

**Boston Insulated Wire & Cable Co. and General Teamsters, Chauffeurs, Warehousemen & Helpers of Brockton & Vicinity, Local Union No. 653, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 1-RC-17136**

January 20, 1982

**DECISION AND CERTIFICATION OF REPRESENTATIVE**

**BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN**

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election held February 26, 1981,<sup>1</sup> and the Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief<sup>2</sup> and hereby adopts the Regional Director's findings and recommendations.

We agree with the Regional Director that the Petitioner made no material misrepresentations which warrant setting aside the election. We also find, for the reasons set forth below, that the electioneering conducted by the Petitioner's agents during the balloting was insufficient to warrant an inference that it interfered with the exercise of the employees' free choice.<sup>3</sup>

The balloting took place in a room, herein the polling place, located on the ground floor of the Employer's Building #2. The entrance to the polling place was approximately 10 feet up a corridor<sup>4</sup> from a set of glass-paneled doors opening to the Employer's parking lot. Through these doors, a person standing in the parking lot could view the corridor, the entrance to the polling place, and parts of the polling place itself. The Employer presented evidence that, during the balloting, agents of the Petitioner passed out a campaign leaflet and spoke to employees as they entered both the main entrance to the building and the glass-paneled doors on their way to vote or work. The Employer also presented evidence that, as the line of employees waiting to vote backed up to the glass-paneled doors, which were closed, the Petitioner's

agents peered through the doors and continued to pass out literature and talk to entering employees.

It is the Board's province and duty to safeguard its electoral processes from conduct which inhibits the free exercise of employee choice. In carrying out this duty, "the Board is extremely zealous in preventing conduct which intrudes upon the actual conduct of its elections." *Claussen Baking Company*, 134 NLRB 111 (1964). Thus, the Board prohibits electioneering "at or near the polls."<sup>5</sup> And, as means of enforcing this ban against electioneering, the Board will set aside an election on the basis of any prolonged conversations between a representative of a party to the election and employees waiting in line to vote, without inquiring into the nature of the conversation itself, *Milchem Inc.*, 170 NLRB 362 (1968).<sup>6</sup> Such prohibitions, of course, are not required by the Act. Rather, they have been devised by the Board under its authority to regulate its own election procedures and serve to eliminate the unfair advantage gained by last-minute electioneering and pressure as well as to minimize the distraction and interference which result therefrom. As the Board stated in *Milchem*, "[t]he final minutes before an employee casts his vote should be his own, as free from interference as possible."

Nevertheless, the Board does not apply its "no electioneering" rules to set aside elections whenever electioneering takes place "at or near the polls," regardless of the circumstances. While the Board seeks to establish election conditions as ideal as possible, "elections must be appraised realistically and practically, and should not be judged against theoretically ideal, but nevertheless artificial, standards."<sup>7</sup> A representation election is often the climax of an emotional, hard-fought campaign and it is unrealistic to expect parties or employees to refrain totally from any and all types of electioneering in the vicinity of the polls.<sup>8</sup>

When faced with evidence of impermissible electioneering, the Board determines whether the conduct, under the circumstances, "is sufficient to warrant an inference that it interfered with the free

<sup>1</sup> The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 69 for and 66 against, the Petitioner. There were no challenged ballots.

<sup>2</sup> The Employer has requested oral argument. This request is hereby denied as the record, the exceptions, and the brief adequately present the issues and positions of the parties.

<sup>3</sup> Our determination herein is based on the evidence presented by the Employer during the investigation of the objection, which we have assumed to be true and which has not been disputed. A hearing is, therefore, unnecessary.

<sup>4</sup> At the opposite end of the corridor, a stairway leads to the main entrance of the building.

<sup>5</sup> *Claussen Baking Company, supra*.

<sup>6</sup> The Employer does not contend that the election herein should be set aside on the basis of the strict *Milchem* rule, though it does argue that the *Milchem* principles should be applied here.

<sup>7</sup> *The Liberal Market, Inc.*, 108 NLRB 1481, 1482 (1954). While *Liberal Market* involved the effect of antecedent conduct upon a Board election, the standard is equally applicable to allegations of improper electioneering.

