

**Felsenthal Plastics Inc. now known as Grede Plastics, A Division of Grede Foundries Inc. and Leroy McCoy, Petitioner, and District 8, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 13-RD-984**

July 28, 1975

## DECISION AND DIRECTION OF SECOND ELECTION

Pursuant to a Stipulation for Certification Upon Consent Election, an election by secret ballot was conducted on December 5, 1974,<sup>1</sup> under the direction and supervision of the Regional Director for Region 13, among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately 196 eligible voters 84 cast ballots for, and 96 cast ballots against, the Union. There was one challenged ballot, a number insufficient to affect the results of the election. Thereafter, on December 9, the Union filed timely objections to conduct affecting the results of the election.

Pursuant to Section 102.69 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation of the issues raised by the objections and on February 13, 1975, issued and duly served on the parties his Report on Objections, finding that objection 3 was without merit and recommending that it be overruled. The Regional Director further found however that objections 1 and 2 had sufficient merit to warrant setting the election aside.

The Employer filed exceptions to the Regional Director's disposition of the issues raised by objections 1 and 2 and a brief in support thereof. No exceptions were filed by the Union.

Upon the entire record in this case, including the exceptions and brief, 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 parties stipulated, and we find, that the following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(c) of the Act:

All production and maintenance employees employed by the Employer now located at 3500 North Kedzie, Chicago, Illinois, excluding printers, office clerical employees, artists, designers, employees employed on a salary basis, guards and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report and the Employer's exceptions thereto, and hereby adopts the Regional Director's findings and recommendations.

The Regional Director's investigation revealed that the Employer has several plants in the Midwest at which the employees are not represented by any labor organization. The plant involved herein, whose employees are represented by the Union, was acquired by the Employer in July 1971. On August 20, 1974, the instant decertification petition was filed, and an election was scheduled for December 5.

On December 2, the Employer sent the following letter to the employees:

### TO ALL GREDE PLASTICS EMPLOYEES:

On Thursday, December 5th, you and your fellow workers will decide a very important question—whether or not you wish to be represented by a union.

Consider the facts before you vote.

*It is a fact* that the employees at our six non-union foundries have received larger and more frequent wage increases than you have under your recent contract.

*It is a fact* that these non-union employees enjoy a better fringe benefit package than you had under your contract.

*It is a fact* that these non-union employees have greater job security through satisfied customers than you supposedly had from the union contract.

These facts are the result of a team effort on the part of all of these employees in satisfying our customers.

We believe you should be a part of this successful team—and free from union dues.

Vote *NO* on December 5th.

The Union lost the election 96 to 84.

On December 16, at a time when the Union's objections were pending, the Employer sent the employees another letter. In that letter, after thanking the employees for having voted the Union out, the Employer announced a 12-percent wage increase; improved medical and life insurance; elimination of the requirement for employees to contribute insurance payments in order to cover their dependents; an extension of accident and sickness benefits; an additional holiday; and an improved vacation plan.

<sup>1</sup> All dates are 1974 unless indicated otherwise.

In support of its objections, the Union did not contend that the statements contained in the December 2 letter regarding wages and benefits enjoyed by the Employer's unrepresented employees were untrue. Rather, the thrust of the Union's contention was that the letter contained promises of benefits to the employees if they withheld support from the Union. It also argued that the letter must be viewed in connection with the Employer's immediate conferral of benefits after the election in which the employees did in fact withdraw their support from the Union.

We agree with the Regional Director's conclusion that the letter, however factual, was a clear invitation to the employees to reject the Union and receive benefits for doing so.

Thus the letter stressed the fact that all the Employer's nonunion employees received better wages and benefits and had better job security than the Union had been able to obtain from the Employer's predecessor. The letter describes the nonunion plants as constituting a team and invites these union employees to join that team by rejecting the Union. Since the employees knew that if the decertification effort were unsuccessful the Union would be bargaining with the Employer over wages, fringe benefits, and job security, the employees also knew that it was within the Employer's power to agree or not to agree to employment terms desired by them. Thus it is clear that the contents of the letter told employees that if they joined the Employer's "team" of nonunion employees they as "team" members would enjoy "team" benefits. At the same time the letter had the effect of warning employees that if they declined to join the "team" by voting against decertification, Respondent would take a tough stand during negotiations and would not agree to terms and conditions of employment comparable to those enjoyed by the nonunion employees. Accordingly, we agree with the Regional Director's finding that the election should be set aside and a second election directed.<sup>2</sup>

[Direction of Second Election omitted from publication.]<sup>3</sup>

CHAIRMAN MURPHY and MEMBER KENNEDY, dissenting:

<sup>2</sup> Our dissenting colleague makes much of the fact that the Employer's actual conferral of benefits did not take place until after the election. While this conduct took place outside the critical period and might very well have constituted a basis for an 8(a)(1) violation in an unfair labor practice context, the fact remains that the Employer's unlawful promise of benefit, made prior to the election and during the critical period, in itself constituted sufficient interference to warrant setting the election aside. Moreover, the later fulfillment at least in part of the implications conveyed to the employees during the pendency of the petition can hardly be regarded as unrelated to those implications.

