; *Primco Casting Corporation*, 174 NLRB 244.

Employer's objection, set aside the election, and direct another.

### ORDER

It is hereby ordered that the election herein conducted on December 18, 1972, be, and it hereby is, set aside.

[Direction of second election and *Excelsior* footnote omitted from publication.]

#### MEMBER FANNING, dissenting:

In my opinion, the Regional Director properly analyzed the facts and the applicable Board precedent in this case and arrived at the right conclusion. Like him, I have concluded that the waiver of initiation fees and past dues did not materially affect the ability of the employees to make a rational choice for or against the Union and, accordingly, I conclude that the objec-

membership, free of charge, all employees in the unit, including former members of the union who had been suspended for nonpayment of dues during their prior employment by a different employer, Goldberg Shoe Company. The indebtedness of the former members could not, in our view, lawfully be required to retain their employment with the new employer, *Andal Spector Freight Systems, Inc.*, 123 NLRB 43. Accordingly, the fact that the union did not attempt to penalize the former employees in the unit was not viewed by the majority as an improper promise of benefit. With respect to the relinquishment of any civil action to collect this past indebtedness, the evidence showed the union's constitution and bylaws did not require the collection of such arrears on rejoining and it had not been the union's practice to collect them.

In the instant case, however, the waiver of initiation fees and dues by the incumbent Union related to an obligation incurred by the four employees under the terms of the collective-bargaining agreement with their present Employer. The waiver to the four employees, therefore, constituted a promise of benefit by the Union to secure their votes and was objectionable.

tions do not raise substantial issues which warrant setting aside the election.

The appeal of forgiveness of accrued dues, "if the Union wins," is a mixed appeal which does not necessarily constitute a grant of financial benefit "indistinguishable from other grants of immediate benefit" which the Board has found objectionable. To an employee mainly seeking relief from back dues, a "No" vote is apt to achieve that result without future obligations much more appealingly than a "Yes" vote with the assumption of dues obligations for an indeterminate time in the future if the Union wins.<sup>7</sup>

I also find no material difference in the facts in this case from those in *Andal Shoe*,<sup>8</sup> *supra*, in which another panel of this Board dismissed comparable objections stating "we perceive no improper promise of benefit in the Union's to waive dues arrears and reinstatement fees if the Union won the election and the promise employees suspended because of arrears re-joined the Union." I agree with the decision expressed therein. Accordingly,<sup>9</sup> I dissent.

<sup>7</sup> See *Primco Casting Corporation, supra*, 245.

<sup>8</sup> *Andal Shoe, Inc., supra*.

<sup>9</sup> My colleagues, it appears, take a more legalistic than practical view of the election-impact of forgiving accrued dues and fees. Without analyzing voter impact they assume that forgiveness is a financial benefit which will corrupt employees in their choice in the manner of a cash gift or bribe. They now distinguish *Andal Shoe* simply because the forgiveness there was to employees suspended for nonpayment to the union under the aegis of a predecessor employer. But there as here the union constitution did not require collection of arrears. There it was not the union's practice to collect; here the Regional Director noted a lack of evidence that the Union collected from employees it no longer represented. In the circumstances why should any employee vote for continued representation by the union simply to save paying accrued dues? By voting "Yes" he risked paying dues indefinitely. By voting "No" he might end union representation, hence union interference with his job over nonpayment of dues. The specter of a law suit to recover a few months of back dues if the union is unsuccessful is not persuasive. In my view the American worker is too practical and too independent to be thus "coerced" in exercising his franchise.