

Vemco, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW). Cases 7-CA-29122, 7-CA-29516, 7-CA-29674, 7-CA-29763, and 7-RC-19035

September 30, 1994

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND COHEN

On August 27, 1991, the National Labor Relations Board issued a Decision and Order finding that the Respondent had committed certain violations of Section 8(a)(3) and (1) of the National Labor Relations Act.¹ On April 5, 1993, the United States Court of Appeals for the Sixth Circuit issued a decision enforcing the Board's Order in part and denying enforcement in part.² On March 3, 1994, the Board advised the parties that it had accepted the remand and invited statements of position. The Respondent and the Union subsequently filed statements of position, and the Respondent filed a supplemental statement of position.

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

The Board has considered its original decision and the record in light of the court's remand, which it accepts as the law of the case. Remaining for the Board's disposition is the status of the Certification of Representative issued by the Regional Director in Case 7-RC-19035. The Board has decided to revoke the certification and to order a second election in this case.

In its Decision and Order, the Board overruled challenges to the ballots cast by 52 employees who had been laid off by the Respondent on March 17, 1989, based on the Board's finding that the layoffs violated Section 8(a)(3) and (1). Pursuant to the Board's Order, the Regional Director opened and counted the challenged ballots, and thereafter issued a Certification of Representative. However, the court of appeals has denied enforcement to the Board's finding that the mass layoff was unlawful. Accepting the court's opinion as the law of the case, we find that the 52 laid-off employees were not eligible to vote in the election. Without counting the ballots cast by these individuals, the tally of ballots is 127 for and 141 against the Union. Accordingly, we shall revoke the Certification of Representative.

We further note that, in light of the court of appeals' finding that the mass layoff was not unlawful, the authorization cards signed by the 52 laid-off employees may not be counted in determining whether the Union had a card majority. Because we have accepted the re-

mand, we find that the General Counsel has not established that the Union had majority status based on a count of authorization cards as of April 29, 1989, as alleged in the complaint.³ Accordingly, and in light of the court's finding that the mass layoff was lawful, we agree with the court that a bargaining order is no longer warranted in this case.

However, we find that the unchallenged and substantial violations of Section 8(a)(1) enforced by the court of appeals reasonably tended to interfere with employee free choice in the election. In this regard, we note that these violations include confiscation of union literature, threats of plant closure, soliciting grievances and promising benefits in the event employees did not vote for the Union, and threats of more onerous working conditions if the Union won, all committed during the critical period between the date the petition was filed and the date of the election. We further note that the threats of plant closure and promise of benefits in particular were widely disseminated throughout the plant. Accordingly, we shall set aside the results of the first election and direct that a second election be held. See, e.g., *Dal-Tex Optical Co.*, 137 NLRB 1782 (1962).⁴

Finally, we reject the Respondent's contention that it should not be required to post a notice to employees concerning its violations of the Act due to the passage of time since the unfair labor practices "allegedly were committed," alleged turnover among its supervisory and unit personnel, or the potential that a notice advising the Respondent's employees of their rights under the Act and reassuring them that Vemco will not violate those rights "would undermine labor management relations at Vemco." The court of appeals has ordered that the Respondent post the Board's notice, as modified by the court. We are at a loss to understand the Respondent's belief that it is entitled to ignore the court's order, or its characterization of the court's order that the Respondent post the notice, as amended, as a "suggestion" on the part of the court.⁵

³ As noted in the court of appeals' opinion, on April 29, 1989, the Union had authorization cards signed by 131 of 292 unit employees. See *NLRB v. Vemco, Inc.*, 989 F.2d at 1488 fn. 15.

⁴ The Respondent contends that a second election should not be directed due to the passage of time and employee turnover since the 1989 election. The Respondent's contentions are without merit as the mere passage of time and employee turnover are not sufficient to warrant withholding a direction of a second election. Further, the Respondent does not argue that the original showing of interest, less the number of cards signed by laid-off employees, would have been inadequate to support the petition. In any event, it is well settled that a showing of interest is an administrative matter. See e.g., *Allied Chemical Corp.*, 165 NLRB 235 fn. 2 (1967).

⁵ With respect to the Respondent's averment that it has entered into a settlement agreement with respect to any backpay owed to employee Hall under the terms of the court's order, we note that the nature and terms of any such agreement are not part of the record in this case. We find that the effect of the alleged agreement, if any,

¹ 304 NLRB 911.

² *NLRB v. Vemco, Inc.*, 989 F.2d 1468, modified 997 F.2d 1149 (6th Cir. 1993).

ORDER

It is ordered that Case 7–RC–19035 is reopened and the previously issued Certification of Representative is revoked.

IT IS FURTHER ORDERED that a second election by secret ballot shall be held among the employees in the unit(s) found appropriate, whenever the Regional Director deems appropriate. The Regional Director shall direct and supervise the election, subject to the Board's

on backpay owed to employee Hall is best resolved at the compliance stage.

Member Cohen finds that the Respondent's backpay obligation, if any, to Gregg Hall has been satisfied pursuant to the voluntary settlement agreement it entered into with Hall. Under the terms of that agreement, Hall expressly released the Respondent from liability for backpay in connection with these proceedings. In return, he received a cash payment. The settlement agreement has been fully executed. Although his colleagues state that the nature and terms of the agreement are not in the record, he notes that Respondent has described the agreement in relevant detail, and no one disputes these averments. Indeed, neither the General Counsel nor the Charging Party opposed the Respondent's position in their postremand position statements to the Board.

Rules and Regulations. Eligible to vote are those employed during the payroll period ending immediately before the date of the Notice of Second Election, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their employee status during the eligibility period and their replacements. Those in the military services may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW).