

**American Laser Corporation and Amalgamated
Clothing and Textile Workers Union, Petitioner.
Case 27-RC-6405**

20 June 1986

**DECISION AND DIRECTION OF
SECOND ELECTION**

**BY CHAIRMAN DOTSON AND MEMBERS
DENNIS AND BABSON**

The National Labor Relations Board, by a three-member panel, has considered objections to, and determinative challenges in, an election held 1 September 1983¹ 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 29 for and 37 against the Petitioner, with 17 challenged ballots.²

The Board has reviewed the record in light of the exceptions and brief and has adopted the hearing officer's findings³ and recommendations as modified herein.

The Petitioner's Objection 3⁴ involves individual employee interviews conducted by the Employer's personnel manager, Joyce Wickham, after the critical period had begun.⁵ The hearing officer found that these interviews constituted solicitations of employee grievances. Although the hearing officer found that Wickham did not make any express promises of corrective action, she also found that Wickham had impliedly promised that the employee grievances raised in these interviews would be corrected. In its exceptions, the Employer contends that any inference in these meetings of any implied promise of corrective action was rebutted (1) by

Wickham's express disavowal that the complaints would be remedied, and (2) when the solicitation by Wickham is viewed in the context of her also updating in these meetings employee performance appraisals after having been away from the plant for 6 months. The Employer's exceptions relating to Objection 3 are without merit and, for the reasons set forth below, we adopt the hearing officer's recommendation that Objection 3 be sustained.

The employee interviews conducted by Wickham varied between 5 and 15 minutes in length and occurred over a 2-day period in early August. The interviews were on an individual basis encompassing approximately 70 employees, which is about 95 percent of the unit. For these interviews, Wickham basically used the same agenda, discussing wages, complaints, and suggestions.⁶ In this regard, Wickham testified that after she asked the employee what his or her salary was, she then asked if the employees had any complaints or suggestions. Wickham further testified that 95 percent of the employees interviewed voiced some complaints or suggestions.⁷ According to Wickham, after the complaints were solicited, she told the employees that she would not record what they told her, but "was just making an overall note of any suggestions or complaints they had, and it would be passed on to management." Wickham admitted that on the day following the interviews, she gave the employees' complaints to the Employer's president, Jack Savage.⁸

There is no evidence that the Employer had an established past practice of conducting this sort of employee interview.⁹ In fact, in the 2 years of Wickham's service with the Employer as personnel manager, she had never held such interviews with employees on this large a scale or for her stated purpose for the August interviews, which was to update employee performance appraisals.

Applying the Board's decisions in *Reliance Electric Co.*¹⁰ and *Raley's, Inc.*,¹¹ the hearing officer concluded that Wickham's interviews constituted objectionable conduct. In both the cited cases, like the situation here, the employer held employee meetings during a union organizational campaign; it invited the airing of employee complaints; it indi-

¹ All dates are in 1983 unless otherwise indicated.

² At the hearing the parties agreed that 16 challenges should be sustained and that the challenge to the one remaining ballot was no longer determinative. The hearing officer accepted the parties' hearing stipulation and recommended sustaining these challenges. In the absence of exceptions, we adopt pro forma the hearing officer's disposition of these challenged ballots.

³ 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.

⁴ The hearing officer recommended overruling the Petitioner's Objection 9 and sustaining its Objections 1-8 and 10-12. In the absence of exceptions, we adopt the hearing officer's recommendation to overrule Objection 9. In view of our decision to set aside the election solely on the basis of Objection 3, we find it unnecessary to pass on the Petitioner's other objections.

On 28 October 1985 the General Counsel filed a "Motion to Hold in Abeyance Board Review of the Hearing Officer's Report on Objections and Challenged Ballots Findings and Recommendations to the Board." The General Counsel requests that the Board delay consideration of this case pending the decision of the administrative law judge in Case 27-CA-8542-2, et al., because the Petitioner's Objections 1, 2, and 5 are among the unfair labor practices alleged there. No response was filed to the General Counsel's motion. We deny the motion as lacking in merit.

⁵ On 25 July the Union filed its representation petition with the Board.

⁶ The record reveals that in some of the interviews Wickham also discussed the ongoing union organizing when the subject was mentioned by the employee.

⁷ For example, according to credited testimony of employee Lewis, he told Wickham that there were too many management personnel and the need for a retirement program, better insurance, dental coverage, and sick pay.

⁸ There is no evidence that any further action concerning these grievances was taken.

⁹ Cf. *Carbonneau Industries*, 228 NLRB 597 (1977).

¹⁰ 191 NLRB 44 (1971).

¹¹ 236 NLRB 971 (1978).

cated in some fashion that management would look into those complaints, implying some action would be forthcoming from the employer although no express promises were made; and it had not previously solicited employee grievances in the same manner. In this regard, the Board, in *Reliance Electric*,¹² stated:

Where, as here, an employer, who has not previously had a practice of soliciting employee grievances or complaints, adopts such a course when unions engage in organizational campaigns seeking to represent employees, we think there is a compelling inference that he is implicitly promising to correct those inequities he discovers as a result of his inquiries and likewise urging on his employees that the combined program of inquiry and correction will make union representation unnecessary. In both cases, the Board found that the employer's conduct did not dispel the employee's belief that "the reason for their voicing such complaints was the hope that they might be remedied."¹³

We agree with the hearing officer that the Employer impliedly promised to correct employee complaints. Contrary to the Employer, we find that Wickham's conduct did not dispel the employees' belief that corrective action on their grievances would be forthcoming. As indicated by the record, at no time did Wickham announce that she could not make any promises or commitments concerning the employee grievances.¹⁴ Moreover, Wickham's explanation for the timing of these interviews is insufficient to counter the reasonable inference that these interviews were scheduled because of the union campaign. Wickham claimed that her work schedule away from the plant, rather than the union campaign, had required that the interviews be held in August.¹⁵ However, Wickham's cross-examination indicates that earlier in the year there were several occasions when she was working at the plant and could have conducted such interviews then instead of in August. Wickham did not satisfactorily explain why those earlier dates were not chosen.

