

**Louisville Lumber & Millwork Company, Inc. and Paul D. Eaton, Sr., Petitioner and Kentucky State District Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, and its Local 2501, AFL-CIO. Case 9-RD-1789**

August 22, 1996

**DECISION AND ORDER REMANDING FOR HEARING**

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND FOX

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on March 7, 1996, and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 8 for and 9 against the Union, with no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, and adopts the Regional Director's findings and recommendations,<sup>1</sup> except that it finds that the Union's Objection 2 raises substantial and material issues which can best be resolved by a hearing.<sup>2</sup>

**ORDER**

It is ordered that a hearing be held before a designated hearing officer for the purpose of receiving evidence to resolve the issues raised by the Union's Objection 2.

IT IS FURTHER ORDERED that the hearing officer designated for the purpose of conducting the hearing shall prepare and serve on the parties a report containing credibility resolutions, findings of fact, and recommendations to the Board as to the disposition of the objection. Any party may, within the time prescribed

<sup>1</sup> Absent exceptions, we adopt pro forma the Regional Director's recommendation that the Union's Objection 4 be overruled.

<sup>2</sup> Contrary to our dissenting colleague, we find that a hearing is necessary to resolve the issues raised by Objection 2. The evidence presented concerning that objection consisted of two inconsistent employer-generated documents—a dues remittance form sent to the Union by the Employer suggesting the possibility that two employees had been given a pay increase, and payroll records indicating that no increases had been granted. The Regional Director resolved the apparent conflict between the two documents without a hearing by accepting the Employer's bare assertion that the dues remittance form was inaccurate because of clerical errors, but the payroll records are correct. Our dissenting colleague also accepts the Employer's explanation. In our view, however, the question of which of the two employer-generated documents is accurate is a factual issue which cannot properly be resolved without a hearing. The Union should be given the opportunity to examine the Employer's witnesses and test their explanation that bookkeeping errors occurred. For this reason we believe that the proper course is to remand this proceeding for a hearing on the Union's Objection 2.

by the Board's Rules and Regulations, file with the Board in Washington, D.C., eight copies of exceptions to the hearing officer's report. Immediately upon the filing of such exceptions, the filing party shall serve a copy on the other parties and shall file a copy with the Regional Director. If no exceptions are filed, the Board will adopt the recommendations of the hearing officer.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 9 to arrange the hearing.

CHAIRMAN GOULD, dissenting in part.

I agree with my colleagues that the Regional Director correctly recommended that the Union's Objections 1, 3, and 4 be overruled. Contrary to my colleagues, I would also find that the Regional Director correctly recommended that Objection 2 be overruled without a hearing, because the Union has failed to submit sufficient evidence to establish a prima facie case in support of the objection.

The Union's Objection 2 alleges that the Employer gave two employees a pay raise shortly before the election. In support, the Union presented dues reports from the Employer setting forth the amount of dues deducted from each employee's wages during December 1995, and January and February 1996. The reports show that in February the Employer apparently increased the amount of dues deducted from the wages of employees Robert Unseld and Paul Eaton. The Union did not present other evidence in support of the objection.

The Regional Director found that the Objection 2 did not raise substantial and material issues affecting the result of the election and recommended that it be overruled. In reaching this conclusion, he relied in part on evidence discovered during an investigation of the objection, including: Eaton's denial that he received a pay increase; the Employer's payroll records which show that rates of pay for Eaton and Unseld remained the same during the period December 1995 to February 1996; and interviews of the Employer's witnesses in which they asserted that the apparent increase in dues for Eaton and Unseld were clerical errors.

The Union excepts, contending that the Regional Director based his recommendation on a credibility determination that was not within his authority to make without the benefit of a hearing. In particular, the Union contends that the Regional Director improperly credited the Employer's payroll records and the testimony of the Employer's witnesses over the dues reports supplied by the Union. The Board's Rules and Regulations require that substantial credibility issues concerning material facts be resolved at a hearing and

not upon the basis of an evaluation of the results of an administrative investigation.<sup>1</sup>

I have examined the evidence relied on by the Regional Director in this case, however, and I find that there are no credibility issues to be resolved. The evidence submitted by the Union is easily reconciled with and is in no way inconsistent with the evidence discovered during the Regional investigation of the objection.

With regard to Unseld, the dues reports leave little room for doubt that the apparent increase in his dues was a typographical error. The evidence discovered during the Regional Director's ex parte investigation merely confirms this. The Union contends that if Unseld's wages remained unchanged his dues should have been \$23.35 in February. The Union infers that Unseld received a raise from the fact that his dues were recorded as \$23.85 in the February report. It is apparent from the report, however, that the Employer did not deduct \$23.85 from Unseld's wages. Thus, the sum of the dues recorded for each individual employee is \$379.97. The total recorded at the bottom of the dues report, however, and on the check attached to the dues report, is \$379.47. Therefore, the total dues deducted in February and transmitted to the Union did not include the apparent 50-cent increase in Unseld's dues. Further, the March report indicates that the Employer deducted \$23.35 from Unseld's wages in March.

<sup>1</sup>Sec. 102.69(d); NLRB Casehandling Manual Sec. 11396.2; *River Walk Manor, Inc.*, 269 NLRB 831 (1984).

With regard to Eaton, the payroll records show that he earned \$10.55 an hour during the period December 1995 to February 1996. Several other employees are also shown to have earned the same hourly wage. According to the dues reports, however, in December 1995 and January 1996, other \$10.55-an hour employees paid 50 cents more than Eaton in dues. According to the Employer, it discovered this error in February, and increased Eaton's dues by 50 cents to \$23.35 to match the dues paid by other \$10.55-an hour employees. It then deducted another 50 cents from his wages to make up for its error in the previous months. In March, the Employer deducted \$23.35 in dues from Eaton's wages, the same amount deducted from the wages of other employees earning \$10.55 an hour.

The Union has not submitted any evidence contradicting the payroll records and witnesses, nor does it contend that it could produce such evidence at a hearing. The payroll records and the Employer's witnesses are therefore uncontroverted, and there are no credibility issues to be resolved.<sup>2</sup> Under these circumstances, I find that the Regional Director properly relied on his ex parte investigation in determining that the Union is not entitled to a hearing on its Objection 2.

<sup>2</sup>In my opinion, the Union cannot create a credibility issue merely by *suggesting* that evidence *may* have been fabricated, without providing any basis for that suspicion.