GTE Lenkurt, Incorporated *and* International Brotherhood of Electrical Workers, AFL–CIO, CLC, Petitioner. Case 28–RC–2492

March 7, 1974

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS FANNING AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election approved April 12, 1973, an election by secret ballot was conducted on June 29, 1973, under the direction and supervision of the Regional Director for Region 28 in the stipulated unit. At the conclusion of the election, the parties were served with a copy of the tally of ballots, of which 407 were for the Petitioner and 358 were against. There were 20 challenged ballots, which number is not sufficient to affect the results of the election. Thereafter, the Employer filed timely objections to the conduct of the election, duly serving a copy on the Petitioner.

Pursuant to Section 102.69(c) of the Board's Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and on September 19, 1973, issued his Report on Objections, attached hereto in pertinent part as Appendix. He recommended that Employer's Objections 4 and 5 and the Employer's Supplement to Objections be overruled in their entirety and that Objections 1, 2, 3, and 8 be overruled only to the extent that they do not relate to the job comparisons made in Petitioner's handbill of June 25. He also ordered that a hearing be directed on issues raised by Objections 6 and 7, that portion of Objections 1, 2, 3, and 8 concerning the June 25 handbill making a wage comparison between two job classifications of the Employer and two other Albuquerque companies, and certain other alleged conduct brought to his attention during the investigation of the objections. Thereafter, the Employer filed timely exceptions to the report.

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 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, as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All production and maintenance employees consisting of grade one through seven employees; excluding office clerical employees, plant clerical employees, professional employees, technologists, expediters, timekeepers, guards, watchmen, first line supervisors, and all other supervisors as defined in the Act.

The Board has considered the entire record in the case, including the Regional Director's report, the exceptions, and brief, and hereby adopts the findings and recommendations of the Regional Director[1] except as modified herein.

The Board having duly considered the matter is of the opinion that in light of the Supreme Court decision in *N.L.R.B.* v. *Savair Manufacturing Co.*, 414 U.S. 270, the issues raised by that portion of the Employer's Additional Contentions relating to the alleged waiver of initation fees by Petitioner should also be set for hearing.

ORDER

It is hereby ordered that the Employer Objections 4 and 5 and the Employer's Supplement to Objections be, and they hereby are, overruled in their entirety, and that Objections 1, 2, 3, and 8 be, and they hereby are, overruled only to the extent that they do not relate to the job comparisons made in Petitioner's handbills of June 25.

IT IS FURTHER ORDERED that the issues raised by

[1] Chairman Miller would not overrule that portion of Objection 1 which alleged that the Union misrepresented to the employees that a supervisor had threatened two employees with reprisals if they failed to attend an Employer meeting The Regional Director's investigation revealed that the supervisor merely asked one employee to attend the meeting despite her illness. The Chairman, contrary to the Regional Director, would not characterize Petitioner's statement as "legitimate campaign propaganda", however he would reserve ruling on whether it constitutes misrepresentation sufficient to set aside the election until a complete factual context on the issues sent to hearing are developed therein Furthermore, in addition to those issues recommended for hearing by the Regional Director, he would also include those issues raised by Objections 1, 2, and 3, insofar as such objections allege misrepresentation of the sick-leave policy at one of the Employer's organized plants, and by the alleged excessive payments by Petitioner to its election observers that was considered by the Regional Director under the heading "Additional Employer Contentions" in his report Chairman Miller would prefer to see the facts fully developed on these issues before determining whether the alleged conduct might, *in toto*, be sufficient to warrant setting aside the election. Accordingly, he would expand the scope of the hearing to include full factual development and credibility resolutions on these two issues.

