

Food Store Employees Union, Local 437, United Food & Commercial Workers International Union, AFL-CIO-CLC and Stanton Enterprises d/b/a Best Western, Elk River Inn

West Virginia Inns d/b/a Holiday Inn, Heart-O-Town and Food Store Employees Union, Local 347, United Food & Commercial Workers International Union, AFL-CIO-CLC, Petitioner

Stanton Enterprises d/b/a Best Western, Elk River Inn and Food Store Employees Union, Local 347, United Food & Commercial Workers International Union, AFL-CIO-CLC, Petitioner. Cases 9-CB-5572, 9-RC-14267, and 9-RC-14271

15 August 1984

**DECISION, ORDER, AND
CERTIFICATION OF
REPRESENTATIVE**

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

On 27 October 1983 Administrative Law Judge Marion C. Ladwig issued the attached decision. The Charging Party Employer filed exceptions and a supporting brief.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,² and conclusions³ and to adopt the recommended Order.

¹ We note that these representation cases and the related *Pool Associates d/b/a Holiday Inn Charleston House*, Case 9-RC-14273, involve three separate elections at motels in Charleston, West Virginia, operated by a single employer. The hearing in this consolidated proceeding was held before the Board could rule on the Employer's objection in each election that any objectionable conduct which the Petitioner may have engaged in at one election site would also affect the election results at other locations. After considering that issue in light of the exceptions the Employer previously filed, we adopt the Regional Director's recommendation in each case overruling the objection.

² The Charging Party Employer has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

³ In adopting the judge's dismissal of the complaint, we do not pass on his finding that, even if the Respondent's organizer had made the statements attributed to him by employee Carolyn Kimberling, they would not constitute an unlawful threat to do her bodily harm.

In the absence of exceptions thereto, we adopt pro forma the judge's recommendations on the unexcepted-to objections in both representation cases as well as his disposition of determinative challenged ballots in Case 9-RC-14271.

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ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

IT IS FURTHER ORDERED that in *Stanton Enterprises d/b/a Best Western, Elk River Inn*, Case 9-RC-14271, the Regional Director for Region 9 shall, pursuant to the Rules and Regulations of the Board, within 10 days from the date of this decision, open and count the ballots of Dortha Derrick, Roger Hanshaw, Mary Huffman, Della Naylor, Shirley Palmer, and Marie Rhodes and, if a sufficient number of these ballots has been cast in favor of the Petitioner so that the outcome of the election is no longer in doubt regardless of the eligibility of the challenged voters, the Regional Director shall issue a certification of the Petitioner as the exclusive collective-bargaining representative of the employees in the appropriate unit.

IT IS FURTHER ORDERED that, if a sufficient number of ballots has been cast against the Petitioner to affect the election results, i.e., to make it necessary to determine the eligibility of the challenged voters, the Regional Director shall hold the disposition of the challenged ballots of Dortha Derrick, Roger Hanshaw, Mary Huffman, Della Naylor, Shirley Palmer, and Marie Rhodes in abeyance pending the outcome of the unfair labor practice proceeding involving the status of these individuals, whereupon he may take such action as he deems appropriate.

**CERTIFICATION OF
REPRESENTATIVE**

IT IS CERTIFIED that in *West Virginia Inns d/b/a Holiday Inn, Heart-O-Town*, Case 9-RC-14267, a majority of the valid ballots have been cast for Food Store Employees Union, Local 347, United Food & Commercial Workers International Union, AFL-CIO-CLC, and that it is the exclusive collective-bargaining representative of the employees in the unit found appropriate:

All full-time and regular part-time maids employed by the Employer, but excluding all other employees and guards, professional employees, housemen or porters, and supervisors as defined in the Act.

DECISION

STATEMENT OF THE CASE

MARION C. LADWIG, Administrative Law Judge. These consolidated cases were tried at Charleston, West Virginia, September 20, 1983. The charge was filed May

16, 1983,¹ the complaint was issued June 22, and orders consolidating the cases and transferring the representation cases to the Board were issued July 25 and 26.

The remaining issues in this proceeding involve a credibility question of whether an experienced union organizer, in a telephone conversation with a former union supporter before an election won by the Union, (a) threatened that she had better resign her job, (b) threatened to sue her, and (c) threatened her with unspecified bodily harm because of her opposition to the Union, violating Section 8(b)(1)(A) of the National Labor Relations Act and requiring the election to be set aside.

