

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

June 30, 1975

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

Pursuant to a Decision, Order, and Direction of Third Runoff Election issued by the National Labor Relations Board on August 16, 1974, and an Order Correcting the Decision and Direction of Third Runoff Election issued by the Board on August 23, 1974, a new runoff election by secret ballot was conducted on September 26 and 27, 1974, 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's Rules and Regulations, Series 8, as amended, which showed that, of approximately 1,563 eligible voters, 559 cast their ballots for, and 791 against, Sheet Metal Workers' International Association, AFL-CIO (the Petitioner in Case 17-RC-6767),¹ 7 were challenged, and 10 were void. The challenged ballots were not sufficient to affect the election's results. Thereafter, Petitioner in Case 17-RC-6767, hereafter also referred to as Sheet Metal Workers or the Union, filed timely objections to conduct affecting the results of the election.

The Regional Director conducted an investigation and, on April 10, 1975, issued and served on the parties his Supplemental Decision on Objections, in which he recommended that the objections be overruled and that the results of the election be certified. Thereafter, the Sheet Metal Workers filed a "Request for Review" of the Regional Director's report, and the Employer filed an answering 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 Petitioner in Case 17-RC-6767 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 Sections 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 production and maintenance employees employed at the Wichita, Kansas, plants of the Coleman Company, Inc., including inspectors, leadmen, group leaders, model shop employees, repair department employees (in the North plant), tool crib attendants and truckdrivers, but excluding all tool and die department employees, tool room crib attendants, employees of the Mid-Western Branch and the Coleman Comfort Center, laboratory employees, printing department employees, outing products service and sales department employees, office and plant clerical employees, the mail boy, watchmen and guards, professional employees and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report, the Sheet Metal Workers "Request for Review" the Employer's brief, and the entire record in the case, and adopts the Regional Director's report as modified herein.²

The Sheet Metal Workers objection 5 alleges that, prior to the election, the Employer, the decertification Petitioner, and the Coleman Independent Employees Association made material misrepresentations of facts to the employees at a time when Sheet Metal Workers did not have a sufficient opportunity to respond. The Regional Director overruled this objection on the grounds that the Union failed to provide evidence in any form to substantiate its claim.

The Sheet Metal Workers excepts to the Regional Director's recommended disposition of objection 5, contending that it presented three witnesses who offered testimony in support of that objection. Two of those witnesses in affidavits aver that around 3 p.m. on September 25, 1974, the day before the third runoff election in this proceeding, an employee who

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 third runoff election, and is no longer a party to this proceeding.

² Absent exceptions, we hereby adopt, *pro forma*, the Regional Director's recommendations that Objections 1, 2, 3, 4, 6, and 7 be overruled.

belonged to the Coleman Independent Employees Association appeared in the Employer's North plant parking lot carrying a sign which read "Happiness Is . . . No Tinbenders, Vote No for No \$200 Initiation Fee." The third witness presented by the Union was its International organizer, John Lubetich, who stated, "Since 1971, by word of mouth and in our handbills, we have told the Coleman employees that there would be no initiation fees or dues until after we won an election, the people had voted in their officers, and negotiated a contract which would have to be approved by secret ballot of the employees of Coleman." Lubetich added that Sheet Metal Workers spokesmen had told the employees that the initiation fee was \$25 unless the employees themselves determined to increase that amount.

In view of the sworn statements of the three witnesses presented by the Union during the course of the Regional Director's investigation, we cannot adopt the Regional Director's finding that "the Union offered no evidence in any form to substantiate [its] claim." Nevertheless, having considered the testimony offered by those three witnesses, we do not believe it discloses a misrepresentation such as could reasonably be expected to have a significant impact on the election. Lubetich's statement indicates that the topic of the Union's initiation fees was discussed by the Union's representatives and the employees for

³ Member Penello agrees with his colleagues that the alleged misrepresentation does not warrant setting aside the election or directing a hearing, but so finds for the reasons set forth in his dissenting opinions in *Ereno*

3 years before the appearance of the sign. The voters, therefore, had knowledge of the subject matter which would enable them to evaluate the statement on the sign sponsored by an employee association and carried by an employee whom the voters would view as being no more privy to information concerning the Union's initiation fees than themselves. In view of the foregoing, we find that the conduct alleged in objection 5 does not warrant setting aside the election or directing a hearing and, accordingly, we overrule that objection.³

As the tally of ballots shows that the Union has not received a majority of valid votes cast in the election, and as the challenged ballots are insufficient in number to affect the results, we shall certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for Sheet Metal Workers' International Association, AFL-CIO, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

Lewis, 217 NLRB No. 45 (1975), and *Medical Ancillary Services, Inc.*, 212 NLRB 582 (1974).