Aurora Steel Products, *and* United Steelworkers of America, AFL–CIO–CLC, Petitioner. Case 13–RC–14754

January 23, 1979

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY MEMBERS PENELLO, MURPHY, AND TRUESDALE

Pursuant to authority granted it under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election held July 7, 1978,[1] and the Regional Director's report recommending disposition of same.[2] The Board has reviewed the record in light of the exceptions and brief and hereby adopts the Regional Director's findings and recommendations.[3]

[1] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 35 for and 28 against the Petitioner; there were no challenged ballots.

[2] In the absence of exceptions thereto, the Board adopts, *pro forma*, the Regional Director's recommendation that Employer's Objection 4 be overruled.

[3] With respect to Objection 1, the Regional Director found that Petitioner's payment of certain moneys to four employees was only a reimbursement for wages lost while the four employees attended a conference at the National Labor Relations Board. The Employer argues, however, that the payment to each employee was approximately twice the employees' hourly wage rate. In so contending, the Employer relies on an affidavit in which an employee was allegedly told by one of the four employees who had received money that Petitioner had paid that employee "$40 for the 4 hours he spent at the National Labor Relations Board." The Employer argues that for 4 hours' work at the Employer's facility the employee would have been paid about $20. The Employer's contention fails to take into account the fact that the employee would also have to be compensated for his travel time from the Employer's location in Aurora, Illinois, to the Board's office in Chicago, Illinois, and back to Aurora. During this time, the employee would also have lost wages, and, noting the distance between Aurora and Chicago, we conclude that the amount of compensation for this period was proper. Assuming, *arguendo*, that the employees spent only a total of 4 hours away from work, we would still find the amount of compensation in this case was not improper. See *Quick Shop Markets, Inc.*, 200 NLRB 830 (1972), enfd. 492 F.2d 1248 (8th Cir. 1974).

The Regional Director further found that the Employer had presented no evidence in support of its allegation that certain employees were told by Petitioner that *they* would not be required to pay union dues if Petitioner won the election. The Employer argues that it "advised the Regional Director's agent that it had been rumored among the employees that the Union had promised some employees that in exchange for their support they would not be required to pay Union dues if the Union got in." The Employer states that it gave the Board agent the names of three employees who allegedly had received such promises and that the Regional Director's characterization of its submitting "no evidence" on the issue is therefore in error. Assuming that the Employer submitted this list of names to the Region, the Employer has submitted no evidence of what these employees might testify to, nor did it submit the names of any employees who allegedly heard these rumors and what these employees might testify to on this issue. Accordingly, we conclude that the Employer did not furnish sufficient evidence to provide a *prima facie* case in support of its objections, and what evidence it alleges it did submit did not require the Regional Director to investigate the objection further. See, e.g., *Allen Tyler & Sons, Inc.*, 234 NLRB 212 (1978).

CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for United Steelworkers of America, AFL–CIO–CLC, and that, pursuant to Section 9(a) of the Act, the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment:

> All regular full-time and part-time production and maintenance and plant clerical employees employed by the Employer at its facility now located at 580 South Lake Street, Aurora, Illinois; excluding office clerical and professional employees, guards, and supervisors as defined in the Act.

MEMBER MURPHY, dissenting:

One of the Employer's allegations in its Objection 1 is that the Union promised employees that in exchange for their support they would not be required to pay union dues if the Union got in. The Regional Director recommended that this portion of Objection 1 be overruled on the ground that the Employer presented no evidence in support of it.

The Employer claims, however, that it supplied the Regional Director with the names of three employees who had received such promises. Despite that claim, my colleagues adopt the Regional Director's conclusion and recommendation concerning the allegation. I cannot agree.

It is, of course, well-established Board practice that an objecting party must identify the nature of the misconduct alleged to have occurred and supply a list of witnesses with a brief description of the testimony of each. See, e.g., *Sambo's North Division Store No. 144*, 223 NLRB 565 (1976), and *Ohio Masonic Home*, 233 NLRB 1004 (1977). However, in contrast with those cases, here the allegation of objectionable conduct is very specific: employees were promised that they would not have to pay dues in exchange for their support of the Union. Thus, when the Employer presented the names of three individuals who allegedly received such promises, it had furnished sufficient information to the Region to require the latter to proceed with the investigation of the objection. At that point, therefore, it was incumbent upon the Region to interview the individuals named by the Employer to determine the merits of the objection, and the failure of the Regional Director to have that done constituted an abuse of discretion. This is so unless we are henceforth going to require an objecting party also to submit detailed statements from witnesses, a

requirement which heretofore has never been imposed.

In these circumstances, my colleagues' condonation of the Regional Director's action constitutes an abdication of the Agency's function of protecting the laboratory conditions for the conduct of Board elections. In this case, the Employer has satisfied the Board's requirements; it alleged specific conduct by the Union which, if it occurred, would warrant setting the election aside and, in support thereof, has identified the witnesses who it claims would substantiate its allegation. Consequently, my colleagues' adoption of the Regional Director's holding that the Employer has not presented evidence in support of the allegation in question elevates form over substance.

Accordingly, I would remand this aspect of Objection 1 to the Regional Director for the purpose of interviewing the three named witnesses and for such additional investigation as thereafter may be appropriate.[4] Perhaps the result would be the same; certainly no one knows. But the facts do call for an investigation to find out. This I would order.

[4] See my dissent in *Allen Tyler & Sons, Inc.*, 234 NLRB 212 (1978).