Member Penello would overrule the objections insofar as they allege a misrepresentation of the wage comparison as he would not continue to adhere to the *Hollywood Ceramics* rule (140 NLRB 221) *(Modine Manufacturing Company,* 203 NLRB No 77, fn 6), and, therefore, he would narrow the scope of the hearing to eliminate this issue

Objections 6 and 7 and the above-noted portions of Objections 1, 2, 3, and 8 pertaining to job comparisons and the additional alleged conduct, as set forth in the Regional Director's report, shall be processed pursuant to the Regional Director's order and notice of hearing with the addition that the said Regional Director be, and he hereby is, authorized to issue a new date and time for such hearing.

IT IS FURTHER ORDERED that the hearing should include, the issues raised by the Employer's allegation of a waiver of initiation fees by Petitioner, and the hearing officer, as to this shall issue a report of the facts thereon without any recommendations or conclusions of law.

APPENDIX

THE OBJECTIONS

1. During the week preceding the election of June 29, 1973, Petitioner promulgated, distributed and disseminated to members of the voting unit false and misleading campaign material to which the employer had no opportunity to make an effective reply. Said material contained substantial and material misrepresentations of fact which petitioner knew to be false and/or misleading and which was intentionally promulgated by the petitioner to mislead voters in the unit.

2. During the campaign, Petitioner promulgated, distributed and disseminated to members of the voting unit false and misleading campaign material which was not disclosed to the Employer and which was discovered by the Employer only on the day of the election or so close to the election that the Employer had no opportunity to make an effective reply. Said material contained substantial and material misrepresentations of fact, which Petitioner knew to be false, and/or misleading, and which was intentionally promulgated by the Petitioner to mislead voters in the unit.

3. During the campaign, Petitioner promulgated, distributed and disseminated to members of the voting unit false and misleading campaign material. Said material contained substantial and material misrepresentations of fact, which Petitioner knew to be false, and/or misleading, and which was intentionally promulgated by the Petitioner to mislead voters in the unit.

4. During the campaign and specifically during the week preceding the election on June 29, 1973, Petitioner instigated and carried out a concerted effort to influence and polarize improperly the voters in the unit by means of and with the assistance of outside religious groups and individuals connected therewith. This conduct had the effect of interfering with the rights of the employees freely to elect whether or not they wished to be represented by the Petitioner and more particularly with the laboratory voting conditions required by the National Labor Relations Board in a representation election.

5. During the campaign and specifically during the week preceding the election on June 29, 1973, the Petitioner instigated and carried out a concerted effort to influence and polarize improperly the voters in the unit by means of and with the assistance of outside community pressures. This conduct interfered with the rights of the eligible voters freely to elect whether or not they wished to be represented by the Petitioner and more particularly with the laboratory voting conditions required by the National Labor Relations Board in a representation election.

6. During the campaign, Petitioner, through its agents and supporters, threatened and coerced unit members to support its cause. Several voters in the unit were threatened that they would lose their jobs unless they supported and voted for Petitioner. These threats caused an atmosphere of confusion and fear surrounding the election, and had a substantial and material effect on the outcome of the election.

7. During the day of election, June 29, 1973, Petitioner engaged in coercive, threatening and other prohibited electioneering, which had a substantial and material effect on the outcome of the election.

8. On the day of the election and during the week before the election, Petitioner promulgated and distributed to members of the voting unit, campaign material which contained promises of benefits and/or threats of detriments, which were intended to influence improperly the members of the unit and which had a substantial and material effect on the outcome of the election.

THE SUPPLEMENT TO OBJECTIONS

During the campaign, and particularly during the period immediately prior to the election, and on election day, June 29, 1973, Employer supervisory personnel engaged in activities on behalf of the IBEW, AFL–CIO (union) including organizing, advocacy, and the giving of advice and instructions to their employees to vote in favor of the AFL–CIO, by which employees were induced, coerced and caused to favor the union, sign cards for the union, and vote in favor of the union, and which interferred [sic] with the laboratory voting conditions required by the National Labor Relations Board in a representation election, all of which was unknown to the Employer until after the election.

