Ursery Companies, Inc. *and* Service Employees International Union Local 531, AFL–CIO, Petitioner. Case 34–RC–1098

May 28, 1993

DECISION AND ORDER REMANDING

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

The National Labor Relations Board has considered objections to an election held July 9, 1992, and the Regional Director's report recommending overruling them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 8 for and 7 against the Petitioner, with 1 challenged ballot, a sufficient number to affect the results of the election.

The Board has reviewed the record in light of the exceptions and briefs, and adopts the Regional Director's findings and recommendations.[1] The determination of results of the election is dependent on resolutions to be made following a hearing with regard to the challenged ballot.

Our dissenting colleague would set aside the election on the basis of the Union's including in its campaign literature a letter from a member of the House of Representatives of the State of Connecticut supporting the Union. The letter, on the Representative's official stationery, was reduced and superimposed on the Union's stationery. Our colleague refers to a long-established test that where campaign material is not recognizable as campaign propaganda of a particular party, ''no participant in a Board election may be permitted to suggest either directly or indirectly that *this Government Agency* endorses a particular choice in an election.'' (Emphasis added.) Our colleague concludes that the state representative's endorsement of the Union eliminated the NLRB's appearance of impartiality and thereby interfered with the employees' free choice in the election. We can find no legal or logical basis for that conclusion.

In *Columbia Tanning Corp.*, 238 NLRB 899 (1978), relied on by our colleague, the Board set aside an election on the basis of a letter written in Greek and sent to Greek employees by the commissioner of labor of the State of Massachusetts on his official stationery endorsing the union. The Employer had submitted evidence that the labor commissioner had ''a significant degree of control over the terms and conditions of employment in . . . Massachusetts, particularly over alien workers.'' The Board found that the employees could not be expected to discern readily the difference between the state ''Department of Labor'' and the Federal ''National Labor Relations Board,'' particularly in light of the fact that both contain the word ''Labor'' in their titles. The differences between *Columbia Tanning* and the present case are obvious and significant. There is no reference to ''Labor'' in the state representative's letter. Further, the letter was sent by the Union and appeared on Union stationery as a reproduction. In our view these facts suffice, without more, to identify the Union as the source of the document in question.

In *Columbia Tanning* and in general, the concern is whether and to what extent a document imitates a Board publication and under what circumstances it can be said that the Board or the United States favors one party to the election.[2] In the absence of other objectionable conduct, the Board will honor the decision made by the employees in the voting booth, unless it can be shown that the Board's impartiality was called into question. The campaign material involved in this case clearly does not meet that test. Accordingly we affirm the Regional Director's recommendation to overrule this objection.

ORDER

It is ordered that this case is remanded to the Regional Director for Region 34 for further proceedings consistent with this Decision and Order Remanding.

MEMBER OVIATT, dissenting.

Contrary to my colleagues, I would not adopt the Regional Director's recommendation to overrule the Employer's Objections 4(b) and (c) to the Union's use of a letter of endorsement from a state representative on official stationery. For the reasons set forth below, I would sustain these objections and direct a second election.

Shortly before the election, the Union mailed campaign materials, including a copy of the representative's letter superimposed on the Union's stationery, to all unit employees. The letter is signed by Juan Figueroa, a member of the House of Representatives of the State of Connecticut. The letter is written on official stationery, bears the seal of the State of Connecticut, as well as Representative Figueroa's name, address, telephone numbers, and State House of Representatives committee affiliations.

The text of the letter reminds the employees of the date and time of the election. The letter additionally advises that other employees at the same facility recently voted in favor of the Union and ''since then they have negotiated a contract with the cleaning contractor and won many new benefits including free indi-

[1] In the absence of exceptions, we adopt the Regional Director's recommendation that Objections 3, 4(a), 4(d), and 4(e) be overruled.

[2] See *Huntsville Mfg. Co.*, 240 NLRB 1220, 1223 (1979). Unlike our colleague, we believe that the employees are not so politically naive that they would be unable to distinguish between a Connecticut State Representative and the NLRB, and to recognize that the former is a state legislator and the latter a Federal agency with no connection to each other.

vidual health insurance coverage for all employees.'' Attached to the letter is a list of employee benefits of the unit at issue here, which are compared unfavorably with the benefits won by the employees who recently selected the Union as their representative. The letter concludes, ''I am sure after reviewing [the attachment] you will see that the Union is powerful and wins for its members. . . . Remember, in unity there is strength.''

As noted, Representative Figueroa's letter was superimposed on the Union's stationery. Above the official Connecticut state letterhead the letter bears the name (in abbreviation), address, and telephone number of the Union, along with the slogan ''Justice for Janitors.''

The evidence shows that half of the 16 unit employees here did not read or speak English, and further reflects that the remaining employees possessed limited English skills. The election notices and ballots were printed in English and Spanish, and the Union translated much of its campaign literature into Spanish. In light of these circumstances, I believe the letter created the clear possibility that employees understood the letter to suggest governmental approval of the Union. The letter clearly exhorts the employees to support the Union, and the source of that exhortation is a Connecticut state representative. The letter prominently bears the seal of the State of Connecticut, followed by ''HOUSE OF REPRESENTATIVES, STATE CAPITOL, HARTFORD, CONN.'' In my view, these employees in all likelihood would not readily discern the distinction between Connecticut State government and the Board as an agency of the Federal Government. I agree with the Employer that these employees' possible unfamiliarity with the structure of Government creates the likelihood that the employees could have been misled as to the impartiality of the ''government'' in the election.

The potential for confusion was compounded by the Union's failure to clearly identify that it—independent of the Government—was the source of the letter. The letter was not accompanied by any cover document or other materials identifying the Union as the source of the document. Rather, the employees received what appears to be an official letter from a Connecticut representative endorsing the Union in the election. In these circumstances, I cannot conclude that the abbreviated name of the Union and its address at the top of the letter sufficiently identified the Union as the independent source of the letter; indeed, that reference to the Union might compound any confusion.

The Board has explained that so long as campaign material is recognizable as propaganda of a particular party, the Board will leave the task of evaluating its contents solely to the employees. See, e.g., *SDC Investments*, 274 NLRB 556, 557 (1985). The Union failed to sufficiently identify the material in dispute here. Scrutiny by the Board of the material is accordingly appropriate. Id. It has long been established that no participant in a Board election may be permitted to suggest either directly or indirectly that this Government Agency endorses a particular choice in an election. *Allied Electric Products*, 109 NLRB 1270 (1954); *Columbia Tanning Corp.*, 238 NLRB 899 (1978). See *Huntsville Mfg. Co.*, 240 NLRB 1220 (1979) (the Board considered and rejected the employer's contention that a union document misled employees by making it appear as though the Board and/or the United States Government favors unionization). A suggestion of governmental approval of any party to an election eliminates the Board's appearance of impartiality and thereby interferes with the exercise of a free choice in the election. *Columbia Tanning Corp.*, supra, 238 NLRB at 890. In my view, the Union violated these fundamental principles with the Figueroa letter mailed to all unit employees shortly before the election. For the reasons set forth above, I believe the letter impermissibly suggests Government sanction of the Union in the election, and requires that we set the election aside.

I accordingly dissent.