Baja's Place, Inc. *and* Hotel, Motel, Restaurant Employees, Cooks and Bartenders Union, Local 24, AFL-CIO, Petitioner. Case 7-RC-16160

13 February 1984

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

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 9 January 1981,[1] and the hearing officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the hearing officer's findings and recommendations only to the extent consistent herewith.

The hearing officer recommended, inter alia, that the Employer's Objection 1-A be overruled. This objection alleges that, during the campaign, a unit member was threatened with physical harm and economic loss if he did not cease opposing the Union. We disagree with the hearing officer's recommendation.

The testimony shows that Dennis Tap, at all times material, has been a business representative of the Petitioner, and he conducted the organizational campaign among the Employer's employees. On 30 December 1980, approximately 10 days before the election, Tap mailed a letter informing unit employees of an upcoming union meeting. The notice was not sent to employee Gary Wood. Rather, on the Petitioner's stationery, Tap sent Wood a letter which stated: "f— you a——." Tap asserted that he sent this message to Wood because of his belief that Wood was in some way involved in the discharge of an employee organizer.

The hearing officer found that Wood showed the message to John Baja, the Employer's president, and to four or five fellow employees, who in turn showed it to other employees. On 6 January 1981, 3 days before the election, Wood telephoned Tap and asked, "what the f— is this that I received?" Tap stated that Wood knew what it was for. Wood continued saying he did not know what it was for. Tap stated that Wood knew why and that Tap would get him; that he would get Wood's job. Wood reported the conversation to the Employer and to several other employees.

With regard to this objection, the hearing officer concluded that the message Tap sent to Wood did not itself represent a threat of physical harm. He further concluded that Tap's statements to Wood to the effect that Tap would get Wood and that Tap would get Wood's job do not warrant setting the election aside. In this regard, the hearing officer was of the view that Tap's comments to Wood were "personal in nature" and "unrelated to the election." The hearing officer also regarded the incident as isolated and stated that it could not have created a general atmosphere of fear and confusion, warranting the setting aside of the election.

We disagree with the hearing officer's reasoning and his ultimate conclusion. Contrary to the hearing officer, the facts plainly reveal that Tap's statements to Wood were related to the election campaign. Thus, the evidence shows that Tap was an official of the Petitioner conducting the election campaign, and that the obscene message Wood received was sent by Tap on Petitioner's stationery in lieu of organizational material received by other employees. Further, Tap conceded that his conduct toward Wood was based on Tap's belief that Wood had been involved in effecting the discharge of a prounion employee.

In addition, the hearing officer erred in applying the third-party standard of whether the conduct created a general atmosphere of fear and confusion. Because the threats in issue were made by an official of the Petitioner, rather than by a rank-and-file employee, the proper test is whether the conduct reasonably tends to interfere with the employees' free and uncoerced choice in the election. Under this standard, Tap's threats to "get Wood's job" and "to get" Wood are clearly coercive and objectionable, as they can reasonably be interpreted as threats of economic retaliation, physical harm, and other unspecified reprisals. Initially, we note that the threat "to get Wood's job" was a direct threat to take economic reprisals against Wood and to seek his discharge, and the threat "to get" Wood could reasonably be viewed as a threat of physical harm and of other unspecified reprisals.[2]

Further, as set forth in the hearing officer's report, Wood discussed Tap's threats with John Baja, the Employer's president, and Baja attempted to relieve Wood's fears by pointing out that Tap was not *that* strong and that he did not have *every* bar locked up. Wood was employed as a bartender by the Employer, and Petitioner represented a number of bar and lounge employees in the area. In such a context, it is clear that Tap exercised a significant degree of influence over a substantial

[1] The election was conducted pursuant to a Stipulated Election Agreement. The revised tally was: 21 for and 17 against the Petitioner, with 3 challenged ballots, an insufficient number to affect the results.

[2] We note that Tap's conduct in sending the obscene message serves to confirm our conclusion and to emphasize that Tap's expressed intent to get Wood's job and to get Wood cannot be dismissed as offhand or casual remarks.

number of jobs in the industry and that Tap's threats "to get Wood's job" and "to get" Wood were not idle threats made in a vacuum, but were threats made by a union official who wielded substantial influence in the local industry.

Finally, we disagree with the hearing officer that the incident was "isolated" merely because it involved only one employee. As set forth above, Wood repeated Tap's threats to Baja and a number of other employees. Thus, Tap's threats of economic reprisals, physical harm, and other unspecified reprisals were disseminated among the employee work force.

For these reasons, we find, contrary to the hearing officer, that the conduct of Tap, an official of the Petitioner, warrants setting aside the election and directing a second election.

[Direction of Second Election and *Excelsior* paragraph omitted from publication.]