The Coleman Company, Inc. *and* Viola Clark, Petitioner and International Union of District 50, Allied and Technical Workers of the United States and Canada

The Coleman Company, Inc. *and* Sheet Metal Workers' International Association, AFL–CIO, Petitioner. Cases 17–RD–449 and 17–RC–6767

August 16, 1974

DECISION, ORDER, AND DIRECTION OF THIRD RUNOFF ELECTION

Pursuant to a Decision, Order, and Direction of New Runoff Election issued by the National Labor Relations Board on June 1, 1973 (203 NLRB 1056), a new runoff election was conducted on August 30 and 31, 1973, under the direction and supervision of the Regional Director for Region 17. At the conclusion of the election, the parties were furnished a tally of ballots in accordance with National Labor Relations Board Rules and Regulations, which showed that, of approximately 1,352 eligible voters, 636 cast their ballots for, and 561 against, Sheet Metal Workers' International Association, AFL–CIO (the Petitioner in Case 17–RC–6767),[1] 4 were challenged, and 6 were void. The challenged ballots were not sufficient to affect the election results. Thereafter, both the Employer and the decertification Petitioner filed separate timely objections to conduct of the election and to conduct affecting the results of the election.

The Regional Director conducted an investigation and, on September 21, 1973, issued an order directing a hearing and notice of hearing. A hearing was held before Administrative Law Judge Robert Cohn on October 29 and 30, 1973. All parties appeared and were given full opportunity to examine and cross-examine witnesses, introduce evidence, argue orally, and file written briefs. On January 23, 1974, the Administrative Law Judge issued and duly served on the parties his Report on Objections in which he recommended that objections of the Employer and of the decertification Petitioner be sustained on the basis of a preelection offer by the Petitioner to waive initiation fees for those employees who make application for charter membership; all remaining objections to the election or to conduct affecting the results of the election be overruled; and a new runoff election be conducted. Thereafter, the Employer filed exceptions to the Administrative Law Judge's report and a supporting brief. The Petitioner filed exceptions to the report, with a supporting brief, and it also filed a brief in answer to exceptions filed by the Employer.

The Board has reviewed the rulings of the Administrative Law Judge made at the hearing and finds they are free from prejudicial error. They are hereby affirmed. The Board has considered the Administrative Law Judge's report, the exceptions and briefs, and the entire record in this proceeding, and hereby adopts the findings, conclusions, and recommendations of the Administrative Law Judge as modified herein.

In adopting the Administrative Law Judge's conclusions, we are not adopting his rationale insofar as it relates to Petitioner's offer to waive initiation fees. That offer was contained in a letter to the employees from the Petitioner about 2 weeks before the election. Fully set forth in the Administrative Law Judge's report, the letter tells the employees that they will have their own local union if they vote "YES" in the election. It advises that they will not have to pay any dues until a contract has been signed with the Company. However, with respect to the matter of initiation fees, it reads: "You will not—pay any initiation fee. The initiation fee will be waived for all present employees who make application for charter membership in your new local union." This offer to waive initiation fees must be held an interference with the election under the Supreme Court's holding in *N.L.R.B.* v. *Savair Manufacturing Co.*,[2] that a union interferes with employees' Section 7 rights to refrain from union activities when it offers to waive initiation fees for those who sign union cards before the election.

In the instant case, the promise of benefit is extended in terms which lack a critical detail. For nowhere in the letter does it appear when the employees to whom it was sent must make their "application for charter membership" in order to be eligible for the waiver. It is explicit as to when the employees will be obligated to pay their union dues, which is after a contract has been signed with the Company, and when they will be covered by life and dismemberment insurance, which is when they pay their first month's dues. But it does not specify when the "application for charter membership" must be made. Indeed, the term "charter membership" itself is not even defined and that compounds the confusion. For sure, the employees may not wait until the contract is signed; obviously, an earlier point in time is contemplated. Our dissenting colleagues are of the opinion that the deadline is when the local union which is to serve the employees is formed and that all who join by then will not need to pay an initiation fee. But even assuming that the requirement of an application for charter membership is susceptible of the interpretation, that is not the only construction that is permissible; and therein lies the difficulty with the dissent. In *Inland*

[1] International Union of District 50, Allied and Technical Workers of the United States and Canada, the incumbent Union, did not appear on the ballot in the new runoff election, and is no longer a party to this proceeding.

