

A. Rebello Excavating Contractors and Teamsters, Chauffeurs, Warehousemen and Helpers of America Local 526, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 1-RC-13299

July 21, 1975

**DECISION, ORDER, AND DIRECTION OF
THIRD ELECTION**

BY CHAIRMAN MURPHY AND MEMBERS JENKINS
AND KENNEDY

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties and approved by the Regional Director for Region 1 of the National Labor Relations Board on June 15, 1974, an election by secret ballot was conducted in the above-entitled proceeding on June 28, 1974, under the direction and supervision of said Regional Director. Thereafter, Petitioner filed objections, a hearing was held thereon, and the Board adopted the Hearing Officer's recommendations that the election be set aside and a second election directed.

On December 5, 1974, a second election was conducted. The tally of ballots indicated that there were approximately four eligible voters and that three cast votes for the Petitioner and one cast a vote against the Petitioner.

The Employer filed timely objections to conduct affecting the results of the second election. On January 14, 1975, the Regional Director issued his Report on Objections to the second election, in which he recommended, *inter alia*, that a hearing be held on Employer's Objection 1, which alleges that "The Union threatened the employees with loss of their union cards in the event that they voted against the Union." Thereafter, on February 4 and 7, 1975, a hearing was conducted and on February 25, 1975, the Hearing Officer issued his report. The Hearing Officer found no merit to Employer's Objection 1 and recommended that it be overruled and Petitioner be certified as the bargaining representative. Thereafter, the Employer and the Petitioner filed timely exceptions and briefs to the Hearing Officer's 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 labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees 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 truckdrivers employed by the Employer at its Westport, Massachusetts, location, but excluding all office clerical employees, professional employees, guards, and supervisors as defined in the Act.

5. The Board has reviewed the rulings made by the Hearing Officer at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Hearing Officer's report, the exceptions and briefs, and the entire record in this case. We agree with the Employer that Shop Steward Souza's remark, discussed below, interfered with the second election and requires that a third election be conducted.

The Employer operates a trucking business with trucks that are leased out with drivers. During the preelection period, the Employer had three drivers,¹ two of whom—Dennis Thibodeau and Manuel Costa—were on lease to Assonet Sand and Gravel Co. Assonet is a union operation. Thibodeau is a member in good standing of Teamsters Local 59 of New Bedford, Massachusetts, and Costa is a member in good standing of the Petitioner. James H. Couturier, the third active driver, is also a member in good standing of the Petitioner, but was assigned to drive elsewhere.

On or about November 18, while Thibodeau was on lease to Assonet, he had a brief conversation with Antone (Chico) Souza, Petitioner's shop steward at Assonet. According to Thibodeau, whose testimony was credited by the Hearing Officer, Souza referred to the scheduled December 5 second election and told him: "You guys can do what you want but . . . you may have a good chance to lose the books if you vote against the Union." The "books" that Souza referred to are the union books or cards that members carry which indicate that they are members of the Teamsters Union.

This was the only conversation that Shop Steward Souza had with Thibodeau about the coming election. Souza did not talk to Costa or Couturier about it. However, Thibodeau told Costa and Couturier about his conversation with Souza. Couturier told

¹ A fourth driver, who had been laid off or terminated, also voted in the election without challenge.

Thibodeau that he (Couturier) was unconcerned about it. Later, there was a conversation about what Souza had told Thibodeau between the Employer's owner (Rebello), Thibodeau, and Couturier. Rebello and Couturier tried to convince Thibodeau that what Souza had told Thibodeau could not happen.

The record shows that union membership provides a driver with access to union jobs and the union hall. Although the Employer has no bargaining relationship with the Petitioner, the union membership of its employees enables them to be employed by the Employer in leasing arrangements with a union company such as Assonet. Shop Steward Souza's prime function at Assonet is to check drivers coming into Assonet's "barn" for their union cards. If they do not have cards, he reports them to the proper union officials in an effort to get them to join the Union. Both Thibodeau and Costa testified, without contradiction, that the loss of their union cards would work a hardship on them in that they would lose access to union jobs and to the use of the union hall to secure new jobs. Consequently, they testified, they were seriously concerned, apprehensive, and fearful for the loss of their jobs.

The Hearing Officer found, however, that although Souza—a responsible union official—told Thibodeau that he "could" lose his union book (card) if he voted against the union in the election, and that it was reasonable for Thibodeau to place reliance on Souza's apparent authority to speak on internal union matters, there was no showing that the statement involved anything other than notice of a potential internal union disciplinary action not jeopardizing the employees' employment status.

We agree with the Hearing Officer's findings that Souza made the statement attributed to him by Thibodeau and that Souza was a responsible representative and agent of the Petitioner. However, we disagree with the Hearing Officer's conclusion that there is no showing that the statement involves anything other than notice of a potential internal union disciplinary action, which did not threaten the employees' employment status.

As noted above, the employees testified without contradiction that the loss of their union cards would work a hardship on them in that they would lose access to union jobs and to the use of the union hall to secure new jobs. Indeed, Souza himself admitted that "If the fellow doesn't have a union card, he can't work in the yard." He went on to further testify that, although he personally has not thrown anybody off, "the union [has] had to." He also testified that he told a National Labor Relations Board investigator that drivers of leased trucks have to have union cards or else, "Well, I give them what I usually do, I give them a week to open up a books [sic] and if they don't they don't come back."

O'Donald, the Union's business agent, also admitted that when Souza calls him about a driver without a union card either he or the secretary-treasurer makes a decision as to what to do about the driver. If either one decides to bar the driver, then usually the business agent goes to the plant or yard, bars the cardless driver, and directs Souza to follow through with his instructions.

Based upon the foregoing, we conclude that the withdrawal of the employees' books clearly could have an adverse impact on their employment status and that the employees' fears in this regard were reasonable. We therefore find that Souza's statement to Thibodeau reasonably tended to coerce and threaten the employees in the exercise of their organizational rights not to vote for the Union and interfered with the conduct of the election.²

We shall therefore set aside the election and direct that a third election be held.

ORDER

It is hereby ordered that the election in this case conducted on December 5, 1974, be, and it hereby is, set aside.

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

² *Vickers Incorporated, a Division of the Sperry Rand Corporation*, 152 NLRB 793, 795 (1965).