

**Crown Chevrolet Co. and C. Lee Barnes, Petitioner,
and Automobile Salesmen's Union, Local No.
1095, affiliated with United Food and Commer-
cial Workers International Union, AFL-CIO.
Case 32-RD-235**

April 10, 1981

DECISION AND DIRECTION

The National Labor Relations Board has considered the determinative challenges and objections to a decertification election held on May 30, 1980,¹ and the Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief² and hereby adopts the Regional Director's findings and recommendations only to the extent consistent herewith.

The Union's Objections 3 and 7 allege that the Employer induced its employees to vote for decertification of the Union by promising benefits to them. The Regional Director's investigation disclosed that the Employer conducted a preelection meeting of eligible voters approximately 28 hours before the election, at which its lawyer informed the employees that, even if the Union were decertified, the contractual wage rates would still be enforceable against the Employer under California law and that, if the Union were decertified, the Employer intended to implement its last collective-bargaining proposals relating to hours, night openings, and holiday work. In concluding that the statement did not amount to objectionable conduct, the Regional Director stated that, in the absence of other evidence,

. . . the statements . . . merely reflected the Employer's attorney's opinion concerning the enforceability of the Employer's contract until its stated expiration date, regardless of the outcome of the decertification election, and the Employer's lawful right to implement changes

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was four for and four against continued representation by the Union. There were three challenged ballots, a sufficient number to affect the results of the election.

² In the absence of exceptions, we adopt *pro forma* the Regional Director's recommendation that the Union's Objections 1, 2, 4, 5, 6, and 8 be overruled in their entirety and that the three challenged ballots be opened and counted.

On September 17, 1980, the Union filed with the Board a motion to remand this proceeding to the Regional Director for further investigation. On September 29, 1980, the Employer filed with the Board a response in opposition to the motion to remand. The motion and accompanying affidavit of Richard Salvaressa, a union officer, allege that the employees in the unit in which the decertification election was conducted were unwilling to cooperate in the Regional Director's original investigation because of their fear of employer reprisals. Neither the motion nor the affidavit contains specific allegations of conduct by the Employer that may have had such an inhibiting effect. The motion to remand is therefore hereby denied as it raises no evidentiary issues warranting further investigation.

in employees' working conditions in the absence of any obligation to bargain with the Union.

We disagree with the Regional Director's characterization of the Employer's promise to implement its last collective-bargaining proposals as to scheduling and holiday work.³ Unlike the Regional Director, we construe the statement as a promise of new or increased benefits sufficiently objectionable to warrant directing a new election in this case. In the vast majority of cases, decertification proceedings occur at a time when the incumbent union is negotiating a new contract with the employer. Under such circumstances, if an employer promises to implement its latest collective-bargaining proposal, the clear implication is that the employer has made concessions in negotiating sessions that represent an increase in prior contractual benefits. Such a statement, therefore, represents more than a promise to maintain the status quo and constitutes a promise of increased benefits if the employees vote against the Union.

Accordingly, we shall direct the Regional Director to open and count the challenged ballots and, if the results of the election conducted on May 30, 1980, disfavor the Union, to conduct a new election.

DIRECTION

It is hereby directed that, as part of his investigation to ascertain whether the Union shall continue as representative for the purpose of collective bargaining with the Employer, the Regional Director for Region 32 shall, according to the Board's Rules and Regulations, within 10 days from the date of this Decision and Direction, open and count the ballots of C. Lee Barnes, Linda Bell, and Jim Kittredge, and cause to be served upon the parties a revised tally of ballots, including the count of the ballots of Barnes, Bell, and Kittredge. In the event that the revised tally of ballots shows that the Union has received a majority of the valid ballots cast, the Regional Director shall issue the appropriate certification of representative.

In the event that the revised tally of ballots shows that the Union has not received a majority of the valid ballots cast, a second election by secret ballot shall be conducted among the employees in the unit found appropriate, at such time as the Regional Director deems appropriate. The Regional Director for Region 32 shall direct and supervise

³ We agree that, in the context of a decertification election, an employer does not promise new or increased benefits by advising its employees that it intends to maintain the status quo under an existing contract. *El Cid, Inc.*, 222 NLRB 1315, 1316 (1976). See also *Ellex Transportation, Inc. (Formerly Hugh Breeding, Inc.)*, 217 NLRB 750 (1975).

the election, subject to the National Labor Relations Board Rules and Regulations, Series 8, as amended. Eligible to vote are those in the unit who were employed during the payroll period ending immediately before the date of issuance of the Notice of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the

designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof, and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.⁴ Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by Automobile Salesmen's Union Local No. 1095, affiliated with United Food and Commercial Workers International Union, AFL-CIO.

⁴ [Excelsior footnote omitted from publication.]