Tri-Cast, Inc. *and* International Molders and Allied Workers Union, AFL-CIO-CLC, Petitioner. Case 7-RC-16468

27 February 1985

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

Pursuant to a Stipulation for Certification Upon Consent Election,[1] a secret-ballot election was conducted on 18 September 1981. The tally of ballots shows that of approximately 25 eligible voters 11 cast ballots for and 12 cast ballots against the Petitioner. There were two challenged ballots, a number sufficient to affect the results of the election. Subsequently, the parties agreed to, and the Regional Director approved, a stipulation resolving challenged ballots. The revised tally of ballots shows 11 ballots for and 14 against the Petitioner.

The Petitioner also filed timely objections to conduct affecting the results of the election. Following an investigation of the objections, the Regional Director issued his Report and Recommendation on Objections recommending that the Petitioner's Objection 1 be sustained, that the election be set aside, and that a second election be directed.[2] Thereafter, the Employer filed exceptions and a supporting brief.

The Board has reviewed the record in light of the exceptions and brief, and adopts the Regional Director's findings and recommendations only to the extent consistent with this decision.

1. On the day of the election, the Employer distributed a letter to its employees. Paragraph 2 of the letter stated:

> 2. We have been able to work on an informal and person-to-person basis. If the union comes in this will change.
>
> We will have to run things by the book, with a stranger, and will not be able to handle personal requests as we have been doing.

The Regional Director concluded these statements misrepresented employee rights under Section 9(a) of the Act,[3] under which employees retain the right, with certain limitations, to present individual grievances to their employer. The Regional Director also found that the statements amounted to a threat to take away existing rights since the Employer was implying, contrary to Section 9(a), that personal requests would not be handled as before because of unionization. Thus, the Regional Director, relying on *Greensboro News Co.*, 257 NLRB 701 (1981); *Armstrong Cork Co.*, 250 NLRB 1282 (1980); and *LOF Glass, Inc.*, 249 NLRB 428 (1980), found the statements were objectionable and warranted setting aside the results of the election.

We do not agree with the Regional Director's finding that the Employer threatened to withdraw rights preserved by Section 9(a). The Employer's statement, crafted in layman's terms, simply explicates one of the changes which occur between employers and employees when a statutory representative is selected. There is no threat, either explicit or implicit, in a statement which explains to employees that, when they select a union to represent them, the relationship that existed between the employees and the employer will not be as before. This is especially so, as implied in the Employer's statement here, where a collective-bargaining agreement is negotiated.[4] Section 9(a) thus contemplates a change in the manner in which employer and employee deal with each other. For an employer to tell its employees about this change during the course of an election campaign cannot be characterized as an objectionable retaliatory threat to deprive employees of their rights, but rather is nothing more or less than permissible campaign conduct.[5] As the Ninth Circuit has observed, "[I]t is a 'fact of industrial life' that when a union represents employees they will deal with the employer indirectly, through a shop steward." *NLRB v. Sacramento Clinical Laboratory*, 623 F.2d 110, 112 (9th Cir. 1980).

---

[1] The stipulated unit is

All full-time and regular part-time production and maintenance employees, including leaders and drivers, employed by the Employer at its 16960 148th Street, Spring Lake, Michigan facility, but excluding all office clerical employees, guards and supervisors as defined in the Act.

[2] The Regional Director also recommended that the Petitioner's request to withdraw its Objection 2 be approved There were no exceptions to this recommendation, and therefore we adopt it pro forma

[3] Sec 9(a) of the Act reads as follows

Sec 9 (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect. *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment

[4] The proviso to Sec 9(a) specifically provides that employees have the right to present grievances to their employer without union interference "as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect *Provided further*, That the bargaining representative has been given opportunity to be present at such adjustment "

[5] Cf *Eagle Comtronics, Inc*, 263 NLRB 515 (1982) To the extent that the cases relied on by the Regional Director, cited above, are to the contrary, they are overruled

Furthermore, the Regional Director's finding of an objectionable misrepresentation cannot stand. In *Midland National Life Insurance Co.*, 263 NLRB 127 (1982), the Board stated that it would "no longer probe into the truth or falsity of the parties' campaign statements, and . . . will not set elections aside on the basis of misleading campaign statements."[6] Subsequently, the Board reaffirmed its commitment to *Midland National* when it decided to treat mischaracterizations of Board actions in the same manner as other misrepresentations. *Riveredge Hospital*, 264 NLRB 1094 (1982). Finally, in *Furr's, Inc.*, 265 NLRB 1300 fn. 10 (1982), the Board indicated that there was no basis for treating misrepresentations of law differently from any other misrepresentations. Accordingly, we would not overturn the election results here even if the letter were read to have misrepresented employee rights.[7]

2. In the same letter to employees, the Employer stated in paragraphs 1 and 3:

> 1. We are still a young company fighting for new business. If we have to bid higher or customers feel threatened because of delivery cancellations (union strikes) *we lose business—and jobs.* [Emphasis in the original.]
>
> . . .
>
> 3. We will lose the flexibility we need to ship castings and beat the competition. We cannot stay healthy with union restrictions. We are much too small.

The Regional Director concluded that these comments were veiled threats that business would decline and jobs would be lost if employees selected the Petitioner to represent them. The Regional Director found that the Employer failed to show an objective basis for the predictions stated in the letter. Thus, the Regional Director determined that the comments constituted objectionable threats. Accordingly, the Regional Director also recommended setting aside the results of the election on this basis.

Contrary to the Regional Director, we do not view the Employer's statements as threats, but rather as permissible campaign comments. The Employer's printed views and opinions here, when properly analyzed, are bereft of threats, and thus not objectionable.

The Employer's first comment is couched in terms of what might happen "*if*" certain events occur. We construe this comment as nothing more than the Employer's permissible mention of possible effects of unionization. Higher bids or customer feelings of dissatisfaction because of problems caused by union strikes *can* lead to lost business and lost jobs. There is no dispute that the Employer is a young company and that higher wages demanded by a union could mean ultimately higher bids which might, in turn, affect the amount of business garnered by the Employer. Making these reasonable possibilities known to employees does not constitute objectionable conduct.[8]

Nor does the Employer's reference to loss of business health constitute objectionable conduct. A statement by the Employer that it could not remain healthy with union restrictions because they would lessen its flexibility and its competitiveness can only refer to possible restrictive conditions that may be sought by the Petitioner in future bargaining. These restrictions are possible outgrowths of unionization, designed to assure the amount and types of work done by unit members. Since the Employer's comments reflect possible consequences of unionization, and are moderate in tone, we conclude that they are not threats of retaliatory conduct.

Accordingly, we overrule the Petitioner's objections and certify the results of the election.[9]

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for International Molders and Allied Workers Union, AFL–CIO–CLC, and that the labor organization is not the exclusive representative of all the employees in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act.

---

[6] 263 NLRB at 133

[7] See Member Hunter's dissent in *Hahn Property Management Corp*, 263 NLRB 586 (1982)

[8] See, e g, *Daniel Construction Co*, 264 NLRB 569 (1982), *Butler Shoes New York*, 263 NLRB 1031 (1982) Cf *Fiorella*, 261 NLRB 281, 283 (1982)

[9] The Employer requested that a hearing be held on the issues raised in this case In light of our decision here, there is no need to pass on the Employer's request for a hearing