* * * * *

Objections Numbered 1, 2, and 3:

These numbered objections allege the distribution

and dissemination of misleading literature during the pre-election campaign by the Petitioner. In its statement of position submitted in support of its objections, the Employer specifically objects to a number of Petitioner's handbills and mail distributions. The objected to literature is attached hereto as Exhibits A through J. Much more campaign material was distributed by both parties before the election but I find it unnecessary to encumber this report by attaching all of it.

On June 25 the Petitioner distributed to the employees a handbill attached hereto as Exhibit A. The distribution was made to the employees at the Employer's plant. A portion of that handbill makes a wage comparison between the assembler and tester jobs at the Employer and two other Albuquerque companies, Sandia Corporation and General Electric. The Employer maintains that the jobs are not comparable and has submitted evidence in support of this contention. The Petitioner, on the other hand, maintains that the jobs are comparable and has submitted evidence in support of its position. Additionally, the Petitioner maintains that the Employer had an ample opportunity to respond to the handbill because it was distributed on Monday, June 25, and the election was not conducted until Friday, June 29. The Employer maintains that it did not have an opportunity to respond because of the difficulty in obtaining statistics and other information concerning the jobs in question.

I have carefully considered all evidence disclosed by the investigation concerning this portion of the handbill and find that it raises issues of fact and credibility which can best be resolved by a hearing. Accordingly, I will direct that a hearing be conducted concerning this portion of the June 25 handbill.

The Employer also objects to the remainder of the June 25 handbill. Just below the above-mentioned wage comparison, a portion of the handbill states that the Petitioner guarantees that there will never be a strike at the Employer's Albuquerque facility unless the Albuquerque employees vote to have such a strike. The Employer maintains that the Petitioner's constitution gives the International President authority to call a strike and that, therefore, the handbill contains a material misrepresentation. A reading of the Petitioner's constitution discloses, however, that the International President does not have the authority to call a strike, but only the authority to approve a strike which has already been voted upon by the local union. I find, therefore, that this portion of the handbill contains no misrepresentation of a material fact but merely constitutes campaign rhetoric which would not warrant either setting aside the election or conducting a hearing.

The Employer also objects to the reverse side of the June 25 handbill where the Petitioner refers to the Employer's Burnaby, Canada, plant, and an alleged wage cut instituted by the Employer some years ago after a decertification election. The Employer contends that it did not cut wages at the plant as alleged by the Petitioner in its handbill. As noted above, the handbill in question was distributed on June 25. The investigation disclosed that the Employer, on June 26, distributed to its foremen and supervisors a document headed "Fact Sheet No. 9," wherein the Employer fully set forth its position concerning the allegations of the Petitioner contained in the handbill. Additionally, there is evidence that this Fact Sheet was used by foremen and supervisors to discuss with employees the Employer's position concerning the alleged wage cut referred to in the handbill. In any case, it is clear, since the Employer did prepare the above Fact Sheet, that the Employer had an ample opportunity to respond to this portion of the handbill. See *Hollywood Ceramics Company, Inc.*, 140 NLRB 221, and *Modine Manufacturing Company*, 203 NLRB No. 77. Accordingly, I find that this portion of the handbill does not raise any issue of fact or credibility which would warrant setting aside the election or conducting a hearing.

The Employer alleges a misrepresentation in a handout of the Petitioner of June 26, attached hereto as Exhibit B. A portion of the objected to handbill states that directors and officers of the Employer have a contract with the Employer. Employer maintains that no director or officer of the Employer has a contract with it. The Petitioner presented evidence which indicates that in the past certain directors have had deferred compensation agreements with the Employer. I find, in any case, that the alleged misrepresentation, if in fact it was a misrepresentation, was so minor and immaterial as to have had no impact on the election or to warrant a hearing. Additionally, I find that the Employer had an adequate opportunity to respond to this portion of the Petitioner's handbill. *Hollywood Ceramics, supra,* and *Modine Manufacturing, supra.* Accordingly, I will not direct that a hearing be held concerning this allegation.

