

**Southern Bag Corporation, Ltd. and United Paperworkers International Union, AFL-CIO, CLC, Petitioner.** Case 26-RC-7632 (formerly 15-RC-7838)

December 14, 1994

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

The National Labor Relations Board, by a three member panel, has considered objections to an election held on May 19, 1994, and the hearing officer's report (pertinent portions are attached as an appendix) recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 59 for and 72 against the Petitioner with 1 challenged ballot, a number insufficient to affect the results.

The Board has reviewed the record in light of the exceptions and brief, has adopted the hearing officer's findings and recommendations,<sup>1</sup> and finds that the election must be set aside and a new election held.<sup>2</sup>

We agree with the hearing officer that Leadman Bud Guthrie had apparent authority to act as the Employer's agent during the meeting held with the sewing line on the morning of the election and that Guthrie's acts at the meeting are therefore attributable to the Employer<sup>3</sup> and violated the Board's prohibition of captive audience speeches within 24 hours of the election.

The Board applies common law principles when examining whether an employee is an agent of the employer. Apparent authority results from a manifestation by the principal to a third party that creates a reasonable basis for the latter to believe that the principal has authorized the alleged agent to perform the acts in question. See generally *Great American Products*, 312 NLRB 962 (1993); *Dentech Corp.*, 294 NLRB 924

<sup>1</sup> In the absence of exceptions, we adopt pro forma the hearing officer's recommendation that we approve the Petitioner's withdrawal of Objection 1 and that we overrule Objections 2, 3, and 4.

<sup>2</sup> The Employer contends that the hearing officer's impartiality was compromised because the hearing officer acted as the Board's agent at the election. In addition, the Employer excepts to the hearing officer's conduct of the hearing. On careful examination of the hearing officer's report and the entire record, we are satisfied that these contentions are without merit.

<sup>3</sup> We find no merit in the Respondent's allegation that this issue was not raised at the hearing and that the Respondent was not afforded an opportunity to fully litigate the issue.

(1989); *Service Employees Local 87 (West Bay)*, 291 NLRB 82 (1988). The test is whether, under all the circumstances, the employees "would reasonably believe that the employee in question [the alleged agent] was reflecting company policy and speaking and acting for management." (Citations omitted.) *Waterbed World*, 286 NLRB 425, 426-427 (1987). As stated in Section 2(13) of the Act, when making the agency determination, "the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

In this case, one of Guthrie's duties as a leadman is to have meetings with employees in his department to discuss subjects such as safety, housekeeping, quality control, and similar production matters. The Employer's plant manager testified not only that the leadmen's responsibilities include conducting meetings on those subjects, but that the leadmen do not have to obtain permission prior to holding such meetings and that the leadmen can stop or delay production in order to hold them. When an employer has placed a leadman (or other employee) in a position in which the employees in his department look to him as an authoritative communicator of information on behalf of management regarding safety, housekeeping, quality control, and production matters, it is clear that the employees would tend to reasonably view the leadman as an agent of the employer on other employment-related matters discussed in a similar context.

On the morning of the election, with the permission of the plant superintendent, Guthrie delayed production for 20 to 25 minutes to conduct a mandatory meeting of the sewing line in the training room. Guthrie stated at the beginning of the meeting that he had a legal right to speak to the employees and proceeded to encourage the employees to vote against the Union. In these circumstances, it is clear that the sewing line employees would reasonably believe that Guthrie was conveying company policy (his antiunion message was consistent with the messages presented by management officials throughout the campaign) and that he was indeed acting for management the morning of the election.<sup>4</sup> We find that Guthrie acted as an agent of the

<sup>4</sup> We find that *Montgomery Ward & Co.*, 115 NLRB 645 (1956), cited by the Respondent, is inapposite. In *Montgomery Ward*, supra, the Board specifically found that a supervisor, who was included in the voting unit, had no actual or apparent authority to act as the employer's agent, and the Board held that, in the absence of such findings, the employer was not liable for the supervisor's actions.

