

**Amveco Magnetics, Inc. and Sheet Metal Workers' International Association.** Case 16-RC-10443

April 4, 2003

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS LIEBMAN, SCHAUMBER, AND ACOSTA

The National Labor Relations Board, by a three-member panel, has considered objections to an election held September 11, 2002, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 21 ballots cast for and 40 ballots cast against the Petitioner, with 1 void ballot and no challenged ballots.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings<sup>1</sup> and recommendations only to the extent consistent herewith, and finds that a certification of results of election should be issued.<sup>2</sup>

The hearing officer found that a 1-page document entitled "Thought for the Day or Don't Be a Chump," which the Employer posted on a bulletin board, contained an implied threat to eliminate bonuses and overtime work if the Union won the election.<sup>3</sup> She, therefore, found merit to the Petitioner's Objection 5 and recommended that the election be set aside and a new election conducted. For

<sup>1</sup> The Employer has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

<sup>2</sup> In the absence of exceptions, we adopt pro forma the hearing officer's recommendations to overrule Objections 1, 2, 3, 4, and 7. The hearing officer granted the Petitioner's request to withdraw Objection 6.

<sup>3</sup> The document presents a "hypothetical situation," with two sets of wage computations, one reflecting straight time, overtime, and bonus pay and the other reflecting a pay raise, but no overtime or bonus pay, and a "new monthly bill" that was intended to represent union dues and assessments.

the reasons explained below, we disagree and overrule the objection.

The only witness who testified about the "Thought for the Day" document was its author, the Employer's vice president, David Snelling. He said that he saw the document on a bulletin board during the critical period.<sup>4</sup>

Snelling was not asked, and the record does not indicate, where the bulletin board was located. In addition, there is no evidence of the duration of the posting. Finally, although employees testified about other employer campaign propaganda, there is no evidence that even one employee saw the document or learned about it.

Although we can assume that, by posting the document, the Employer did intend for it to be seen by employees, the unusually sparse record here does not permit us reasonably to infer that the document could have influenced enough employees to affect the results of the election, which the Petitioner lost by 10 votes and a nearly 2-1 margin. Thus, in the absence of sufficient evidence that posting the document would have affected the results of the election, we see no basis for overturning the election. See, e.g., *M.B. Consultants, Ltd.*, 328 NLRB 1089 (1999) (overruling objection where supervisor's promise of benefits could not have influenced more than two employees and election was decided by six votes). See also *Metz Metallurgical Corp.*, 270 NLRB 889 (1984); *Caron International*, 246 NLRB 1120 (1979).

Accordingly, we reverse the hearing officer and overrule the Petitioner's objection.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Sheet Metal Workers' International Association and that it is not the exclusive representative of these bargaining unit employees.

<sup>4</sup> Although Snelling testified that it was possible that the document was mailed or handed out to employees, there is no record evidence confirming that either step was actually taken.