The Employer objects to Petitioner's handout of June 27, attached hereto as Exhibit C, wherein the Petitioner quotes various presidents of the United States and the positions of various churches concerning unionization. Additionally, the handout contains a purported quotation from the National Labor Relations Act, "it shall be the policy of the United States Government to encourage collective bargaining." I have carefully scrutinized this handbill and find that it contains no material misrepresentations but is legitimate campaign propaganda, even though the quoted matter is a one sentence summary of

language contained in the preamble to the Act and not an exact quote. *Hollywood Ceramics, supra,* and *Modine Manufacturing, supra.* In any case, this particular handbill was initially distributed by the Petitioner on or about March 10, 1972, so it is clear that the Employer, if it felt this handbill contained any misrepresentation, had in excess of 15 months to make a response to such alleged misrepresentation. Accordingly, I find that this allegation raises no issue of fact or credibility which would warrant setting aside the election or conducting a hearing.

The Employer also objects to the Petitioner's handbill of June 28,[3] specifically the portion thereof which states that certain of the Employer's employees are eligible for food stamps. Investigation disclosed that for several months prior to the election, the Petitioner had taken the position that certain of the Employer's employees were paid wages which would qualify them for food stamps. Although the Employer's statement of position maintains that the Petitioner made a claim that *all* of the Employer's employees were eligible for food stamps, the investigation has failed to disclose any evidence that this statement was ever made. I find, therefore, that there has been no material misrepresentation made by the Petitioner in its assertion. Further, the Employer had an adequate opportunity to respond to this allegation of the Petitioner. Accordingly, I find that this allegation raises no issues of fact or credibility which would warrant setting aside the election or conducting a hearing.

Also contained in the Petitioner's distribution of June 28 to employees is a statement that "the Company *told* you that a couple of people got fired at the Automatic Electric plant, Chicago, 'for refusing to pay union dues.' *It wasn't the truth!*" The Petitioner then published a telegram received from the union in Chicago where it states that no such terminations took place. The investigation disclosed that this portion of the handbill was in response to a handbill that the Employer distributed a few days previously wherein the Employer had stated in part that "it costs to belong to the IBEW!" The handbill further stated, "[T]urn inside and you'll see at a glance that *you* pay with your *job* . . . if you don't pay your *dues!*" I find that a reading of both handbills provides merely an example of the give and take on both sides of legitimate pre-election propaganda. *Hollywood Ceramics, supra,* and *Modine Manufacturing, supra.* Accordingly, I find that Petitioner's handbill of June 28 raises no issue of fact or credibility which warrants setting aside the election conducted or conducting a hearing.

The Employer also alleged that in early June the Petitioner distributed by mail to the employees a questionnaire[4] asking the employees what they would like to have in the way of a collective-bargaining agreement. The results of this questionnaire were distributed by the Petitioner to the employees on June 28.[5] The Employer maintains that the results imply that 516 people in the unit were supporting the Petitioner, and states that it had no way of checking the validity or accuracy of the statistics published on June 28. The investigation disclosed no evidence to indicate that the survey was conducted in any unlawful or improper manner or that the results were invalid or inaccurate. Accordingly, I find that this allegation raises no issue of fact or credibility which would warrant setting aside the election or conducting a hearing.

The Employer objects to a "truth tape" used by the Petitioner on June 28. Such tapes were regularly played by the Petitioner during the course of the campaign. The tapes were played when the telephone number at the Petitioner's hall was dialed. A transcript of the tape in question is attached hereto as Exhibit G. The Employer maintains that the second paragraph of the tape which refers to foreman Frank Smalley is objectionable in that it indicates that Smalley threatened employees with adverse consequences if they failed to attend an employee meeting at the Employer's plant on June 27. Although Smalley did urge one employee who was ill to attend the meeting with all the other employees, he did not threaten the employee. I find that the tape is an example of legitimate campaign propaganda and the statements therein do not warrant setting the election aside. *Hollywood Ceramics, supra,* and *Modine Manufacturing, supra.* Accordingly, I recommend that the objection to the use of the June 28 truth tape be overruled.