¹² 191 NLRB at 46

¹³ *Raley's, Inc.*, above at 972.

¹⁴ Cf. *Uarco, Inc.*, 216 NLRB 1, 2 (1974) Our dissenting colleague fails to point out that in *Uarco* the company repeatedly told employees that it could make no promises regarding the grievances made. The Board found that this specifically negated any possible inference of a promise of benefits. Here, contrary to the Employer's claim, Wickham at no time expressly disavowed the inference that complaints would be remedied.

¹⁵ During the 6 months preceding the interviews, she frequently had been away from the Employer's facility on business for intermittent periods of varying lengths.

We further reject the Employer's contention that these interviews were for the purpose of updating employee performance appraisals. Thus, as far as the record shows, except for the solicitation of the complaints, the only other topic brought up by Wickham was employee wages. Employee "performance" was not discussed. Wickham testified that she asked each employee what his or her salary was. It is reasonable, however, to assume that such information normally is readily available to an employer and its personnel manager and the record does not show that Wickham, as the Employer's personnel manager, had any apparent need to go directly to the employees for such information. This more than suggests that the conducting of these interviews during the preelection period was not simply coincidental to the election as the Employer claims.

Accordingly, in all the circumstances here, we find that the Employer, through Wickham's interviews of employees, engaged in objectionable conduct. We therefore sustain the Petitioner's Objection 3, set aside the election, and shall direct a new election.

[Direction of Second Election omitted from publication.]

CHAIRMAN DOTSON, dissenting.

Contrary to my colleagues, I cannot find that the Employer improperly solicited grievances prior to the election. The majority opinion, in essence, transforms an innocent inquiry by a supervisor during employee evaluations concerning what complaints or suggestions employees might have for the company into a promise of benefit which constitutes grounds for overturning the election. Such an interpretation unduly restricts an employer's ability to gather employee input. I would, therefore, overrule the Petitioner's Objection 3 and reach the merits of the Petitioner's Objections 1, 2, 4-8, and 10-12.

Approximately 1 month prior to the election held 1 September 1983, the Employer's personnel director, Joyce Wickham, conducted a series of individual employee interviews. The purpose of these interviews was to update employee evaluations. Wickham had fallen behind in the evaluations because she had been out of the country for much of the 6 months preceding the interviews. The meetings with employees varied from between 5 and 15 minutes in length. During the interviews, Wickham reviewed employee wages and inquired whether employees had any suggestions for or complaints against the Employer. Employees were told that their comments "would be passed onto management," but no promises were made with respect to

any action being taken on the complaints. There is no evidence that any action was, in fact, taken on any of the matters raised in the interviews.

The hearing officer found, and the majority agreed, that these interviews constituted objectionable solicitation of employee grievances. I disagree. Wickham's comment that she would pass the employees' suggestions and complaints on to management is too generalized to imply that any specific action would be forthcoming from the Employer.¹ Nor does the fact that the information was actually transmitted to management create such an implication. The Board has found that it is not the solicitation of grievances itself that is coercive, but rather the promise to correct the grievances that is unlawful. *Uarco, Inc.*, 216 NLRB 1, 2 (1974). Here, Wickham made no promise of corrective action, and none was taken. Each of the cases cited by the majority can be distinguished from the present case

¹ Only 3 of the approximately 70 employees interviewed testified at the hearing. Their testimony whether the personnel director made any promises is not entirely consistent on this point. Employee Beachler testified that the personnel director did not indicate any action would be taken concerning employee complaints. Employee Archuleta testified that the personnel director said she was going to put the complaints together and talk to management about them. Employee Lewis testified that in his interview, he was told that the complaints would be presented to President Savage to see what could be feasibly implemented at a later date. Because the testimony of Beachler and Archuleta is largely corroborative of the version given by the personnel director herself, I am satisfied that the personnel director did not make any promises and that Lewis' testimony reflects his interpretation of what the personnel director said and not what she actually told him.

either on the basis of a promise by the employer to "look into" the matter,² or on the basis of corrective action actually being taken.³

In addition, I do not find it determinative that this was the first time such employee interviews were held. In *Uarco*, supra, no objectionable conduct was found even though the employer had no prior history of similar meetings in which it invited employee complaints. Further, it is significant that the interviews were held for the purpose of employee evaluation, and not for the purpose of discussing the union. Receiving input from employees about the company during an evaluation is a common practice and should not, in and of itself, raise the inference of objectionable conduct. As the majority notes, Wickham did not even mention the Union during the interviews unless the subject was raised by the Employees. Thus, here, the Employer's request for input would not intimate to employees that a benefit would be forthcoming if they voted against the Union. Without more, I cannot agree that an inquiry to employees during an evaluation about complaints or suggestions for the Company represents objectionable conduct even when the Union is engaged in an active organizing campaign. Accordingly, I would overrule the Petitioner's Objection 3 and reach the merits of the other objections.

² See *Reliance Electric Co.*, 191 NLRB 44, 46 (1971)

³ See *Raley's, Inc.*, 236 NLRB 971, 972 (1978)