

Quade's Inc. and International Brotherhood of Electrical Workers, Local 343, AFL-CIO, Petitioner and United Construction Workers Local 84, affiliated with Christian Labor Association of the United States of America. Case 18-RC-14721

August 27, 1991

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

The National Labor Relations Board, by a three-member panel, has considered determinative challenges to an election held on April 2, 1990, 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 15 for the Intervenor, 11 for the Petitioner, and 2 votes against both labor organizations, with 4 challenged ballots.

The Board has reviewed the record in light of the exceptions and brief,¹ has adopted the hearing officer's findings² and recommendations, and finds that a certification of representative should be issued.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for United Construction Workers Local 84, affiliated with Christian Labor Association of the United States of America and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time journeyman and apprentice electricians employed by the Employer at or out of its Hutchinson, Minnesota facility; excluding estimators, office clerical employees, and guards and supervisors as defined in the Act.

MEMBER OVIATT, dissenting.

Contrary to my colleagues, I would find that the Respondent did not violate Section 8(a)(1) of the Act when it distributed a letter to its employees advising them to report to management if they were "threatened or subjected to abusive treatment to sign union a authorization card." The majority, in finding the viola-

¹ The Petitioner excepts to the hearing officer's findings and recommendations regarding the challenges to the ballots of David Dahik and Alan Schwab.

² We note that the hearing officer's apparent reliance on the disposition of Lewis' ballot in *United/Bender Exposition Service*, 293 NLRB 728 (1989), as binding precedent on the eligibility issue involving employee Schwab, is misplaced. No exceptions regarding the challenged ballot of employee Lewis were filed in that case and, thus, Lewis' eligibility was neither presented to nor considered by the Board. We agree, however, with the hearing officer's finding that inasmuch as Alan Schwab voluntarily quit his employment in July 1989 he was not an eligible voter. See *Roy N. Lotspeich Publishing Co.*, 204 NLRB 517 (1973); *Birmingham Cartage Co.*, 193 NLRB 1057 (1971).

tion, relies, inter alia, on *Bank of St. Louis*.¹ In *Bank of St. Louis*, the bank president issued a letter to all the bank's employees advising them to report to management if they were "threatened in any way or subjected to constant badgering" to sign an authorization card. In finding a violation, the judge there reasoned that requesting employees to report "constant badgering was tantamount to a request that they report "persistent attempts to persuade," in other words, to report on the protected activities of coworkers. (191 NLRB at 673.)

I agree that employees should not be requested to report on the protected activities of coworkers. In the present case, however, employees who subject other employees to "abusive treatment" are not engaging in protected activities. The Respondent's letter was not unprovoked. On its face, it was a response to employee complaints. And, on this Motion for Summary Judgment, we must take that at face value. While it is true reasonable minds may differ over the exact definition of "abusive treatment," I would find that it is a term that "does approach a level of specificity which, though not without pitfall, must be assessed with a view to the pragmatics of maintaining order and plant discipline in the course of a union campaign." *Liberty House Nursing Homes*, 245 NLRB 1194, 1197 (1979). I would find any potential infringement of Section 7 of the Act should yield to the Respondent's right in the face of provocation to assure its employees that they are free in their workplace from abusive treatment from employee organizers. As a result, I would find that the Respondent's letter did not violate Section 8(a)(1).

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT request our employees to inform us if they have been subjected to abusive treatment by their fellow employees who are soliciting them to sign union authorization cards or otherwise invite or encourage employees to identify union supporters or discourag employee involvement in protected activity.

¹ 191 NLRB 669 (1971), enfd. 456 F.2d 234 (8th Cir. 1972). I find it clear that subjecting employees to "abusive treatment" is far more serious than subjecting employees to "constant badgering" as in *Bank of St. Louis*. It is also much more serious than causing employees "trouble," "putting them under pressure to join a union" (*Colony Printing & Labeling*, 249 NLRB 223 (1980), enfd. 651 F.2d 502 (7th Cir. 1981), or "harrassing" or "pressuring" them (*Bil-Mar Foods of Ohio*, 255 NLRB 1254 (1981).

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

ARCATA GRAPHICS/FAIRFIELD, INC.