

GTE Lenkurt, Incorporated and International Brotherhood of Electrical Workers, AFL-CIO, CLC, Petitioner. Case 28-RC-2492

December 5, 1974

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN MILLER AND MEMBERS FANNING AND PENELLO

On March 7, 1974, the National Labor Relations Board issued a Decision and Order in 209 NLRB 473, in which it overruled certain objections filed by the Employer and directed that a hearing be conducted concerning certain other objections.

Pursuant to said Order, a hearing was held from April 15 through 22, 1974, in Albuquerque, New Mexico, before Hearing Officer L. L. Porterfield. All parties appeared and participated, with full opportunity to examine and cross-examine witnesses and present evidence and argument on the issues. On August 5, 1974, the Hearing Officer issued and served on the parties his report and recommendations. In his report, the Hearing Officer concluded that the objections to the election be overruled. As directed by the Board, no recommendations or conclusions of law were made on the issue of an alleged waiver of initiation fees by the Petitioner. Thereafter, the Employer filed exceptions 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.

The Board has reviewed the rulings of the Hearing Officer made at the hearing and finds that no prejudicial error was committed.¹ The rulings are hereby affirmed.

The Board has considered the Hearing Officer's report, the exceptions thereto, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Hearing Officer.² Addi-

¹ The Employer excepts to various findings of the Hearing Officer on the ground that he erred in crediting certain testimony. It is the established policy of the Board not to overrule a Hearing Officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *The Coca-Cola Bottling Company of Memphis*, 132 NLRB 481, 483 (1957), *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1961). We find no sufficient basis for disturbing the credibility resolutions in this case.

² Although Chairman Miller would adopt the report and recommendations of the Hearing Officer on the express issues that were considered, he would not certify the Petitioner as representative of the unit employees at this time. In the Board's original Decision in this proceeding, 209 NLRB 473 (1974), Chairman Miller stated that he would have expanded the hearing to include the issues regarding alleged misrepresentations of sick leave policy at one of Employer's organized plants and the alleged excessive

tionally, the Board finds no merit to the Employer's objections to the election based on Petitioner's waiver of initiation fees.

The Employer alleged in its objections to the election that Petitioner had offered to waive initiation fees for those members of the voting unit who signed authorization cards prior to the election. The Hearing Officer found that Petitioner's policy published prior to and repeated during the preelection period regarding initiation fees was that such fees would be waived for all employees in the bargaining unit at Lenkurt provided they joined the Union after the election but no later than 30 days after a contract was negotiated, or 60 days after the local was chartered, assuming that Petitioner won the election and was certified by the NLRB as the representative of the employees. The Hearing Officer based his finding on an analysis of a number of written communications distributed by Petitioner to the employees. Illustrative of these is a document prepared by Petitioner consisting of a six-page list of basic questions and answers for use by the employee organizers. In response to the question "How much will I have to pay for initiation fees and dues?" the answer states "No initiation fee. No dues until you have an acceptable contract with wages and benefit improvements." Of like import was a transcript of a recorded message prepared by Petitioner that could be heard by dialing a telephone number given the employees for this purpose, and which stated:

There will be no initiation fee for present employees who join the IBEW within 30 days after your contract is in effect.

A handbill dated February 23, 1973, distributed by Petitioner to employees generally several weeks prior to the date the petition was filed provided:

There will be *NO INITIATION FEE* charged any Lenkurt employee who joins the IBEW within 60 days following installation of the IBEW Local Union Charter.

An analysis of these published statements reveals the clear expression of an intention to make all present employees eligible for a waiver of initiation fees without

payments by Petitioner to its election observers that were overruled by the Regional Director. The Chairman is still of the opinion that the merits of these issues can only be fairly decided after a full evidentiary hearing on the allegations to determine the issues of fact and credibility.

Also, the Chairman previously reserved on the issue of whether the alleged union misrepresentation to employees that a supervisor had threatened two employees with reprisals if they failed to attend an employer meeting was of sufficient impact to warrant setting aside the election until such time as a complete factual context on the issues sent to hearing was developed. The Chairman continues to reserve on this issue as he finds that the record as developed at the hearing, without the resolution of the aforementioned issues, affords him an insufficient basis to determine if the alleged conduct might, *in toto*, be sufficient to warrant setting aside the election

the requirement of union membership prior to the election. There appears to be some variation in Petitioner's statements as to whether present employees would continue to be eligible for the waiver for 30 days after the negotiation of a contract with the employer or whether the period would extend to 60 days after a local was chartered by the International. In either event the waiver by its terms was made available to all employees, not only before, but subsequent to, the election, since the Petitioner had to be certified as the bargaining representative before either of these two conditions could occur. Because the waiver was clearly not conditioned on joining prior to the election, we find that such waiver as expressed by Petitioner's written and recorded statements was not objectionable under *N.L.R.B. v. Savair Manufacturing Co.*, 414 U.S. 270 (1973).

Petitioner's "Fact Book," which was distributed generally to the employees early in the campaign, states that:

Charter members are not required to pay "initiation fees" and there are no assessments or other costs.

We note that Petitioner's leaflet of February 23, 1973, referred to above, limited the period of eligibility for the waiver to a point in time 60 days after chartering of the IBEW local.

Based on the totality of circumstances existing herein, we find that the term "charter member" in Petitioner's "Fact Book" was likely to be interpreted by the employees to include all present employees who joined the Union at least up to the time the local was chartered. As we have already found, such time would inevitably occur after an election in which the Petitioner was successful. Thus it would be clear to employees that they could take advantage of the waiver by joining the Union subsequent to the election. Unlike the circumstances described in our decision in *Inland Shoe Manufacturing Co.*, 211 NLRB 724 (1974), therefore, the use of the term "charter member" herein did not create an ambiguity in which the employees could reasonably conclude that the waiver would be conditioned on their joining the Union prior to the election.

The Employer further contends that Petitioner made verbal representations to the employees that they

would have to pay initiation fees if they did not sign an authorization card prior to the election. The only credited testimony in support of this contention was that of employees Jones, Damon, and McLaughlin. These witnesses testified to representations by employee organizers that they would not have to pay initiation fees if they signed authorization cards prior to the election. We note, however, that Jones and Damon testified that they did not sign authorization cards, and that, although McLaughlin did sign a card, the Hearing Officer found that several months prior to the election she learned that her previous understanding was erroneous from reading Petitioner's literature and talking to employees, and she then knew that the opportunity to join after the election and avoid the initiation fee was available to all employees, whether or not they had previously signed an authorization card.

We find these three incidents, therefore, to have been isolated and insignificant considering the size of the 835-member voting unit, and we conclude that the employees would not reasonably be misled thereby, particularly in light of the clear and repeated expressions of union policy to the contrary throughout the campaign which we find were not objectionable under *Savair*.³

Accordingly, we find no merit to the Employer's objection relating to Petitioner's waiver of initiation fees, and as the tally of ballots shows that the Petitioner has obtained a majority of the valid ballots cast, we shall certify it as the exclusive bargaining representative of the employees in the appropriate unit.

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for International Brotherhood of Electrical Workers, AFL-CIO, CLC, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the said labor organization is the exclusive representative of all the employees in the unit found appropriate herein for the purposes of collective bargaining with respect to wages, hours of employment, or other conditions of employment.

³ See *Western Refrigerator, Subsidiary of Hobart Manufacturing Co.*, 213 NLRB No 40 (1974)