

Hydrotherm, Inc. and Petroleum, Construction, Tank Line Drivers & Allied Employees Union No. 311 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 5-RC-11961

11 June 1984

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

The National Labor Relations Board, by a three-member panel, has considered determinative challenges in and objections to an election held 12 May 1983 and the Regional Director's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 59 for and 56 against the Petitioner, with 7 challenged ballots.

The Board has reviewed the record¹ in light of the exceptions and brief, has adopted the Regional Director's findings² and recommendations, and finds that a certification of representative should be issued.

Unlike our dissenting colleague, we see no reason to reverse the Regional Director and remand this case for a hearing on the Employer's Objections 5 and 12. These objections allege that preceding the election the Petitioner improperly conditioned the waiver of union initiation fees on the signing of union authorization cards and threatened employees who had not signed authorization cards with \$200 fines. The Employer's evidence in support of these objections consisted of the affidavits of two employees and a supervisor who stated that about a month before the election employees were told by other unidentified employees that if the Union won the election employees who had not signed union membership cards would be fined \$200. One of the employees approached union organizer Greason and asked him if there would be a fine if she did not sign a card. According to the employee Greason responded that "there would be no fine, that the card was an application to get the union into the plant. He did say there would be an initiation fee, but he did not say how much."

¹ We deny the Employer's motion to compel transfer of file to the Board. See *Frontier Hotel*, 265 NLRB 343 (1982), and *Frontier Hotel*, 266 NLRB No. 155 (May 23, 1983), enfd. No. 83-7511 (9th Cir. 1984).

² In adopting the Regional Director's recommendations that Employer's Objections 4 and 6 be overruled, Chairman Dotson finds it unnecessary to rely on the Regional Director's statement that there is no evidence to establish that agents of the Petitioner were responsible for certain conduct alleged to be objectionable.

In *NLRB v. Savair Mfg. Co.*, 414 U.S. 270 (1973), the Supreme Court held that a union's offer to waive initiation fees for only those employees who signed authorization cards before the election impairs employee free choice and warrants setting the election aside. The Court found that obtaining employees' signatures on authorization cards in such a manner "allows the union to buy endorsements and paint a false portrait of employee support during its election campaign" and may create a feeling of obligation to vote for the union in the election. Id. at 277-278. The Regional Director relying on *Savair* concluded that the Employer failed to submit evidence to support a finding that the Petitioner engaged in objectionable conduct. We agree. In order for *Savair* principles to apply, there must be some evidence that employees are being induced to sign an authorization card before the election in order to qualify for some special concession. The Employer failed to show that Greason coupled his alleged comments with any card solicitation activities or with any statement distinguishing employees who signed cards before the election from employees who signed afterwards. In fact, Greason's alleged statements made no reference whatsoever to any offer by the Union to waive initiation fees and did not contain a single exhortation to sign a card or to join the Union before the election. We cannot agree with our dissenting colleague's conclusion that Greason's comments directly equated the idea of a fine for not signing a card before the election with the idea of an initiation fee for not signing a card before the election when no words which could reasonably support such a conclusion were ever uttered. We fail to see any ambiguity in Greason's alleged statements and do not view his comments as susceptible to any objectionable interpretation. Rather we view Greason's statements as merely a passing reference to the initial financial obligations of union members should the Union "get in the plant," and we agree with the Regional Director that these comments repudiated the rumor³ circulating in the Employer's facility regarding a fine for those employees who did not sign authorization cards. Absent any evidence of union-initiated or condoned ambiguity in statements regarding fines or initiation fees we conclude contrary to our dissenting colleague that the Union was under no obligation to clarify any of the alleged objectionable statements. We further con-

³ The Employer in its brief in support of exceptions acknowledged that the alleged statements regarding the imposition of \$200 fines were "rumors." We note that the Employer's witnesses were unable to identify the employees from whom they heard the rumors and failed to present any evidence that the Union was in any manner responsible for the initiation or dissemination of the rumors.

clude that all the relevant facts regarding Employer's Objections 5 and 12 are currently before the Board and that the objections do not raise material or substantial issues of fact or law requiring a hearing.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Petroleum, Construction, Tank Line Drivers & Allied Employees Union No. 311 a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees employed at the Employer's Dundalk, Maryland facility, including maintenance/utility employees, assemblers, machine operators, testers, inspectors, brazers, painters, welders, machinists, set-up operators, material handlers, store keepers, shipping and receiving clerks, tool and die makers, but excluding managerial employees, lead supervisors, office clericals, schedulers, expeditors, production control clerks, quality assurance technicians, purchasing agents, industrial and manufacturing engineers, professional employees, confidential employees, guards and supervisors as defined in the Act.

MEMBER HUNTER, dissenting.

Contrary to my colleagues, I would not adopt the Regional Director's recommendations to overrule the Employer's Objections 5 and 12. In my opinion, the Employer has submitted evidence which, at the very least, raises issues best resolved by a hearing.

Objection 5 alleged that the Petitioner improperly conditioned the waiver of initiation fees on the signing of union authorization cards before the election. Objection 12 alleged that the Petitioner threatened employees with \$200 fines if they did not sign union authorization cards before the election. In support of its objections, the Employer submitted employee affidavits which alleged, inter alia, that employees were told by other employees that if the Union won the election employees who had not signed authorization cards would be fined \$200. One employee approached union organizer Greason before the election and asked him whether

there would be a fine if she did not sign a card. According to the employee, Greason responded "that there would be no fine, that the card was an application to get the union into the plant," although he "did say there would be an initiation fee." The Regional Director, finding no evidence to support the Employer's contention that the Union conditioned the waiver of initiation fees on the preelection signing of cards, further found that Greason's alleged statement both "explained the Union's initiation fee policy" and "repudiated the rumors of a \$200 fine that were being circulated at the Employer's facility."

It is well established that a union's offer to waive initiation fees only for those employees who signed authorization cards before the election constitutes grounds for setting aside the election. *NLRB v. Savair Mfg. Co.*, 414 U.S. 270 (1973). It also is well established that when a union offer to waive initiation fees is ambiguous, it is the union's duty "to clarify that ambiguity or suffer whatever consequences might attach to employees' possible interpretations of the ambiguity." *Inland Shoe Mfg. Co.*, 211 NLRB 724, 725 (1974). The Board has remanded cases for a hearing when it appears that alleged union statements concerning waiver are ambiguous and susceptible to an interpretation violative of the *Savair* standards. See, e.g., *Eurasian Automotive Products*, 234 NLRB 1049 (1978); *Rounsville of Tampa*, 224 NLRB 455 (1976). Here, evidence was adduced that, in response to an employee's inquiry about whether she would be fined for not signing a card, the union organizer indicated there would be no fine but there was an initiation fee. In my view, rather than "explaining" the Petitioner's initiation fee policy, Greason's alleged response directly equated the idea of a fine for not signing a card before the election with the idea of an initiation fee for not signing a card before the election. The obvious implication is that an initiation fee would not be imposed if the employee were to sign a card. Thus, since Greason's alleged statement is ambiguous and susceptible to an objectionable interpretation, it raises substantial and material factual issues warranting a hearing. Accordingly, I disagree with my colleagues' decision to overrule Objections 5 and 12 without the benefit of a hearing, and I therefore must dissent from the certification of the Petitioner as collective-bargaining representative.¹

¹ In filing this dissent, I find it unnecessary to pass on the Employer's other objections which are overruled as a result of the majority's decision.