

**Owens-Illinois, Inc., Forest Products Group and United Food and Commercial Workers International Union Local No. 210, AFL-CIO, Petitioner. Case 15-RC-6933**

24 August 1984

**DECISION AND DIRECTION OF  
SECOND ELECTION**

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

Pursuant to a Stipulation for Certification Upon Consent Election approved by the Regional Director for Region 15 of the National Labor Relations Board on 20 September 1982 an election by secret ballot was conducted on 21 October 1982 under the direction and supervision of said Regional Director. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 84 eligible voters, 84 cast ballots, of which 41 were for and 36 against the Petitioner, and 7 were challenged. The challenged ballots were sufficient in number to affect the results of the election. The Employer filed timely objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation and, on 8 December 1982, issued his Report on Challenged Ballots and Objections in which he recommended that the objections be overruled in their entirety; that the challenges to the ballots of Ruth Ann Combs, Billy M. Dees, Freddy Frazier, and Follis L. Ruthardt be sustained; and that the challenges to the ballots of Michael Burger, LaCarlus Fuller, and Charles E. Grafton be overruled. Thereafter, the Employer filed exceptions and a supporting brief.

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

The Board has reviewed the entire record in this case, including the Regional Director's Report on Challenged Ballots and Objections and the exceptions and brief, and hereby adopts the findings, conclusions, and recommendations<sup>1</sup> of the Regional Director with the following modifications.

1. The Regional Director recommended overruling Objection 1, which alleges, inter alia, that the Petitioner promised employees financial and other

<sup>1</sup> In the absence of any exceptions thereto, we adopt pro forma the Regional Director's recommendations that the challenge to the ballot of Michael Burger be overruled and that Objections 5 and 8 be overruled. In adopting the Regional Director's recommendations as to the remaining challenges, we find it unnecessary to resolve the question of Ruth Ann Combs' eligibility to vote, inasmuch as her challenged ballot is not sufficient in number to affect the results of the election.

rewards if they supported the Petitioner and it won the election and that employees were actually given material things of value such as jackets with union insignia in return for their commitment to support and vote for the Petitioner. As to the promises of benefits, the Employer presented an employee witness who stated that at a union meeting the Petitioner's business representative Christ said negotiations would start from employees' present salaries and go up from there. We agree with the Regional Director's conclusion that such campaign propaganda is not objectionable under the Board's recent decision in *Midland Life Insurance Co.*, 263 NLRB 127 (1982), even if it might be misleading. Inasmuch as the evidence regarding this statement, when viewed in the light most favorable to the Employer, does not establish a prima facie case of objectionable conduct, we do not rely on the Regional Director's finding that, "considered in total context," the evidence does not indicate that the Petitioner actually made such a statement.

As to the gifts of union jackets, the Petitioner's business representative Christ admitted that he handed out about 25 jackets with union insignia to employees who came to his room at the Ramada Inn during the period between the first and second voting sessions and that about five or six of these employees had not yet voted. The jackets cost the Petitioner \$16 each, and thus the Petitioner's gifts to unit employees on election day totaled about \$400. The Regional Director concluded that the Petitioner's gifts were not objectionable, because there was no evidence that the jackets were given to any employee conditioned on a promise to vote for the Petitioner but rather it appeared the jackets were given to employees who had already manifested support for the Petitioner. We are persuaded, however, that distribution of these jackets was objectionable conduct. While only five or six employees received jackets before voting, the vote tally and our disposition of the challenged ballots show that five or six votes could have determined the election's results. Moreover, these jackets were not given away during the preelection campaign but on election day itself; distributed as they were between voting sessions, they could well have appeared to the electorate as a reward for those who had voted for the Petitioner and as an inducement for those who had not yet voted to do so in the Petitioner's favor. While not dispositive, we note that the evidence indicates one employee was heard to say, "the way I voted I better get a jacket." Although the Board held in *R. L. White Co.*, 262 NLRB 575, 576 (1982), that distribution of inexpensive pieces of campaign propaganda such as

buttons, stickers, or T-shirts is not per se objectionable conduct, the value of the jackets given away here far exceeds that of the items considered in *R. L. White*. Given all the circumstances of this case, we find the Petitioner's distribution of these jackets was objectionable conduct. Accordingly, we shall sustain Objection 1 and set aside the election.