The Employer also objects to an alleged misrepresentation of the sick leave policy at the Employer's plant in San Carlos, California, where the employees are represented by a constituent local union of the Petitioner. The only evidence presented in support of its allegation is an alleged statement made by a representative of the San Carlos local at a meeting of employees. The employee presented by the Employer as a witness to the alleged statement states that the Union official in question said, "[I]f I have a hangover Monday morning and don't feel like coming in, I just don't show up and I get my pay anyway. And if I don't feel like going in on Tuesday and Wednesday, I get paid for sick leave even though I don't show up." The Union official involved makes a clear and unequivocal denial of ever having made a statement similar to the one attributed to him by the

[3] Attached hereto as Exhibit D [omitted]

[4] Attached hereto as Exhibit E [omitted].

[5] Attached hereto as Exhibit F [omitted].

employee in question. The employee who makes the allegation in an affidavit taken by a Board agent states that the official may have been joking and then says, "[W]hen a guy makes a speech your mind drifts and I'm not sure that's what he said, I can't be sure, but it was like that." In an affidavit submitted by the Employer the employee states that the statement was "something like the foregoing," referring to the alleged statement. The Employer presented no other evidence that a statement similar to the one set forth above was ever made at this meeting. Approximately 100 employees attended the meeting where the alleged statement was supposedly made and only one employee alleges that anything like this statement was made. I find that the evidence presented on this issued by the Employer does not raise an issue of fact or credibility which would warrant the conduct of a hearing. Accordingly, I find that this alleged misrepresentation does not raise a material issue which would warrant setting aside the election and it is recommended that this portion of the Employer's objections be overruled.

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ADDITIONAL EMPLOYER CONTENTIONS:

The Employer alleges, in his statement of position, that the Petitioner's election observers were paid for 10 hours of work by the Petitioner for serving as observers. The investigation disclosed that Petitioner's observers were paid their normal hourly rate, and that at least two of them were paid 10 hours pay. The Board, in a similar situation, recently rules that such payment is not objectionable. *Quick-shop Markets,* 200 NLRB No. 120. There, the Board found unobjectionable a situation where a union paid its observers $15 for serving 4-1/2 hours as election observers, an amount which would be twice their normal pay. Here the employees received substantially less than twice their normal pay. Accordingly, I find that this allegation raises no issue of fact or credibility which would warrant setting aside the election or conducting a hearing.

The Employer also alleged that members of the Petitioner's organizing committee told employees that if they signed authorization cards on behalf of the Petitioner an initiation fee would be waived which would otherwise be charged should the Petitioner be selected as the collective-bargaining representative in the June 29 election. The investigation disclosed conflicting evidence as to whether or not this occurred. If such did in fact occur, I find that it did not interfere with the election as the offer was not conditioned on how the employee voted. The fact that an employee may or may not sign an authorization card does not in any way bind him as to how he may cast his ballot. In any event, the Board has found, in situations such as this, that such conduct is not objectionable even if a commitment to vote for the union is required in exchange for the waiver of initiation fees. *DIT–MCO, Incorporated,* 163 NLRB 1019. Accordingly, I find that this allegation raises no issues of fact or credibility which would warrant setting aside the election or conducting a hearing.

Also in its statement of position, the Employer makes an allegation of improper conduct on the part of one or more of the Board Agents who conducted the election herein. In its statement, the Employer complains of "prolonged conversations between the Union's observers and one or more of the NLRB agents supervising the election. These conversations, although innocent, may well have been misconstrued by the voters in line who could infer some support for the Union's position by the Board." I have caused an investigation to be made of this allegation, which investigation disclosed absolutely no evidence that such conversations took place, or that any objectionable conduct of any kind was engaged in by any of the Board Agents involved in the conduct of the election. Accordingly, I find that this allegation raises no issue of fact or credibility which would warrant setting aside the election or conducting a hearing.