Ramada Inns, Inc., Employer-Petitioner *and* Freight Checkers, Clerical Employees & Helpers Union, Local 856, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 20–RM–1606

January 24, 1974

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN MILLER AND MEMBERS FANNING AND JENKINS

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties and approved by the Regional Director, an election by secret ballot was conducted on May 18, 1973,[1] under the direction and supervision of the Regional Director for Region 20 among the employees of the unit described below. Upon the conclusion of the election, the parties were furnished with a tally of ballots which showed that, of approximately eight eligible voters, three cast ballots for and five cast ballots against the Union. There were no challenged ballots. Thereafter, the Union filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, the Acting Regional Director conducted an investigation and, on July 31, issued and served on the parties his Report on Objections, Order and Notice of Hearing on Objections and, on August 10, issued an errata correcting his report in certain respects. In his corrected report, the Acting Regional Director recommended to the Board that Objections 2 and 3 be overruled and that a hearing be held to resolve the issues raised by Objections 1 and 4. A hearing was conducted on August 23 and, on September 11, the Hearing Officer issued his report recommending that Objection 4 be overruled, that Objection 1 be sustained, and that a rerun election be directed. Thereafter, the Employer filed timely exceptions to the Hearing Officer'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 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 labor organization involved claims to represent certain employees of the Employer.

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

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All front desk, PBX and clerical employees of the employer at its Santa Clara, California location excluding all other employees, assistant managers, assistant manager trainees, guards and supervisors as defined in the Act.

5. The Board has considered the Hearing Officer's report, and the Employer's exceptions thereto and brief in support thereof, and hereby adopts the Hearing Officer's findings and recommendations, and concludes that in these circumstances it will effectuate the policies of the Act to direct another election.

Our dissenting colleague apparently ignores the Hearing Officer's finding that the meetings involving Jerry Eisen, director of labor relations for the Employer, and the unit employees were initiated by the Employer for the purpose of soliciting grievances. It is well established that the solicitation of employees' grievances by an employer is sufficient to "warrant an inference by the employees that their Employer intends to try and do something about their grievances."[2] We have condemned this practice since it interferes with the employees' right under Section 8(a)(1).[3] Since "conduct violative of Section 8(a)(1) is, *a fortiori,* conduct which interferes with the exercise of a free and untrammeled choice in an election,"[4] the Employer engaged in objectionable conduct by soliciting the employees' grievances.

Moreover, it is clear that the Employer intended to convey the idea that a union victory would delay any wage increases. The employees knew that their wages were below those in the competitive area. Eisen reviewed the fact that bargaining had occurred over the past year and a half without success. According to credited testimony, when asked if the employees were going to get raises, Eisen replied that if the Union did not file any objections within 5 days after the election, he would see to it that the employees would have "benefits and wages comparable to the other inns in the area." When asked what would happen if the Union won, Eisen told the employees that "he did not have to agree to what the Union asked for. And that bargaining could go on for one,

[1] All dates are in 1973 unless otherwise indicated.

[2] *Fairchild Camera & Instrument Corporation,* 169 NLRB 90

[3] *Eagle-Picher Industries, Inc.,* 171 NLRB 293, *Texaco, Inc (Evansville),* 178 NLRB 434

[4] *Dal-Tex Optical Co., Inc.,* 137 NLRB 1782, 1786.

two, three, four, five months—or possible even a year."

There is no other reasonable interpretation of Eisen's remarks but that the Employer would grant employees their long-awaited wage increases if the Union lost the election. These statements made in the above context undermine the Union and do not fall within the protection of Section 8(c) of the Act.

ORDER

It is hereby ordered that the election conducted herein on May 18, 1973, be, and it hereby is, set aside.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

CHAIRMAN MILLER, dissenting:

Contrary to my colleagues, I would find the Employer's preelection statements to the employees protected by the provisions of Section 8(c) of the Act, and that they do not warrant our setting aside this election.

The facts, which are not materially in dispute, are briefly as follows: The Union was certified as the representative of the Employer's front desk, PBX, and clerical employees on September 7, 1971. Over the next 18 months, the Union and Employer held a number of bargaining sessions but failed to reach agreement on a contract. There were no charges that the Employer failed to bargain in good faith. During the 18-month bargaining period, of course, the lack of agreement meant that no fruits of bargaining, such as wage increases, materialized, whereas the general inflation in the economy apparently had resulted in the Employer's competitors in the area granting such increases. A petition for an election was filed in March 1973.

During the campaign which followed, the Employer's labor relations director, Jerry Eisen, met on about three occasions with the employees. In the course of what seem to have been relatively informal sessions, virtually all of the employees, naturally enough in view of the long period of no increases, asked about the possibility of immediate or future wage increases.[5] According to the undisputed and credited testimony, Eisen replied that he could make them no promises. Eisen told the employees that if the Union *won* the election the Employer would continue to bargain with it *in hopes of reaching agreement on a contract.* He also said that if the Union lost the election and did not file objections within 5 days after the election "the company was free to do whatever it wished to do." Eisen said further that the Employer "would be competitive with the other inns in that area" with respect to wages, and that it was the national policy of the Employer to remain competitive "in terms of wages, benefits, and other working conditions."[6] In answer to a question, Eisen also opined that the management would "consider it a slap in the face if they went Union." Eisen, it seems to me, was doing no more than accurately explaining to the employees the legal consequences of an election and the effects it would have upon them; i.e., if the Union won the Employer would continue to bargain with it and, that if the Union lost, the Employer would be free to act alone in setting wage and benefit policies. In addition, he stated—truthfully so far as this record shows—that it was the Respondent's policy to stay competitive in its levels of wages and benefits. And finally, he expressed the view that the management would consider a prounion vote a "slap in the face."

Such a combination of legal accuracy, truthful statements, and uncoercive opinion is, in my view, fully protected by Section 8(c) of the Act, and offers no valid reason for setting aside an election.

Accordingly, I would certify the results of the election.

[5] The Hearing Officer's finding with regard to Eisen's purpose in holding the meetings was a conclusion drawn by him solely from his view as to the legality of Eisen's remarks As indicated, the issue of possible raises was raised by the employees themselves Since I find Eisen's responses to have been unobjectionable, I find no record support for the Hearing Officer's conclusion that Eisen had an improper purpose in conducting the meetings

[6] The majority says the "only reasonable interpretation" of this remark was that employees would get "their long-awaited wage increase" if the Union lost, whereas they might well have to await several months more of negotiations if the Union won In my view, it is entirely permissible for an employer to state that his policy is to remain competitive in wages and other benefits, unless this is shown to be a material misrepresentation of fact, which it is not even argued to be here If the employees have sufficient faith in the employer's policy that they believe the unilateral implementation of such a policy will produce better wages and working conditions for them with less delay than union-conducted negotiations, which had clearly been time-consuming here, that is the kind of informed judgment employees are entitled to make They need not be kept in the dark as to the employer's policy or as to the facts of life about union negotiations in order to effectuate any policy of this Act with which I am familiar