Pick Your Part Auto Wreckers, Inc. *and* International Molders and Allied Workers Union, Local 164, International Molders and Allied Workers Union, AFL–CIO, Petitioner. Case 32–RC–2564

May 13, 1989

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN STEPHENS AND MEMBERS JOHANSEN AND CRACRAFT

The National Labor Relations Board, by a three-member panel, has considered objections to an election held August 13, 1987, 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 14 for and 19 against the Petitioner, with 2 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings[1] and recommendations,[2] and finds that a certification of results of election should be issued.

Citing precedent where the Board has found the impartial depiction of strikers to be privileged under Section 8(c), the hearing officer recommended that those portions of Objections 2 and 6 that alleged the Employer's showing of the movie concerning a strike at Magic Chef was objectionable be overruled. In its exceptions, the Petitioner contends that the movie is not impartial but anti-union in tenor. We agree that the movie overwhelmingly promoted the Employer's point of view. However, the Board has found similar films, especially those occurring in a context free of objectionable conduct, to be unobjectionable. *Sab Harmon Industries*, 252 NLRB 953 (1980); *Northern States Beef*, 226 NLRB 365, 376 (1976); *Litho Press of San Antonio*, 211 NLRB 1014, 1014–1015 (1974), enfd. on other grounds 512 F.2d 73 (5th Cir. 1975). We, therefore, adopt the hearing officer's recommendation to overrule Objections 2 and 6 which, inter alia, alleged that the movie interfered with the free conduct of the election.

Further, we agree with the hearing officer's recommendation to overrule that portion of Objection 7 relating to the Employer's provision of additional wage increases based on longevity beyond the July 1 wage increase. In so doing, we do not rely on her rationale.

According to the credited or uncontradicted testimony, the pertinent facts are as follows. The terms and conditions of employment of the Employer's five facilities are determined centrally by a general management team and at its Garden Grove, California corporate office. Prior to the implementation of the new wage scale on July 1, 1987, the wages differed from plant to plant. Because of management's concerns about standardizing the equalizing wages, as well as bringing them up to scale to facilitate hiring, the general management team began discussions about an overall wage plan for its five stores. These discussions began at the general management team's March 12, 1987 meeting; the new wage plan was finalized and approved at the June 18, 1987 meeting.

The final version of the approved wage scale was attached to the Employer's minutes for the June 18 meeting ("Management Team Meeting Recap").[3] This three-page document entitled "Clerical/Technical Pay Rate Schedule" individually lists each job classification and provides the following data for each classification: starting pay rate, maximum pay rate, maximum raises after 90 days, and semiannual raises up to maximum rate. The schedule concludes with this restatement, "AFTER INITIAL 90 DAY RAISE, all classifications will be eligible for a 25 cents per hour raise every six months" (capitals in original). The last data on the schedule, the semiannual rate up to the maximum rate, as well as the final statement, refer to the longevity increases, under dispute here. This wage plan, according to the undisputed testimony of General Manager and Vice President Chris McElroy, was basically the same, with only a few minor changes, as that implemented at the Employer's Stanton store 7 months earlier, which also included longevity increases.

[1] The Petitioner has excepted to some of the hearing officer's credibility findings including the assertion that they were the result of the hearing officer's bias and prejudice After carefully examining the entire record, we find the Petitioner's exceptions are without merit It is well settled that no basis exists for finding credibility findings are based on bias or prejudice merely because important factual conflicts are resolved in one party's favor See, e g , *McLean Roofing Co.*, 276 NLRB 830 fn. 1 (1985). Moreover, 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 they are incorrect *Stretch-Tex Co*, 118 NLRB 1359, 1361 (1957) We find no basis for reversing the findings

No exceptions were made to the hearing officer's recommendations to overrule Objections 1, 4, and 8, and we therefore adopt pro forma those findings The Petitioner withdrew Objection 5

[2] We correct the hearing officer's inadvertent misstatement of the July 1 wage increases they ranged from $1 25 per hour to $1 50 per hour

[3] The Petitioner argues that the minutes of the June 18 meeting specifically discuss the increases implemented on July 1, but do not mention the longevity increases Thus, the Petitioner reasons, the grant of longevity increases was separate from the grant of the increases mentioned in the minutes and was not pursuant to the wage plan agreed on before the union organizing campaign However, the June 18 minutes themselves do not exhaustively describe the changes in the wage structure, as the approved wage scale, referenced in the minutes and attached to them, discloses

On the basis of these facts, we find it clearly established that longevity increases were an integral part of the Employer's overall plan, approved before the advent of the Union, to standardize and upgrade wages. The only remaining issue for clarification is the date of the Employer's decision that on July 1 it would grant employees a pay raise for time *already* worked, as opposed to implementing a prospective longevity pay system. The testimony on this point is inconclusive. Vice President James Casten testified that he thought the decision to grant immediate pay increases for longevity was made at the June 18 meeting (at which he was not present). General Manager McElroy testified that the decision was not made by the general management team, nor at the June 18 meeting, but that "[Vice President and General Manager] Tommy Hutton handled that." However, McElroy also testified that when the almost identical plan was implemented at the Stanton store 7 months earlier, he and that store's manager went over the list of employees one by one, giving them credit (and pay increases) for time already worked. The same process was followed when the increases at issue here were implemented.

Additional evidence indicates that granting the longevity increases was consistent with past practice and was contemplated prior to the critical period. Thus, Vice President Casten testified that when the Employer gave seven employees raises on June 12, prior to the new plan, their raises were based on "work performance or length of service." Also, according to employee Pablo Magana, when he asked Casten about raises 2 to 3 months before the July 1 increase, Casten replied that there would be an increase in the future, "[f]or the older ones, yes, the ones who deserved a raise."

Based on the above facts, we find that the Employer's grant of longevity increases on July 1 was consistent with past practice and with plans underway well before the Union's June 24 filing of its petition. We, therefore, adopt the hearing officer's recommendation to find the longevity increases unobjectionable.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots has not been cast for International Molders and Allied Workers Union, Local 164, International Molders and Allied Workers Union, AFL–CIO, and that it is not the exclusive representative of these bargaining unit employees.