

Blue Island Newspaper Printing, Inc. and Chicago  
Typographical Union No. 16, Petitioner. Case  
13-RC-16459

30 January 1985

## DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS

The National Labor Relations Board has considered objections to an election held 28 June 1984 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 20 for and 10 against the Petitioner, with no challenged ballots. The Employer, Blue Island Newspaper Printing, Inc. (Blue Island), filed objections to the election, and the Regional Director directed that a hearing be held before a hearing officer.

The Board has reviewed the record<sup>1</sup> in light of the exceptions and briefs and adopts the hearing officer's findings and recommendations<sup>2</sup> as modified and finds that a certification of representative should be issued.

The hearing officer recommended that all six of Blue Island's objections to the election be overruled. Blue Island excepts as to the hearing officer's disposition of Objections 3, 4, 5, and 6. We find no merit in Blue Island's exceptions but modify and supplement the hearing officer's report as follows.

### I.

Objection 3 concerned, in part, two statements made by third-shift press employee John Hill that allegedly created an atmosphere of fear which interfered with a free and fair election. About 1-1/2 weeks before the election, after Blue Island's president made an antiunion speech at an employee meeting, third-shift pressman John Kwiatkowski heard Hill say, "I am going to have my own meeting and take care of those who are going to vote no." On the morning of the election prior to the polls opening, third-shift Press Foreman David Bujnowski<sup>3</sup> heard Hill, while in the press area, say, "I will have to take care of all your no votes." Hill denied that he made these statements, but the hearing officer found to the contrary.

<sup>1</sup> We grant Blue Island's request that the word "paystubs" be corrected to read "paste-ups" everywhere that it appears in the hearing transcripts.

<sup>2</sup> In the absence of exceptions, we adopt, pro forma, the hearing officer's recommendations that Objections 1 and 2 be overruled.

<sup>3</sup> Notwithstanding Bujnowski's job title, his name, as well as that of another press foreman, appeared on the *Excelsior* list.

To judge whether threats by third parties<sup>4</sup> create a general atmosphere of fear and reprisal that renders a free election impossible, we apply the following criteria recently articulated in *Westwood Horizons Hotel*, 270 NLRB 802 (1984):

In determining the seriousness of a threat, the Board evaluates not only the nature of the threat itself, but also whether the threat encompassed the entire bargaining unit; whether reports of the threat were disseminated widely within the unit; whether the person making the threat was capable of carrying it out, and whether it is likely that the employees acted in fear of his capability of carrying out the threat; and whether the threat was "rejuvenated" at or near the time of the election.

*Id.* at 803 (footnotes omitted). In this case, in addition to Foreman Bujnowski, six employees worked in the press area during the third shift: Hill, Kwiatkowski, Alonzo Dixon, Joseph Davis, Michael Bocot, and David Lancaster. As Hill's threatening statements were made in the press area, they appear to have been directed to, at most, the other third-shift press employees. As Kwiatkowski was an outspoken opponent of the Union, it may have been that Hill's statements were directed solely or principally at Kwiatkowski. Dixon, Davis, and Bocot testified that they did not hear the statement Hill made 1-1/2 weeks before the election that he would hold his own meeting and take care of those who were going to vote no, nor did they hear Hill's statement on the morning of the election that he would take care of the no votes. Moreover, they testified that they had not heard about such statements being made. Lancaster did not testify. Kwiatkowski, who heard Hill's earlier statement, testified that another employee was standing in the vicinity when this statement was made, but he could not recall which employee it was. Kwiatkowski told only his foreman, Bujnowski, about Hill's statement. Kwiatkowski also testified about a conversation he had with Hill on the morning of the election but did not testify that he had heard Hill's statement that morning that he was going to take care of the no votes. Therefore, we conclude that Hill's threatening statements were heard by only one foreman and, at most, two employees—Kwiatkowski and the unidentified employee who was in the vicinity when Hill made his first statement.<sup>5</sup> We further conclude that the testimony of

<sup>4</sup> We adopt the hearing officer's conclusion, for the reasons he states, that Hill was not an agent of the Union.