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel, the Respondent Union, and the Employers, I make the following

FINDINGS OF FACT

I. JURISDICTION

Stanton Enterprises, a West Virginia corporation, operates a hotel in Charleston, West Virginia, where it annually has over \$500,000 in gross revenues and receives goods valued over \$25,000 directly from outside the State. The Union admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Alleged Threats

Jodie Ward, an organizer for the last 9 or 10 years, held the initial organizing meeting April 20 at the union hall. Carolyn Kimberling, a maid at the Best Western Hotel, was one of the 13 housekeeping and maintenance employees who attended the meeting and signed authorization cards. She made a speech in favor of the Union. About 4 days later, however, she telephoned Ward and advised him that she was living for the Lord and did not feel it would be proper to be involved with the Union. He told her he respected her opinion.

After this conversation, Union Organizer Ward began getting reports that Kimberling was working against the Union and had informed the Employer which employees had attended the meeting and signed cards.

On May 10 (about 4 weeks before the election), Ward telephoned Kimberling. As he credibly testified, "I told her that I called her to let her know what I thought of her." After reminding her of her speech at the union meeting, "that we're going to stick together," he accused her of going back and "ratting" on the employees and being the "slimiest thing" or the "biggest piece of slime" in the county (Tr. 35-36). He also told her the employees were upset with her, stating that he heard she had been going around "telling the employees not to attend the union meetings," that they would be seen, that the Employer had somebody watching the union hall, and that they would lose their jobs. She responded that what

she was doing, she was doing for the employees because she loved them and did not want to see them get fired (Tr. 38-39). According to Kimberling, Ward told her he understood she was threatening the girls, that she was "nothing but scum," and was no Christian (Tr. 12). The General Counsel does not contend that either version of this part of the conversation was coercive or unlawful.

Kimberling gave other testimony in support of the allegations in paragraph 5 of the complaint that in this May 20 telephone conversation, Union Organizer Ward (a) threatened that she had better resign her job because of her opposition to the Union, (b) threatened to sue her for everything she had because of her opposition to the Union, and (c) threatened her with unspecified bodily harm because of her opposition to the Union. She claimed (Tr. 12-13):

And he said, not only that, but the girls was mad enough at me they could kill me if they thought they could get by with it.

And he said, if I continue on my job, that he would see that I got sued and lose everything that I had.

Ward positively denied the allegations (Tr. 41).

B. Parties' Contentions on Credibility

The General Counsel contends that Kimberling's "testimony, in its entirety, is plausible" and should be credited. Relying on her version of the telephone conversation, the Employer contends "That Ms. Kimberling was coerced is beyond dispute."

To the contrary, the Union argued at the trial that there is no logical basis for Union Organizer Ward to have threatened the employee. "He's an experienced union agent and would know that would be basis for throwing out an election," and he "would never engage in such conduct." (Tr. 137.) Concerning the purported threat to sue her, it argued that there is no basis in fact or law for such a threat. "What basis does he have for suing an employee because of campaign statements, whether she was for or against the union. There's simply no logical basis for that." (Tr. 138.) Concerning her claim that Ward told her the girls were mad enough that they could kill her "if they thought they could get by with it," the Union argued that "doesn't make any sense, logically, for anybody to say, we're going to kill you if we can get by with it. In a situation like that, it would be obvious they would come looking for somebody in the union situation." (Tr. 139.)

In its brief, the Union further argues that the purported threat if she continued on the job is not logical "because of her testimony that she told Ward in the telephone conversation that she had already intended to resign from the Employer and offered to send Mr. Ward a copy of her resignation letter."

¹ All dates are in 1983.

C. Fabricated Testimony

I find that Kimberling's claim that Union Organizer Ward threatened her in the May 20 telephone conversation was fabricated.

Concerning her mad-enough-to-kill claim, Kimberling's initial pretrial affidavit (given June 3) stated, "You're lower than scum, and you're no Christian either." Later the sentence was added, and initialed: "And he said the girls were so mad at me that they could kill me." (Tr. 23.) Then at the trial, as quoted above, Kimberling gave the embellishment that the girls could kill her "if they thought they could get by with it." I discredit both versions and credit Ward's testimony that when he told Kimberling what the employees had been telling him about her antiunion activity, he informed her that the employees were upset with her (Tr. 38). Moreover, even if Ward had told Kimberling in the conversation that "the girls were so mad at me that they could kill me" (as claimed in the amended affidavit), or that "the girls was mad enough at me they could kill me if they thought they could get by with it" (as claimed at the trial), neither version supports the allegation in the complaint that Ward "threatened her with unspecified bodily harm because of her opposition to the Union." There was no threat that he or anybody else would do her bodily harm or kill her for opposing the Union.