Employer at the meeting in question and that his statements at that meeting were attributable to the Employer and constituted objectionable conduct within the meaning of *Peerless Plywood Co.*, 107 NLRB 427 (1953). Thus, we sustain the Petitioner's Objection 5 and direct that a second election be held.

[Direction of Second Election omitted from publication.]

#### APPENDIX

##### HEARING OFFICER'S REPORT

However, the resolution of Objection 5 does not hinge solely on the supervisory status of Guthrie. While the evidence fails to establish supervisory status, the credited testimony clearly reveals that in his capacity of leadman employees could reasonably believe that Guthrie spoke on behalf of management. It is well established that an Employer can be held liable for the acts and statement of non-supervisory employees who act as its agents. The critical issue is "whether, under all the circumstances, the employees would reasonably believe that the nonsupervisory employee was reflecting company policy and speaking and acting for management." *Minnesota Boxed Meat*, 282 NLRB 1208 (1987); *Community Cash Stores*, 238 NLRB 265 (1978); and *Dentech Corp.*, 294 NLRB 924 (1989). As reflected in the Employer's brief Guthrie served **primarily as a conduit of information between the sewing department employees and the company supervisors**. In that capacity Guthrie conducted safety and production meetings with employees.

Further, the credible facts, undenied by the Employer, establish that on the morning of the election, Guthrie addressed a group of sewing department employees. Guthrie was authorized by Plant Superintendent Wells to hold the meeting. Guthrie conveyed to the sewing department employees that he had been given the legal right to hold the meeting. Production was delayed for approximately 20-25 minutes while Guthrie met with employees. This meeting took place in the same room previously used by the Employer to address employees during its preelection campaign. During the May 19 meeting Guthrie echoed the sentiments of the Employer with respect to unionization.

Based on the above facts, I find that Guthrie was the Respondent's agent during the meeting and his actions constituted objectionable conduct within the meaning of *Peerless Plywood Co.*, 107 NLRB 427 (1953).

The Employer denied that Guthrie acted as its agent during the meeting at issue. Furthermore, the Employer denied any knowledge of the union sentiment of Guthrie or the nature of the meeting. Hence, it argues, that it is not liable for Guthrie's actions. I find the Employer's arguments to be

unpersuasive. First of all, throughout the hearing as well as in its brief, the Employer was able to identify not only leadmen, who supported the union, but other employees as well. Just as the Employer was aware of leadmen who supported the union, I am convinced it was equally aware of those who opposed it. Further, I find incredible the Employer's testimony that it had no knowledge of the nature of Guthrie's meeting. While Wells testified it was not uncommon for leadmen to hold meetings, it was clear from his testimony that any such meeting was always work-related and required no permission by management. Further, these meetings were generally short in duration and often held in the production area and there was nothing in the record to indicate that any such meeting had previously been brought to the attention of the plant manager. Wells testified that meetings which were not work-related were not permitted. This was in direct conflict to the testimony of Plant Manager Rusche. Rusche testified that during the course of the preelection campaign, prounion leadmen could have halted production and held meetings with employees advocating support for the Union. I completely discredit this testimony of Rusche, as being totally unworthy of belief, especially in light of the Employer's antiunion position and Wells' testimony. I also find it interesting that Rusche testified that the day after the election, Wells approached him and told him that Guthrie had met with the sewing department employees. If such a meeting was not an unusual occurrence, I find it odd that Wells would bring this meeting to the attention of the plant manager.

While the Employer implied that prounion leadmen had in fact held meetings with employees, there was no evidence in support thereof. In fact, Flaienhean denied any such action. No witness was called by the Employer to refute Flaienhean's testimony in that regard. Thus, I find that the meeting held by Guthrie was the first and only such meeting allowed. Even assuming the Employer had no knowledge of the nature of Guthrie's meeting Section 2(13) of the Act provides as follows:

In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

In the final analysis, I find that Guthrie's action of taking employees away from their working area and subjecting them to antiunion messages in the privacy of a company office, afforded the Employer an unfair advantage to affect the outcome of the election. The conduct is incompatible with the free and untrammelled choice the election is designed to reflect. Accordingly, I recommend that Petitioner's Objection 5 be sustained and the election be set aside.