Visitainer Corp. *and* Amalgamated Industrial Union, Local 76B–92–76, United Furniture Workers of America, AFL–CIO, Petitioner. Case 29–RC 4120

August 3, 1978

DECISION ON REVIEW AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On May 2, 1978, the Regional Director for Region 29 issued his Decision and Direction of Election in the above-entitled proceeding, finding that the contract between the Employer and the Intervenor [1] was not a bar to the petition herein. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer and the Intervenor filed requests for review asserting that their contract has been substantially enforced and therefore is a bar to the election. The Board granted the requests for review by telegraphic order dated June 1, 1978.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case with respect to the issue under review and makes the following findings:

The Employer has had contractual relations with the Intervenor since 1971. The current contract between the Employer and the Intervenor has a 3-year term extending from July 1, 1977, to June 30, 1980. It contains provisions convering wages, hours of work, vacations, holidays, seniority and layoff, grievance and arbitration procedures, probation period, and union security, among others.

The Regional Director found that the contract had been complied with regarding paid holidays and vacations, and that there had been successful resolution of employee grievances concerning inadequacies in the physical environment at the plant without resort to the arbitration procedure established by the contract.

However, the Regional Director also found that because of the failure of enforcement of certain other provisions, as set forth below, the contract "does not, as administered, chart with adequate precision the terms and conditions of employment" of the unit employees and therefore is not a bar to the petition. We disagree.

About half of the unit employees were paid 5 cents less than the contractual minimum hourly rate, although some were paid more. Also, night-shift employees were not paid a 15-percent contractual bonus. Employees who worked on Thanksgiving Day were not paid time-and-a-half wages as the contract required but were instead given the following day off with pay. The Regional Director attached undue significance to the fact that during the life of an antecedent contract five employees negotiated a pay raise directly with the Employer. He also regarded as significant the fact that the Intervenor had been lax in enforcing the contract's union-security provision.

On the basis of the record as a whole, we are unable to find that the contract has been abandoned or that the actual wages, hours, and working conditions at the plant are so at variance with the contract terms as to remove the bar quality from the contract. On the contrary, it is clear that there has been compliance with many of the contract terms and substantial compliance with others, and that any breaches may be subjects of the grievance procedures which the Intervenor has successfully used before.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.

[1] Local 294, Factory Production Specialists & Assembly Workers Union, International Journeymen's and Production Allied Services of America and Canada.