Concerning Kimberling's claim that Organizer Ward told her that "if I continued on my job, *he* would see that I got sued and lose everything that I had" (emphasis added), Kimberling gave a conflicting version on cross-examination. There she claimed that he said that "if I continued upon my job that I would get sued and lose everything" she had (Tr. 19), and denied that he said who was going to sue her (Tr. 21). I discredit both versions and find there was no threat to force her to quit her job. Admittedly, she had already decided to quit and told him so.

After Organizer Ward (who impressed me by his demeanor on the stand as an honest, conscientious witness) testified that Kimberling stated the reason for her actions (in opposing the Union) was that she loved the employees, she added that "it doesn't matter anyway, I'm going to quit," and offered to send Ward a copy of her resignation letter (Tr. 36). Kimberling admitted on cross-examination that before the union organizing began she had intentions of quitting and had told the employees her plans (Tr. 14-15). She also acknowledged that in the May 20 telephone conversation she informed Ward she already intended to quit and told him that she would send him a copy of her resignation letter to the Employer (Tr. 23-24).

Regardless of her motivation for opposing the Union, I find that she fabricated the testimony that the organizer threatened her. (She impressed me as being less than candid on the stand.)

Accordingly, I find that the complaint which alleges that the Union restrained and coerced employees in violation of Section 8(b)(1)(A) must be dismissed.

III. REPRESENTATION PROCEEDINGS

A. Best Western Election, Case 9-RC-14271

1. Objections to the election

A stipulated election was held June 8 in the following appropriate unit:

All full-time and regular part-time housekeeping and maintenance employees employed by the Employer at 2 Kanawha Boulevard, East, Charleston, West Virginia; excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Employer timely filed six objections. In a report dated July 25, the Regional Director overruled Objections 1, 2, 4, and 5 and directed that a hearing be held on Objections 3 and 6.

In support of Objection 3, the Employer relies on the same evidence presented at the trial of Case 9-CB-5572. Having found that the testimony that Union Organizer Ward made the alleged threats was fabricated, I overrule this objection.

In light of the admission in the Employer's brief that it failed to prove union campaigning occurred in the polling area, I also overrule Objection 6.

2. Challenged ballots

At the June 8 election, the vote was six for and five against the Union, with six challenged ballots. In his July 25 report, the Regional Director recommended that the challenged ballots of Dortha Derrick, Roger Hanshaw, Mary Huffman, Della Naylor, Shirley Palmer, and Marie Rhodes be opened and counted. All six of them were active in the Union's organizational campaign and were alleged to have been discharged before the election in violation of Section 8(a)(3) in Cases 9-CA-19613-1,-2,-3. Each of them has signed a statement waiving the right to a secret ballot, and they have requested that their ballots be opened to resolve the representation issue.

Because of the possibility that the challenged ballots could be determinative, I find that they must be opened.

B. Heart-O-Town Election, Case 9-RC-14267

A stipulated election was held June 17 in the following appropriate unit:

All full-time and regular part-time maids employed by the Employer, but excluding all other employees and guards, professional employees, housemen or porters, and supervisors as defined in the Act.

The vote was 11 for and 1 against the Union, with 4 challenged ballots (an insufficient number to affect the outcome of the election).

The Employer timely filed seven objections. In a report dated July 26, the Regional Director overruled Objections 1, 2, 3, 4, 5, and 7 and directed a hearing on Objection 6.

In light of the admission in the Employer's brief that it failed to prove union campaigning occurred in the polling area, I also overrule Objection 6.

CONCLUSIONS OF LAW

The Union did not commit any unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The complaint is dismissed.

IT IS FURTHER ORDERED that Case 9-RC-14271 is remanded to the Regional Director to open and count the ballots of Dortha Derrick, Roger Hanshaw, Mary Huffman, Della Naylor, Shirley Palmer, and Marie Rhodes; to prepare a revised tally of ballots; and to issue an appropriate certification.

In Case 9-RC-14267, IT IS CERTIFIED that a majority of the valid ballots have been cast for Food Store Employees Union, Local 347, United Food & Commercial Workers International Union, AFL-CIO-CLC, and that it is the exclusive collective-bargaining representative of the employees in the unit found appropriate.