[2] 414 U.S. 270 (1973)

Shoe Manufacturing Co., Inc.,[3] where a union leaflet promised that "There are no initiation fees for charter members of a new local (and that is what you would be)[.] Monthly dues will start when a new contract has been made with the Company," the Board held: "We find that the employees who read Petitioner's leaflet could reasonably have concluded that it was to their benefit to join Petitioner before the election—to come in at the ground floor—to avoid the possibility of having to pay initiation fees later." We think that the requirement in the case before us of an *application* for charter membership is at the least equally ambiguous and just as susceptible of an interpretation by the employees that it is to their benefit to make a union commitment before the election, and thereby "come in at the ground floor," to avoid paying the initiation fee. If the letter was not intended to be thus read, it was Petitioner's duty, as explained in *Inland Shoe Manufacturing Co., Inc.*, "to clarify that ambiguity or suffer whatever consequences might attach to employees' possible interpretations of the ambiguity."

In the circumstances, and for the reasons more fully explicated in the *Inland Shoe Manufacturing Co.* case, we conclude that Petitioner's offer of a waiver of initiation fees to those who apply for charter membership is the kind of preelection offer condemned by the Supreme Court in *Savair.*

ORDER

It is hereby ordered that the election conducted herein on August 30 and 31, 1973, be and it hereby is, set aside.

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

MEMBERS FANNING AND JENKINS, dissenting:

In agreement with our colleagues we would not adopt the Administrative Law Judge's rationale insofar as it relates to Petitioner's offer to waive initiation fees. Our colleagues however conclude that that offer was nevertheless objectionable as it was ambiguous as to whether it was available to employees after the election. We cannot agree.

The offer to waive initiation fees was contained in a letter sent to the Coleman employees on August 18, just 12 days prior to the start of the August 30 to 31 second runoff election. The letter is set forth in full in the Administrative Law Judge's report. In terms which seem quite clear to us it informs employees that if the Union wins the election the Coleman employees will have their own local, that its number will be 304, and that present employees will not be required to pay an initiation fee if they join when the local is formed. Thus, in relevant part, the letter initially states that information has been received from the Washington office as to the local union number "you will have when you are certified as a bargaining unit under the Sheet Metal Workers. The title of your union will be Sheet Metal Workers International Association Local Union 304, AFL–CIO." The letter then goes on to describe in several paragraphs what will happen under Local 304. The offer to waive initiation fees is described in the initial of these paragraphs, as follows:

> You will not—pay any initiation fee. The initiation fee will be waived for all present employees who make application for charter membership in your new local union.

The next paragraph reads:

> You will not—have to pay any union dues until a contract has been signed by both the company and the union.

Near the end of the letter is included the statement:

> Remember by voting yes in your election you will have your own local Union.

At all times the letter is describing what will happen if the Union wins the election. All present employees who join Local 304 when it is formed will not be required to pay initiation fees. Since the local will not be formed until after the election, it is clear that the Union is making the offer to all employees and not just to employees who join prior to the election. Such an offer is not objectionable. *N.L.R.B.* v. *Savair Manufacturing Co.*, 414 U.S. 270 (1973); *Irwindale Division, Lau Industries, A Division of Phillip Industries, Inc.*, 210 NLRB 182 (1974).

Our colleagues focus on the words "charter membership" in reaching their conclusion, citing *Inland Shoe Manufacturing*, 211 NLRB No. 73 (1974). As indicated in that case the use of the term must be considered in its total context. In *Inland* the term was used in circumstances which include an appeal to employees to sign cards. Our colleagues determined that employees who read the leaflet could reasonably conclude that it was to their benefit to join petitioner before the election to avoid the possibility of having to pay initiation fees later. In the instant case the term is simply used to indicate that the waiver will not be granted indefinitely but may be limited to those employees who join when the local is initially formed after the election. Since the waiver is to be available

[3] 211 NLRB No. 73 (1974).

to all who join at that time, employees could not reasonably conclude they had anything to gain in terms of initiation fees by joining prior to the election.

We would certify the Union as the collective-bargaining representative.