2. The Regional Director also recommended overruling Objection 4, which alleges that the Petitioner made material misrepresentations to employees. An employee witness presented by the Employer stated that at a union meeting the Petitioner's business representative Dickey offered to give the employee 100-to-1 odds that there would not be anyone in the plant making less money than they were making now if the Petitioner won the election. The employee accepted the bet. According to this same employee, at another union meeting he asked the Petitioner's business representative Christ how the Petitioner could guarantee such things as 5 personal days, anniversaries, and birthdays off plus 2 weeks' vacation after 1 year, and Christ responded that it was true the Union did have to negotiate but that it had gotten these benefits at the other plants it represented so it should not have any trouble getting them at this plant. In addition, this witness stated that another employee asked Christ if the Petitioner was going to cut out overtime, and Christ replied jokingly, "Well, we've already done that." Again, we agree with the Regional Director's conclusion that, under *Midland*, supra, these statements are nothing more than typical campaign propaganda, which would not warrant setting aside the election even if they were found to be misrepresentations. However, in adopting the Regional Director's recommendation that Objection 4 be overruled, we find it unnecessary to rely on his comments as to the Petitioner's motivation in making these statements. Furthermore, we note the Board has held that betting incidents do not by themselves constitute objectionable conduct.<sup>2</sup>

3. The Regional Director recommended overruling Objection 6 because the Employer presented no evidence in support of its allegation that the Petitioner created an atmosphere of fear and coercion which destroyed the conditions necessary for the employees' free expression of choice in the elec-

<sup>2</sup> *Personal Products Corp.*, 116 NLRB 393, 398 (1956); *Calvine Cotton Mills*, 98 NLRB 843, 846 (1952).

<sup>3</sup> Finally, the Regional Director recommended overruling Objection 10, which alleges that the Petitioner promised to waive its initiation fees for employees who signed union authorization cards and otherwise supported the Petitioner. The Employer contends that Objection 10 raises substantial and material issues of fact which can best be resolved by a

tion. Although the Employer has implicitly excepted to the Regional Director's recommendation, it has not directed our attention to any evidence which the Regional Director failed to consider. We have reviewed the evidence presented by the Employer in connection with the other objections and we find that it does not rise to the level of establishing that an atmosphere of fear and coercion was created.<sup>3</sup>

[Direction of Second Election omitted from publication.]

MEMBER DENNIS, dissenting in part.

Contrary to my colleagues, I would adopt the Regional Director's finding that the Petitioner did not engage in objectionable conduct by giving employees jackets with union insignia. Applying the objective "tendency-to-influence test" set forth in Board and court precedent,<sup>1</sup> I cannot find that a \$16 union jacket is of sufficient value to create in the recipient a feeling of obligation to favor the Petitioner in the election. Rather, I would find that the Petitioner's conduct here was comparable to that of the employer in *R. L. White Co.*, 262 NLRB 575, 576 (1982), where the distribution of company T-shirts was found to be permissible.<sup>2</sup> The Board correctly recognized in *R. L. White* that the distribution of inexpensive pieces of campaign propaganda is commonplace in NLRB elections. I decline my colleagues' invitation to begin regulating such innocuous conduct.

I would not adopt, however, the Regional Director's recommendation to overrule Objection 10, which alleges that the Petitioner promised to waive its initiation fees for employees who signed union authorization cards and otherwise supported the Petitioner. Although the Regional Director acknowledged that a factual dispute existed as to what the Petitioner told employees regarding its policy on initiation fees, he found that the Petitioner had clarified its policy by mailing employees certificates explaining its requirements for waiving initiation fees, which were consistent with the standards set forth in *NLRB v. Savair Mfg. Co.*, 414 U.S.

hearing. Because we are directing a second election, we find it unnecessary to pass on the question whether the Regional Director should have held a hearing on Objection 10.

<sup>1</sup> See, e.g., *Gulf States Cannery*, 242 NLRB 1326 (1979), and cases cited therein, enfd. 634 F.2d 215 (5th Cir. 1981). Because the test is an objective one, my colleagues' reliance on the subjective reaction of one employee is erroneous.

<sup>2</sup> My colleagues also regard as significant the \$400 total value of the Petitioner's gifts to employees. In *R. L. White*, however, the employer distributed 468 T-shirts (262 NLRB at 588), and therefore the two cases cannot be distinguished on that ground.

U.S. 270 (1973). The Employer contends that a factual dispute still exists as to what statements were made by the Petitioner and which employees actually received the certificates in the mail. I agree with the Employer that Objection 10 raises substantial and material issues of fact which can best

be resolved by a hearing. Accordingly, I would direct a hearing on Objection 10.<sup>3</sup>

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<sup>3</sup> In all other respects I agree with my colleagues.