

**Metz Metallurgical Corp. and Service Employees
International Union, AFL-CIO, Petitioner.
Case 22-RC-8885**

24 May 1984

**DECISION AND CERTIFICATION OF
RESULTS OF ELECTION**

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

The National Labor Relations Board, by a three-member panel, has considered objections to an election held 6 January 1983 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 53 for and 77 against the Petitioner, with 1 challenged ballot, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief, and has adopted the hearing officer's findings and conclusions only to the extent consistent with this decision.

The hearing officer has recommended setting aside the results of the election based on two conversations between the Employer's supervisors and unit employee Robert Ciancimino. We disagree with the hearing officer's conclusion that the conduct at issue affected the election results.¹

According to Ciancimino's credited testimony, he was working 20 December 1982 when Supervisor Randy Van Lit initiated a conversation by asking Ciancimino how he felt about the Union. Ciancimino replied that the Union had its good points and its bad points. Van Lit then predicted that employees would lose certain fringe benefits if the Union became their bargaining representative. Ciancimino replied that they would not lose these benefits. There is no credible evidence that any other person overheard this conversation or that Van Lit, who does not supervise Ciancimino, repeated his comments to anyone else.² Ciancimino discussed the conversation with one other employee, Wayne Tracey.

On 22 December Ciancimino had an on-the-job encounter with Charles Crincoli, his supervisor. Crincoli told Ciancimino to perform another employee's duties in the metallurgical department. Ciancimino instead went to a vault to get silver, a

task unrelated to Crincoli's order. When Crincoli asked what Ciancimino was doing, the employee said that he had gone for silver. Crincoli replied that "he didn't want any of this insubordination" and that "when I tell you to go over there and do your job, go do it." In a parting remark, Crincoli added, "You don't need any union, your job is on the line." There is no evidence that other employees heard this conversation. Ciancimino admitted that Crincoli has criticized him on several occasions for poor work performance.

With respect to Crincoli's comments to Ciancimino, the evidence does not support the hearing officer's finding that they implied a threat to discharge Ciancimino for engaging in union activities. A reasonable person would fully understand Crincoli's statement to be yet another warning against poor performance and the failure to follow work instructions. The incidental parting reference to a union was made in the context of a correct suggestion that union representation cannot insulate an employee from discharge or discipline for poor work performance. Consequently, Crincoli's conduct was not objectionable and presents no basis for setting aside the election.

Assuming *arguendo* that Supervisor Van Lit's conduct did entail proscribed interrogation and threats of lost benefits, we find that this single incident was *de minimis* with respect to affecting the results of the election. In determining whether certain conduct is *de minimis*, the Board takes into consideration the number of violations, their severity, the extent of dissemination, the size of the unit, and other relevant factors. *Caron International, Inc.*, 246 NLRB 1120 (1979). Any misconduct here occurred 17 days before the election during a single isolated conversation between a low-level supervisor and one employee. There was no other objectionable conduct. Only one other employee in a large unit of 136 eligible voters is shown to have learned about the conduct.³ Under these circumstances, it is virtually impossible to conclude that Van Lit's conduct could have affected the results of the election. We will not set aside the election based on such a remote possibility.

**CERTIFICATION OF RESULTS OF
ELECTION**

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Service Employees International Union, AFL-CIO, and that it is not the exclusive representative of these bargaining unit employees.

¹ We express no opinion whether the hearing officer properly considered evidence related to objections issues which were first raised during the regional investigation of a subsequently withdrawn unfair labor practice charge. We note that the Employer failed to file exceptions to the Regional Director's direction of a hearing on those issues.

² Member Hunter presumes that the remarks were disseminated in the absence of evidence to the contrary. He agrees, however, that for all the other reasons the conduct does not warrant setting aside the election.

³ Contrary to the hearing officer, we will not presume general dissemination of Van Lit's remarks.