

**Mike Yurosek & Son, Inc and General Teamsters & Food Processing Local 87, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, Petitioner Case 31-RC-6084**

February 14, 1989

**DECISION AND DIRECTION OF  
SECOND ELECTION**

**BY MEMBERS JOHANSEN, CRACRAFT, AND  
HIGGINS**

The National Labor Relations Board, by a three member panel, has considered objections to an election held December 17, 1986, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to the Acting Regional Director's Decision and Direction of Election. The revised tally of ballots shows 292 for and 290 against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief and has adopted the hearing officer's findings<sup>1</sup> and recommendations only to the extent consistent with this Decision and Direction of Second Election.

The Employer contends that Western Conference of Teamsters Representative Gunder Hansen, Petitioner's agent, engaged in surveillance by photographing employees while they engaged in campaign activities at the front gate to the Employer's plant. The hearing officer found that Hansen's conduct was not objectionable. We disagree.<sup>2</sup>

Virtually everyday during the campaign, Hansen took photographs with a small pocket camera of campaign activity, at the entrance gate, by both prounion and antiunion employees. He testified that he took pictures (1) because the subjects wished to be photographed, and (2) to keep a record of antiunion activity should the Union decide later to file objections or unfair labor practices. Hansen told antiunion activist Brogdon that "We've got it on film, we know who you guys are after the Union wins the election some of you may not be here."<sup>3</sup>

<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 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> Because we find merit in this objection we find it unnecessary to pass on the hearing officer's findings with respect to the remaining objections.

<sup>3</sup> Brogdon's testimony on direct and cross-examination was consistent but varied slightly as to the exact words used by Hansen. The version credited by the hearing officer is a composite of these variations and is consistent with each of them.

The hearing officer recommended that the objection be overruled. She found that in the absence of threatening or coercive acts indicating that the Union would punish antiunion campaigners, the filming of public campaign activity, even if it includes an occasional photograph of employees entering or leaving the gate, would not constitute impermissible surveillance.

In *Pepsi Cola Bottling Co*, 289 NLRB 736 (1988), the Board found that the appearance of videotaping by a union representative of at least two employees at a rally the day before the election gave the employees the impression that the pictures would be used for future reprisals against them. The Board noted that no legitimate explanation for the videotaping was offered to the employees at the rally, and that none was proffered at the hearing. Under these circumstances the Board concluded that the conduct of the union representative was intimidating and would reasonably tend to interfere with employee free choice in the election. Similarly, in the instant proceeding the pictures of employees were taken by a union agent and, like *Pepsi-Cola Bottling Co*, no explanation was provided to employees while pictures were being taken to assuage their fears that the pictures would be the basis for future reprisals.<sup>4</sup> Further, Hansen's remarks to Brogdon are arguably threatening, and certainly do nothing to assure employees that the pictures Hansen was taking would not be improperly used.

At the hearing Hansen attempted to explain that he took pictures to have evidence of antiunion supporter misconduct. Contrary to the hearing officer's findings, we conclude that this explanation is belied by Hansen's giving away of many photographs and the Union's acknowledgment that it did not know the location of the negatives. Therefore, in the absence of a valid explanation, we find that Hansen's conduct in photographing employees was objectionable.<sup>5</sup>

Accordingly, we find that the election held on December 17, 1986, must be set aside and a new election held.

[Direction of Second Election omitted from publication.]

<sup>4</sup> In *Interstate Cigar Co*, 256 NLRB 496 (1981) relied on by the hearing officer the incidents in question were found to be isolated and did not involve photographing of unit employees.

<sup>5</sup> Member Higgins finds it unnecessary to rely on *Pepsi Cola*. As noted above while photographing antiunion activity Hansen commented to antiunion activist Brogdon that "we've got it on film we know who you guys are after the Union wins the election some of you may not be here." In Member Higgins' view the photographing of antiunion employees accompanied by this statement could reasonably put employees in fear that the pictures would be used for future reprisals and was therefore objectionable.