

Hydro-Aire Division, Crane Co., Employer and Miscellaneous Warehousemen, Drivers & Helpers Local 986, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. Case 31-RC-5945

30 September 1986

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN DOTSON AND MEMBERS
JOHANSEN AND BABSON

The National Labor Relations Board, by a three-member panel, has considered an objection to an election held 1 November 1985 and the hearing officer's report recommending disposition of it. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 103 for and 196 against the Petitioner, with 1 void ballot and 3 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs,¹ has adopted the hearing officer's findings² only to the extent consistent herewith, and finds that a certification of results of election should be issued.

The issue presented by the Employer's exceptions is whether the hearing officer erred in recommending sustaining the Petitioner's objection and setting aside the election because she found that the Employer had created an impermissible impression of surveillance of prounion employees' activities. Contrary to the hearing officer, we find that the Employer did not engage in any conduct interfering with the election.

The conduct in dispute took place at the end of the employees' day shift in midafternoon of Friday, 25 October 1985. Larry Larios, an employee on the Petitioner's in-plant organizing committee,³ was leaving the Employer's facility. He carried with him a stack of prounion campaign leaflets and a list of eligible voters annotated by Larios and another employee to reflect supposed preferences in the upcoming representation election.

Acting pursuant to a valid company rule, the Employer's chief of security, Don Rugee, would not permit Larios to carry materials out of the plant until the employee obtained a property pass

from an authorized official. Rugee took the stack of papers from Larios and put them on a desk in the guard shack. While Larios was in the plant getting a property pass, Rugee also stopped two other employees and similarly impounded their stacks of leaflets.⁴

When Larios returned with his pass, Rugee handed him a stack of papers. Larios left, joined other employee organizing committee members outside the plant, then discovered that the annotated voters' list was missing from his papers. Larios and three other employees immediately returned to the guard shack and asked Rugee for the list. Rugee expressed ignorance about the list and told Larios that the employees would have to re-enter the plant in order to satisfy their desire to speak with the Employer's president about the matter. During the conversation with Rugee, the employees observed Management Representative McAllister, approximately 50 yards away, walking towards the Employer's facility.⁵ McAllister and plant engineer Cameron had visited the guard shack a few minutes earlier.

Larios and fellow employees next entered the main lobby of the Employer's building and arranged to meet with Robert Gruber, senior vice president of engineering. After hearing the employees' explanation of events, Gruber summoned Rugee, all materials left in the guard shack, and a blank property pass. Gruber then filled out the pass and he returned all materials, including the annotated list, to the employees. Estimates vary, but the entire sequence of events apparently took between 45 minutes and 1-1/2 hours.

The hearing officer found, and absent exceptions, it is no longer disputed, that the Employer did not engage in actual surveillance of employee union activities by its possession of the list. She further found, however, that the unexplained presence of McAllister at the guard shack and the unexplained delay in giving the confidential list to Larios after he specifically sought the missing document from Rugee created an impression of surveillance that interfered with the employees' free choice in the election. As previously indicated, we disagree.

The Employer was oblivious to the presence of an annotated voter eligibility list when it initially impounded Larios' documents pursuant to a valid company security rule. There is no direct proof that any representative of the Employer ever actu-

¹ We deny as lacking in merit the Employer's request that the Board reconsider its Order dated 8 January 1986, in which it rejected the Employer's contention that the Petitioner's objections were untimely filed.

² 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.

³ We find it unnecessary to rely on the hearing officer's discussion about the status of Larios as the Petitioner's agent.

⁴ Although there is some evidence of inconsistent enforcement of the property-pass rule, there is no proof of antiunion discrimination in its application to the three employees.

⁵ There are no exceptions to the hearing officer's discrediting of employee claims that they observed McAllister holding the missing list as he walked towards the Employer's facility.

ally saw the list. Furthermore, we find inappropriate the hearing officer's reliance on the "unexplained" presence of McAllister at the guard shack during the time when the Employer apparently possessed the list. As the objecting party, the Petitioner has the heavy burden of proving interference with the election. It has failed to prove here that the presence of McAllister was unusual, deliberate, or in any way related to the election or the employees' union activities. Finally, we find insignificant the delay occurring after Larios returned to claim his missing list from Rugee. There is no proof that Rugee yet knew whether he actually had such a list. If the list was among documents taken from the other prounion employees, there is no basis to believe that Rugee and Gruber were not still operating pursuant to the valid property-pass security rule before turning over all remaining documents; nor is there any objective basis for at-

⁶ Member Babson agrees that the Union has not adduced sufficient evidence to show that the Employer perused the list. More to the point, perhaps, Member Babson does not believe that the Union has demonstrated

tributing the slight delay involved to the Employer's knowledge of its contents.⁶

In sum, we find that the Employer's action did not reasonably tend to create an impression of surveillance interfering with the election.⁷ Consequently, we will overrule the Petitioner's objection and certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Miscellaneous Warehousemen, Drivers & Helpers Local 986, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and that it is not the exclusive representative of these bargaining unit employees.

that the compromise, if any, of the allegedly confidential list was due to anything other than the Union's own lack of care in maintaining the list

⁷ In this regard, we find irrelevant testimony about the subjective reactions of unit employees to the events in question