<sup>5</sup> It may be that Lancaster was the unidentified employee, as he was the only third-shift press employee who did not testify. All the others, except Kwiatkowski, denied hearing Hill's statement. Alternatively, it may be that the unidentified employee did not hear Hill's statement.

the other employees that they did not hear Hill's statements and had no knowledge of them affirmatively demonstrates that knowledge of Hill's statements was not disseminated to the other employees.

As to whether Hill was capable of harming opponents of the Union and whether it is likely that the employees acted in fear of his carrying out the threats, there was evidence that Hill at one time had a fight with his brother, who also was an employee of Blue Island, outside of work concerning a nonwork-related matter, but Hill had not been in fights at work. Additionally, a long time ago Hill had been a high school wrestler in the 105 pound weight class. The hearing officer found that Hill had a serious, almost brooding, demeanor. Davis and Bocot both testified that Hill was a quiet person. Kwiatkowski testified that Hill was mild mannered but tried to cultivate a reputation of being tough, although Kwiatkowski did not specify what Hill did to try to develop this reputation. Kwiatkowski also testified that, after he heard Hill say that Hill was going to have his own meeting and take care of those who were going to vote no, Kwiatkowski did not take seriously that Hill might do something to opponents of the Union. We also note that the language of Hill's two statements was vague and susceptible to a variety of interpretations. On the basis of these facts, we conclude that the hearing officer was correct in finding that Hill was not especially capable of carrying out a threat of physical harm. Moreover, we conclude that it is not likely that the employees acted in fear of Hill's threatening statements.

Finally, as to rejuvenation of the threat, Hill repeated his statement on the morning of the election but, as discussed above, Foreman Bujnowski was the only person to hear or learn of this statement.

Based on our analysis of Hill's threatening statements and the circumstances in which they were made, under the criteria set forth in *Westwood Horizons Hotel*, above, we conclude that, at most, only three individuals had knowledge of Hill's statements and the statements were unlikely to intimidate prospective voters. Therefore, we agree with the hearing officer that Hill's statements did not create a general atmosphere of fear and reprisal rendering a free election impossible.

## II.

We adopt the hearing officer's finding, in overruling Objection 6, that Marilyn Setzke,<sup>6</sup> the most prominent union supporter among the employees, was not a supervisor. Moreover, even if she performed the functions of a supervisor on the occasions that both Josie Kwiatkowski, who was in charge of stuffers, and Scott McManimen, who was the senior stuffer, were absent, these occasions were sporadic and insignificant. Setzke substituted for Kwiatkowski and McManimen only six times between 1 January and 30 July 1984, including three times from 1 January 1984 to the date the election petition was filed, 7 May 1984, and three times from 7 May to 30 July 1984.<sup>7</sup> The substitutions occurred irregularly rather than on any scheduled basis. Therefore, even if Setzke performed as a supervisor on the few occasions that she substituted for Kwiatkowski and McManimen, she did not spend a regular and substantial portion of her working time performing supervisory tasks. Accordingly, under *Aladdin Hotel*, 270 NLRB 838 (1984), she was not a supervisor within the meaning of Section 2(11)<sup>8</sup> of the National Labor Relations Act.

In adopting the hearing officer's disposition of Objection 6, we find it unnecessary to pass on the alternative rationales set forth by the hearing officer supporting his disposition beyond his finding that Setzke was not a supervisor.

## CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Chicago Typographical Union No. 16 and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and part-time production and maintenance employees but excluding all office clerical employees, salesmen, guards and supervisors as defined in the Act.

<sup>6</sup> The spelling of the name "Setzke" is corrected from that which appears in the hearing officer's report.

<sup>7</sup> Although whether Setzke was a supervisor after 28 June 1984, the date of the election, has no relevance to Objection 6, the evidence was presented in terms of the number of times that Setzke acted as a substitute prior to 30 July 1984, the final day of the hearing. Of the three times that Setzke served as a substitute between 7 May and 30 July 1984, the record shows that one of these occasions was on 27 May. It is not clear whether the two other times were before or after 28 June. Even if we assume that all three were prior to the election, our conclusion that Setzke did not fill in for Kwiatkowski often enough or regularly enough to be deemed a supervisor is not altered.

<sup>8</sup> 29 U.S.C. § 152(11).