<sup>3</sup> [Excelsior footnote omitted from publication.]

Contrary to our colleagues, we would not adopt the Regional Director's recommendation that this election be set aside. We find it clear from the Regional Director's report that the Employer did not commit objectionable acts during the critical period between the date the petition was filed and the date the election was held.

The decertification election was conducted in an appropriate unit of employees employed at the Employer's plant located at 3500 North Kedzie, Chicago, Illinois. The Employer, Grede Foundries, Inc., has several other plants located throughout the Midwest, including plants in Kingsford, Michigan; Wichita, Kansas; and Milwaukee, Waukesha, and Reedsburg, Wisconsin. These plants are neither organized nor are the employees represented by labor organizations.

During the critical period the Employer mailed a letter to the employees. In the letter the Employer set forth various employment benefits which it provided at its other nonunion plants. In each case, these benefits exceeded those provided by the contract covering the employees in the unit.<sup>4</sup> During the investigation of the Union's objections based on the Employer's letter, the Employer provided evidence substantiating the accuracy of its description of the wages and benefits enjoyed by the employees of the unorganized plants. And, indeed, the Union did not contend that there was any misrepresentation, nor did it submit evidence thereof, nor was any such evidence unearthed by the Regional Director. Notwithstanding, the Regional Director recommended that the Union's Objections 1 and 2 concerning the Employer's letter be sustained<sup>5</sup> and the election set aside.

The Regional Director based his recommendation on the fact that, after the election held on December 5, the Employer on December 16 granted a substantial increase in benefits to the employees. The Employer states that it did so in order to normalize the employment conditions of these employees vis-a-vis the employees of its other plants.

The Regional Director, citing *Triangle Plastics, Inc.*, 166 NLRB 768 (1967), *Ralph Printing & Lithographing Co.*, 158 NLRB 1353 (1966), and *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405 (1964), concluded that the Employer's letter of December 2 was an invitation to reject union organization with a promise of benefit and, in light of the increases given after the election, constituted interference with the free choice of employees. We cannot accept such fundamental lack of logic.

<sup>4</sup> This contract was negotiated by a previous employer which subsequently sold the plant to Grede Foundries

<sup>5</sup> Objection 3, the only other one, was dismissed for lack of any evidence to support it.

There is absolutely no conceivable logic by which one can hold that the grant of benefits, made after the election, can have interfered with that election.<sup>6</sup> We know of no case in which the Board has held to the contrary.

The only evidence we have of possibly objectionable conduct is the Employer's December 2 letter. Yet all parties concede, or at least do not contend otherwise, that the Employer's statements of the wages and benefits at its other plants are truthful and accurate. The Employer did not anywhere even hint that it would grant those same benefits to the unit employees. In point of fact, we do not know that the Employer even did. We only know that it increased some benefits after the election to bring them up to the "standard" of its other plants.

The Board has held countless elections and rendered a myriad of decisions in which it has found unobjectionable the simple statement of an employer to its employees that it has been fair to them in the past, implying that it will continue to do so. Nor does this Board set aside elections in which a union truth-

<sup>6</sup> Obviously, since it did not occur during the critical period, it contravenes Board law to even consider it. *The Ideal Electric and Manufacturing Company*, 134 NLRB 1275 (1961).

fully tells employees that other, unionized plants pay higher wages than their, as yet unorganized, plant. The majority's decision requires that employees cast their vote in the dark as to facts which we believe they may legitimately consider in deciding whether or not they want continued union representation. If in fact, their collective-bargaining agent has been unsuccessful in securing for them higher wages than the Employer pays in its other plants, we fail to see why that cannot properly be called to their attention.<sup>7</sup>

Lastly, in the absence of a showing that these employees possessed clairvoyant powers, it is simply not reasonable to conclude that the postelection increase in benefits interfered with the election.

Accordingly, we would certify the results of the election.

<sup>7</sup> The majority cites no evidence to support its assertion that the Employer's letter "warned" the employees that, if they declined to join the "team" by voting against decertification, "Respondent would take a tough stand during negotiations and would not agree to terms and conditions of employment comparable to those enjoyed by the nonunion employees." There is no statement even resembling such a "warning" in the Employer's letter, and there is, of course, no other evidence that the Employer would engage in such conduct.

The majority insists on clinging to the thought that the postelection grant of benefits "can hardly be regarded as unrelated to those implications." In light of *Ideal Electric*, and without the benefit of any evidence of such a "relationship," I cannot find the legal relevancy or materiality of such a concept.