

**Bell Trans and United Steelworkers of America,
AFL-CIO, Petitioner. Case 28-RC-4687**

November 21, 1989

**DECISION AND CERTIFICATION OF
REPRESENTATIVE**

**BY CHAIRMAN STEPHENS AND MEMBERS
HIGGINS AND DEVANEY**

The National Labor Relations Board, by a three-member panel, has considered objections to an election held April 18, 1989, 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 128 for and 114 against the Petitioner, with 5 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings¹ and recommendations, and finds that a certification of representative should be issued.

In its objections, the Employer alleged, inter alia, that before the election there existed a general atmosphere of fear and confusion that prevented a free and untrammelled choice by employees in the election. The hearing officer recommended overruling the Employer's objection. We agree with the hearing officer.

The Employer's objection in this regard was based on an incident between employees Guy Wilson and Maury Weisman that occurred 9 days before the election. The hearing officer, based on his credibility resolutions, found that Bitonti, the Petitioner's district coordinator of organizing, called a campaign strategy meeting. According to Bitonti, the meeting was only for those employees perceived as being "100 percent" Union. About 13 drivers and Union Organizer Jerry Mongello met in the lobby of the Park Hotel in Las Vegas. Among this group were Weisman, employee Brett Ritter, and two other employees who were perceived as not being "100 percent" Union. Ritter is a relative of the Employer's chief executives Weisman and Ritter asked Mongello if they could attend the meeting. Mongello, who was new to the organizing campaign and unaware of the meeting's

purpose, replied that they could if it were a general meeting. Mongello then went to a telephone to call Bitonti.

According to Ritter's credited testimony, after Mongello left to find a telephone, Wilson walked up to Weisman, shouted obscenities, threatened to kill Weisman because he had brought Ritter to the meeting, and then slapped Weisman in the face. Weisman responded with obscenities and threats of his own. Within 15 seconds, other drivers stepped in and broke up the altercation. Wilson and the invited drivers then went to the strategy meeting, while Weisman, Ritter, and the other two uninvited drivers remained in the lobby.

According to Mongello, he did not witness the incident, and he was unaware at the time that it had occurred. After his return from making his telephone call, Mongello remained in the lobby with Weisman, Ritter, and the other uninvited drivers, and they discussed, at length, questions that the employees had about the Petitioner and unions in general.

The hearing officer found that the Employer failed to establish that Wilson was an agent of the Petitioner and thus the misconduct must be evaluated under the third party standard of whether the misconduct created an atmosphere of fear and confusion. We agree.

Further, the hearing officer noted that the altercation occurred 9 days before the election in the lobby of the hotel and not at the Employer's facility. At most, a total of 13 employees out of 292 eligible voters viewed the incident. After the incident, Weisman remained in the hotel lobby with the other employees and Mongello to discuss the Petitioner. Finding that the single isolated incident at issue here was not so aggravated as to create a general atmosphere of fear and confusion, the hearing officer recommended overruling the Employer's objection.

We find—and the Employer does not contend otherwise—that the hearing officer correctly determined that the conduct in question was not attributable to an agent of the Union and that, therefore, it is governed by the standard for determining whether the election should be overturned on the basis of third party conduct, i.e., "whether the misconduct was so aggravated as to create a general atmosphere of fear and reprisal rendering a free election impossible." *Westwood Horizons Hotel*, 270 NLRB 802, 803 (1984).

Recently, in *Picoma Industries*, 296 NLRB 498 (1989), the Board found that a series of substantial threats made by union supporters threatening harm, physical injury, and property damage to known or suspected antiunion employees created such an at-

¹ We agree with the hearing officer's conclusion that the Petitioner's election observer, Peter Sardina, did not engage in objectionable conduct during the election by keeping a list containing only the names of voters that he intended to challenge. See, e.g., *St. Elizabeth Community Hospital v. NLRB*, 708 F.2d 1436, 1443-1444 (9th Cir. 1983), and cases cited therein. Having adopted this conclusion, we find it unnecessary to rely on the hearing officer's finding that assuming, arguendo, Sardina maintained an unauthorized list of voters, then Sardina's activity was trifling and, therefore, unobjectionable.

mosphere In *Picoma*, it was significant that the series of threats occurred from 2 weeks up to 2 days before an election in which the union prevailed by only a 2-vote margin Further, the threats were disseminated to at least 25 of 140 employees in the unit

This case differs from *Picoma* in significant respects Here, there was a single incident—not a series of incidents The Wilson-Weisman incident was an isolated and brief 15-second altercation It occurred in a hotel lobby and not at the Employer's facility Wilson's statement was directed only at Weisman Unlike the threats in *Picoma*, the threat here was not broad-based and directed at any or all antiunion employees Only about 13 employees out of a 292-voter unit viewed the incident, and there is little evidence that that information concerning the altercation was disseminated to other employees²

Further, the Petitioner's representatives were not present during, nor did they condone, the incident

² According to Ritter's testimony, he spoke with several of the 60 drivers employed on his shift about the Wilson-Weisman altercation When pressed, however, Ritter could recall specifically talking to only two other drivers about the incident We find that this limited evidence does not support the Employer's contention that news of this incident was widely disseminated

Indeed, when Mongello returned to the group, Weisman did not refer to the altercation Clearly, Weisman did not lay the incident at the Petitioner's door Instead, Weisman and the other uninvited drivers proceeded to discuss with Mongello questions about the Petitioner and unions in general Given these facts, it is reasonable to conclude that employees present would view the Wilson-Weisman incident as a personal dispute between the two men Thus, there would not generally exist among employees any atmosphere of fear and confusion that would render a free choice in the election impossible We, therefore, overrule the Employer's objection

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Steelworkers of America, AFL-CIO, CLC and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit

All limousine and bus drivers employed by the Employer at its Industrial Road, Las Vegas, Nevada, location, but excluding all other employees, office clerical employees, guards and supervisors as defined in the Act