

**Blazes Broiler and Darlene Kaiser, Petitioner and  
Hotel and Restaurant Employees International  
Union, Local 8, AFL-CIO. Case 19-UD-360**

19 March 1985

**DECISION AND CERTIFICATION OF  
RESULTS OF ELECTION**

**BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS**

The National Labor Relations Board has considered objections to a union-security deauthorization election held 6 November 1984 and the hearing officer's report<sup>1</sup> recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 19 for and 12 against<sup>2</sup> withdrawing the authority of the bargaining representative to require, under its agreement with the Employer, that membership in the Union be a condition of employment.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings and recommendations, and finds that a certification of results of election should be issued.<sup>3</sup>

**CERTIFICATION OF RESULTS OF  
ELECTION**

IT IS CERTIFIED that a majority of the employees eligible to vote has not voted to withdraw the authority of Hotel and Restaurant Employees International Union, Local 8, AFL-CIO, to require, under its agreement with the Employer, that membership in the Union be a condition of employment.

<sup>1</sup> Attached as an appendix

<sup>2</sup> Approximately 39 employees were eligible to vote

<sup>3</sup> In agreeing with the hearing officer that the Employer's objections lack merit, Member Hunter would overrule *Performance Measurements Co.*, 148 NLRB 1657 (1964), a case relied on by the Employer. In that case the Board set aside an election because of the presence of the employer's president during the polling period at a location where employees were required to pass in order to enter the polling place. Even though the president engaged in no electioneering the Board found that the employer's conduct interfered with employee free choice in the election.

To the extent that the Board in *Performance Measurements* established a per se rule that the mere presence of a party to an election outside the polling area constitutes objectionable conduct, Member Hunter disagrees with that decision. In his opinion, no per se rule is warranted. Rather, whenever any party, regardless of whether it is a union agent or an employer agent, stays outside the polling area during an election, Member Hunter would examine all the circumstances present in the case and determine whether the conduct, under the circumstances, is sufficient to warrant an inference that it interfered with the free choice of the voters. See, e.g., *Del Rey Tortilleria*, 272 NLRB 1106 (1984), *Boston Insulated Wire Co.*, 259 NLRB 1118 (1982), and *B E & K, Inc.*, 252 NLRB 256 (1980). Accordingly, he would overrule *Performance Measurements*.

**APPENDIX**

**HEARING OFFICER'S REPORT ON  
OBJECTIONS AND RECOMMENDATIONS**

Pursuant to a Stipulation for Certification Upon Consent UD Election, approved by the Regional Director on October 15, 1984, an election was conducted by secret ballot on November 6, 1984, among employees in the following unit:

All employees employed by the Employer at its 2622 N.W. Market, Seattle, Washington operation, excluding all office clerical employees, maintenance employees, supervisors and guards as defined in the Act and professional employees.

An official tally of ballots was served upon the parties on August 24, 1984, setting forth the following results:

Approximate number of eligible voters.....	39
Void ballots.....	0
Votes cast in favor of withdrawing the authority of the bargaining representative to require, under its agreement with the Employer, that membership in such Union be a condition of employment.....	19
Votes cast against the above proposition.	12
Valid votes counted . . . . .	31
Challenged ballots.....	0

On November 13, 1984, the Employer filed timely objections to the Union's conduct affecting the results of the election, copies of which were served on all parties.

On November 28, 1984, the Regional Director issued a Report on Objections and Direction and Notice of Hearing in which he concluded that the issues presented raised substantial and material questions of fact which would best be resolved at a hearing. Pursuant thereto, a hearing was held on December 10, 1984 in Seattle, Washington, before the undersigned Hearing Officer. Representatives of the Employer and the Union were present at the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce relevant evidence, and to provide oral arguments.

Upon the entire record in this proceeding, and from my observations of the witnesses, I make the following findings of fact, conclusions, and recommendations

**FINDINGS OF FACT AND CONCLUSIONS**

*Background*

The Employer operates a restaurant located in Seattle, Washington. The UD election of November 6, 1984 was conducted during two voting sessions. The objections filed pertain to the conduct of the Union's business agent, Glenn Hughes, during the second session held from 5:00 to 6:00 p.m. on the Employer's premises. A pre-election conference was held by the Board Agent conducting the election, Laurie Halpern, one-half hour prior to the first session.

### *The Objections*

The Employer's objections to conduct affecting the results of the election are as follows:

a. The presence of the Union's agent, Glenn Hughes, in the voting area and close to the voting booth while the polls were open during an election; and

b. Conversations with bargaining unit employees in the voting area while the polls were open during an election.