<sup>8</sup> Courts have recognized that the Board has "broad discretion in creating and enforcing standards to ensure fair elections." *Hall-Brooke Hospital v. N.L.R.B.*, 645 F.2d 158 (2d Cir. 1981). See also *N.L.R.B. v. Vista Hill Foundation*, 639 F.2d 479 (9th Cir. 1980); *N.L.R.B. v. Campbell Products Department*, 623 F.2d 876 (3d Cir. 1980).

choice of the voters."<sup>9</sup> This determination involves a number of factors. The Board considers not only whether the conduct occurred within or near the polling place, but also the extent and nature of the alleged electioneering,<sup>10</sup> and whether it is conducted by a party to the election or by employees.<sup>11</sup> The Board has also relied on whether the electioneering is conducted within a designated "no electioneering" area<sup>12</sup> or contrary to the instructions of the Board agent.<sup>13</sup>

Under the circumstances of this case, we find the evidence of electioneering presented by the Employer insufficient to warrant an inference that it interfered with the exercise of the employees' free choice. It is undisputed that the electioneering was conducted away from the polling place and was not directed at employees waiting in line to vote. The area immediately outside the glass-paneled doors had not been designated a "no-electioneering"<sup>14</sup> area and the electioneering did not violate

<sup>9</sup> *Star Expansion Enterprises*, 170 NLRB 364, 365 (1968). Of course, conduct which violates the strict *Milchem* rule is found to constitute *per se* interference with the free choice of the voters.

<sup>10</sup> See *Cabs Housekeeper Service, Inc.*, 241 NLRB 1259 (1979). See also *Harold W. Moore d/b/a Harold W. Moore & Son*, 173 NLRB 1258 (1968). Even the Board's strict *Milchem* rule does not apply to any "chance, isolated, innocuous comment or inquiry" between a party to the election and a voter.

<sup>11</sup> In regulating the conduct of elections, the Board has long distinguished between the conduct of parties to the election and the conduct of employees. See, generally, *Orleans Manufacturing Co.*, 120 NLRB 630 (1958). Thus, the *Milchem* rule applies only to prolonged conversations between parties to the election and voters. See *N.L.R.B. v. Campbell Products Department*, *supra* and *N.L.R.B. v. Slagle Manufacturing Company*, sl. op. #80-1088 (10th Cir. 1981). This distinction has been applied to other types of electioneering as well. *Niagra Wires, Inc.*, 237 NLRB 1347 (1978). Third-party conduct must be "so disruptive" as to require setting aside the election. *Robert's Tours, Inc.*, 244 NLRB 818 (1979).

<sup>12</sup> *Marvil International Security Service*, 173 NLRB 1260 (1968); *Cabs Housekeeper Service, Inc.*, *supra*.

<sup>13</sup> *Star Expansion Enterprises*, *supra*. The electioneering herein was not of such a nature or extent that it was brought to the attention of the Board agent.

any instructions by the Board agent. Most significantly, voters standing in line to vote were separated from the electioneering by the set of doors, which remained closed during the balloting. Thus, while the entrance to the polling place was only 10 feet from the glass-paneled doors and, at times, the line of voters backed up to those doors, the voters, once in the corridor, were insulated from the electioneering. Accordingly, we shall overrule the objection and certify the Petitioner.

#### CERTIFICATION OF REPRESENTATIVE

It is hereby certified that a majority of the valid ballots have been cast for General Teamsters, Chauffeurs, Warehousemen & Helpers of Brockton & Vicinity, Local Union No. 653, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that, pursuant to Section 9(a) of the National Labor Relations Act, as amended, the foregoing labor organization is the exclusive representative of all the employees in the following appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

All production and maintenance employees employed by the Employer at its Plymouth, Massachusetts location excluding quality control employees, technical employees, office clerical employees, guards and supervisors as defined in the Act.

<sup>14</sup> The Board has found the absence of a designated "no electioneering" area to be significant. *Sewanee Coal Operators' Association, Inc.*, 146 NLRB 1145 (1964). As the Board stated in *Marvil International Security Service, Inc.*, *supra*.

[T]he establishment of an area in which electioneering is not permitted must in the first instance be left to the informed judgment of the Regional Director and his agents conducting the election. They are on the scene and familiar with the physical circumstances surrounding the location of the polls.