

Station Operators, Inc. and Local 371, United Food and Commercial Workers Union, AFL-CIO, Petitioner. Case 34-RC-1038

April 27, 1992

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

The National Labor Relations Board, by a three-member panel, has considered objections to an election held on August 1, 1991, and the attached Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 18 for and 6 against the Petitioner, with 2 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the Regional Director's findings and recommendations,¹ and finds that a certification of representative should be issued.²

In adopting the Regional Director's recommendation to overrule the Employer's objection relating to the interruption by the Petitioner's representatives of the Employer's campaign meeting on its premises 2 weeks

¹ We find distinguishable from the present case *Plumbers Local 162 (Natkin & Co.)*, 283 NLRB 1160 (1987), and *Alyeska Pipeline Service Co.*, 261 NLRB 125 (1982), cited by the Employer in support of its exception to the Regional Director's recommendation to overrule its objection regarding the Petitioner's letter distributed to employees on about July 31, 1991. In *Plumbers Local 162*, the Board found that a union violated Sec. 8(b)(1)(A) of the Act by discriminating against nonmembers in the operation of its exclusive hiring hall. In *Alyeska Pipeline*, the Board found that a union engaged in objectionable conduct by suggesting during an election campaign that members would have an advantage over nonmembers in obtaining jobs through the union's exclusive hiring hall. The situation presented here is not akin to the hiring hall contexts in those two cases, where the union controlled access to jobs. In addition, the Petitioner's letter does not promise to represent or treat members differently from nonmembers, but rather sets forth the benefits that allegedly could be obtained from collective bargaining and union membership. Such statements do not exceed the bounds of privileged campaign propaganda. See *Dart Container*, 277 NLRB 1369-1370 (1985); *Smith Co.*, 192 NLRB 1098, 1101 (1971).

Member Oviatt notes that the Employer in its brief asserts that it "did not raise any issue of 'truth'" but rather "discrimination." He, therefore, finds it unnecessary to pass on *Midland National Life Insurance Co.*, 263 NLRB 127 (1982), upon which the Regional Director relied.

² The Employer has renewed its motion, first made to the Regional Director, to expand the record, as defined by Sec. 102.69(g) of the Board's Rules and Regulations. We deny the motion for the reasons set forth by the Regional Director in his January 8, 1992 letter to the Employer.

before the election, we agree with the Regional Director's finding that this case is distinguishable from *Phillips Chrysler Plymouth*, 304 NLRB 16 (1991).³ In *Phillips*, the Board set aside an election based on the refusal of two union representatives to stop talking to unit employees and to leave the employer's shop area approximately 75 minutes before the election. The Board relied on the fact that the union representatives "repeatedly and belligerently refused to heed requests of the employer's president to leave" the premises, even after the police were summoned and 75 minutes before the election. The Board found that the union agents' conduct conveyed to employees the message that the employer was powerless to protect its own legal rights in a confrontation with the union. The Board also observed in *Phillips* that the impact of the incident was especially significant because a shift of one vote could have changed the outcome of the election.

In contrast, here the Petitioner's representatives' confrontations with the Employer's officials during the employee meeting occurred 2 weeks before the election, and the results of the election were not close. In addition, unlike in *Phillips*, the Petitioner's representatives left the premises when told to do so by the Employer's officials, after being on the scene for approximately 5 minutes in each of three instances.⁴ Accordingly, this is not a situation in which the Petitioner's representatives directly challenged the Employer's property rights in a manner that would tend to interfere with employees' free and uncoerced choice in the election.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Local 371, United Food and Commercial Workers Union, AFL-CIO, and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time service station attendants/cashiers employed by the Employer at its Fairfield I-95 East/West locations; excluding all office clerical employees and guards, professional employees and supervisors as defined in the Act.

³ Member Devaney finds the instant case distinguishable from *Phillips*, but also notes that he dissented in that case. Chairman Stephens, who did not participate in *Phillips*, agrees that it is distinguishable. He expresses no view on whether it was correctly decided.

⁴ We, however, do not rely on the Regional Director's characterization of the incidents at issue as "relatively mild."