

Original Art Company, Inc., Employer-Petitioner and Local Union No. 200, Allied Crafts Division, United Textile Workers of America, AFL-CIO. Case 13-RM-1096

January 23, 1976

DECISION ON REVIEW AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS FANNING, JENKINS, AND PENELLO

On June 5, 1974, the Regional Director for Region 13 issued a Supplemental Decision on Challenges and Objections in the above-entitled proceeding in which he sustained the Union's Objections 4 and 7 to conduct affecting the results of the election.¹ Thereafter, pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a request for review of the Regional Director's Supplemental Decision on the grounds, *inter alia*, that he departed from officially reported Board precedent.

By telegraphic order dated July 16, 1974, the National Labor Relations Board granted the Employer's request for review.²

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.

The Board has considered the entire record in this case with respect to the issues under review and makes the following findings:

In sustaining the Union's Objection 4, the Regional Director found that in a speech delivered to the employees 2 days before the election the Employer's president misrepresented the amount of the Union's initiation fee. He also stated, "If your brother comes asking for a job if he doesn't have \$40 to give to the Union, he can't work."³ Further, one of the Union's witnesses states the Employer's president informed

¹ The tally of ballots for the election, which was conducted on February 20, 1974, showed that of approximately 39 eligible voters 27 cast valid ballots, of which 13 were for, and 14 against, the Union. There were five challenged ballots and no void ballots. The Regional Director sustained one challenge and overruled four.

² Subsequently, by telegraphic order dated August 8, 1974, the National Labor Relations Board deferred ruling on Objections 4 and 7 and remanded the case to the Regional Director for disposition of unresolved Objections 1, 2, 3, 5, 6, and 8. On October 22, 1974, the Regional Director issued a Second Supplemental Decision on Challenges and Objections in which he overruled the above-mentioned objections, reaffirmed his earlier finding that the election should be set aside on the basis of Objections 4 and 7, and, having opened and counted the four challenged ballots, issued a revised tally of ballots which showed that of 31 valid votes counted 13 were cast for, and 18 against, the Union.

³ According to the Union, the initiation fee is \$20 and it is practice to waive this fee for employees already working when the Union becomes certified.

the employees if they could not pay the initiation fee they could not work at the Employer's plant.

The Regional Director found (1) that the Employer's statements implied a closed shop agreement would be in effect and it would be necessary for an employee to pay \$40 before he could work for the Company, and (2) that the statements assume a union-security provision requiring the employees to join the Union would be a provision of a contract between the Employer and the Union when, in fact, this is a provision which is subject to bargaining between the parties. In sustaining this objection the Regional Director concluded the Employer's statements contained a material misrepresentation of fact which would affect the outcome of the election.

Contrary to the Regional Director, we find, as urged by the Employer, that considering the Employer's speech in its entirety, insufficient basis exists to warrant setting aside the election. We deem it significant that after the above statements of the Employer were challenged by an employee, the Employer's president stated that he was only speaking in general and did not know about the union rules but was talking from his experiences. He added, "All of you must find out all of these things." In these circumstances, we are of the opinion that the employees were in a position to independently evaluate the truth and accuracy of the Employer's representations.⁴ Accordingly, Objection 4 is hereby overruled.

Objection 7 alleges that the Employer misrepresented the contents of a partial dismissal letter sent to the Union by the Board's Regional Office concerning the dismissal of certain unfair labor practice allegations filed against the Employer.

The Regional Director found that the Employer requested a nonunit employee, Garcia, to translate the letter to the employees. He found that while Garcia accurately translated the portion of the letter which he read to the employees, the letter contained an additional sentence which was not included in the translation, namely, "8(a)(1) allegations of the charge remain outstanding." The Regional Director found that by reading and translating only part of the letter, the Employer substantially misrepresented the facts concerning the disposition of the prior charges, particularly as to the 8(a)(1) allegations.⁵

In the circumstances herein, we do not view Garcia's omission regarding the 8(a)(1) allegations

⁴ *Hollywood Ceramics Company, Inc.*, 140 NLRB 221, 224, fn 10 (1962).

Member Penello agrees with his colleagues that the alleged misrepresentation does not warrant setting aside the election, but so finds for the reasons set forth in his dissenting opinions in *Ereno Lewis*, 217 NLRB No 45 (1975), and *Medical Ancillary Services, Inc.*, 212 NLRB 582 (1974).

⁵ The 8(a)(1) allegations were resolved in a settlement agreement reached on November 30, 1973, more than 2 months prior to the election.

sufficient to warrant setting aside the election. The Employer contends, and the Union does not dispute, that the entire letter, and a copy of the aforementioned settlement agreement, was posted on the Employer's bulletin board for a substantial period prior to the election. Moreover, the letter remained posted during and after Garcia's translation of the letter. In our view, the posting of these documents cured any alleged misrepresentation which might otherwise have resulted from the oral translation to the employees. Accordingly, Objection 7 is overruled.

As all the objections have been overruled and the

tally of ballots shows that a majority of the valid ballots have not been cast in favor of the Petitioner, 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 Local Union No. 200, Allied Crafts Division, United Textile Workers of America, 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.