It is undisputed that Union business agent Glenn Hughes was in the restaurant during the second voting session. Except for a 15 minute visit to the bar for a Tab, he was seated at a table approximately 20 feet from the entrance to the banquet room where the voting was being conducted. It is also undisputed that from a sitting position, the entrance to the banquet room and the hallway approaching the door, which was open, are blocked by a 5 foot wall. Because of the protruding wall, the actual travel distance from Hughes' location to the banquet room is closer to 30 feet. At no time did Hughes enter the 15 foot corridor leading to the banquet room and at no time was there a lineup of employees in the corridor waiting to vote.

There were employees entering and leaving the corridor who passed within a few feet of Hughes. Employees were setting up for the evening dinner customers and entered the hallway to use the coffee and service counter. The time clock is also located at the far end of the hall near the entrance to the banquet room. No testimony was presented that any of these employees were actually on their way to vote when they passed Mr Hughes. The Employer's witness, the Petitioner Darlene Kaiser, hovered around the area where Hughes was seated. She testified that she saw only one person, Rhonda, enter the banquet room, however she did not indicate whether she passed by Hughes or entered by the time clock near the kitchen.

Kaiser also testified that Hughes on occasion stood up and that if one were standing, one could see over the wall to the banquet room door. Hughes admits he got up to go to the bar and that his return route gave him a view down the corridor to the banquet room entrance, but that he did not look down there. Even if he had looked down the corridor or stood up to stretch while seated at the table, I find these movements to be isolated and of no impact on the outcome of the election.

The Employer asserts that Hughes' location was in the voting area. Board Agent Halpern testified that she designated the banquet room and two corridors leading to the two banquet room doors as the "polling area," and instructed that all parties should remain away. Hughes was clearly located outside the designated polling area, and was in an area open to the public. Kaiser testified that the station where Hughes was seated was not open. Hughes, however, states that across the room in another area a couple were dining. This testimony was uncontradicted and, I therefore conclude that the dining room was open to the public even though the particular station where Hughes was seated was not yet open.

It is undisputed that Hughes had conversations with bargaining unit employees while he was seated at the table including the Petitioner Kaiser. There is, however, no evidence of electioneering by Hughes. Kaiser states that she did not hear all of Hughes' conversations, but that what she did hear was not electioneering, but small talk. Besides the employees who talked with Hughes at his table, he also talked briefly to the cashier, the bartender, and the cocktail waitress, but here again there is no evidence of electioneering.

The Employer argues that the voting area or polling area extends beyond the area designated by the Board Agent. For support of his position the Employer cites *Performance Measurement Co.*, 148 NLRB 1657 (1964) and *Star Expansion Industries Corporation*, 170 NLRB 364 (1968). In *Star Expansion* the union's chief observer electioneered right outside the entrance to the cafeteria where the election was being held. In the present case there is no evidence of electioneering and Hughes was not stationed just outside the entrance to the banquet room. Although *Performance Measurement* involves a nonelectioneering case, it does involve an Employer's President who stationed himself by the door to the voting area where he could observe exactly who went in to vote. In the present case Hughes had no direct view of the door to the banquet room. Although he could see who entered the hallway leading to the banquet room, the hallway also leads to the coffee service area, the time clock and the kitchen area. He had no way of knowing who was entering the hallway to vote and who was entering to perform job related duties, or heading to the time clock to check in or out.

Although Hughes did have extended conversations with some employees, the rule established by the Board in *Milchem, Inc.*, 170 NLRB 362 (1968) does not apply to prospective voters unless the voters are, (as was not true in the present case), in the polling area or in line waiting to vote. *Westwood Horizons Hotel*, 270 NLRB No. 116 (1984), *Boston Insulated Wire & Cable Co.*, 259 NLRB 1118 (1982), and *Harold W. Moore & Son*, 173 NLRB 1258 (1968). There is also no evidence that Hughes was near the voting booth as alleged by the Employer.

### *SUMMARY*

Because Hughes was seated outside the designated polling area, never entered in the designated polling area, and made no electioneering statements to employees, I conclude that the Employer's objections lack merit. I therefore recommend that they be overruled, and that the Regional Director issue a Certification of Results

### *Right to Review*

Pursuant to Section 102.69 of the Board's Rules and Regulations, within ten (10) days from the date of issuance of the Hearing Officer's Report, any party may file with the Board an original and eight (8) copies of exceptions hereto, with supporting brief, if desired, which shall

be printed or otherwise legibly duplicated. Immediately upon filing of such exceptions, the party filing the same shall serve a copy thereof, together with a copy of any brief filed, upon each of the other parties simultaneously and submit to the Board a statement of such service. (See

Section 102.69(f) as to the time limit for filing an answering brief to the exceptions.) If no exceptions are filed to the Hearing Officer's Report, the Board may decide the matter forthwith upon the record or make other disposition of the case.