

**Precision Products Group, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, Petitioner.** Case 8-RC-15176

October 31, 1995

DECISION AND CERTIFICATION OF  
RESULTS OF ELECTION

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND TRUESDALE

The National Labor Relations Board, by a three-member panel, has considered objections to an election held February 17, 1995, and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Decision and Direction of Election issued by the Regional Director. The tally of ballots shows 47 for and 61 against the Petitioner. There were no challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the hearing officer's findings and recommendations only to the extent consistent with this decision, and finds that a certification of results of election should issue.

The hearing officer recommended setting aside the election because he found that the Employer's president engaged in objectionable conduct by indicating to employees at a captive audience meeting, that their expectation of receiving an already budgeted wage increase was specifically contingent on the outcome of the election. We do not adopt the hearing officer's recommendation because we find that this issue was not properly before the hearing officer.

Following the election, the Petitioner filed timely objections and the Regional Director caused an investigation to be made of those objections. On March 28, 1995, the Petitioner requested, in writing, that a portion of Objection 1, and all of Objections 3, 4, and 6 be withdrawn. The Petitioner's withdrawn Objection 4 alleged that the Employer or its agents:

4. Stated or implied that the Employer would "bargain from scratch" if the Union won, thereby threatening employees with cancellation of existing wages and benefits.

The Regional Director issued an Order Directing Hearing on Objections on March 31, 1995, approving the Petitioner's withdrawal of the objections listed above, including Objection 4, and directed that the remaining objections be set for hearing.

The allegations in the remaining parts of the Petitioner's Objection 1, which the Regional Director set for hearing, were that the Employer unlawfully raised the rate ranges for all hourly job classifications for the first time in 3 years and that the Employer's action resulted in granting a higher wage rate to those employees hired after the eligibility cutoff date. Following the

hearing, the hearing officer recommended overruling both portions of Objection 1.<sup>1</sup>

Although he recommended overruling both allegations regarding the increased wage rates, the hearing officer nevertheless proceeded to find that the Employer's president and CEO, Maurie Johnson, made a statement during a captive audience meeting that constituted objectionable conduct. More specifically, the hearing officer found that Johnson stated that if the Union won the election, everything would have to be negotiated from "square one," including the already decided upon and announced increase in wage rates. Based on this statement, the hearing officer recommended that the election be set aside and a new election conducted.

The hearing officer noted that Johnson's statement was not specifically alleged in the Petitioner's objections nor cited in the Regional Director's order. The hearing officer found, however, that the allegation regarding Johnson's statement was properly before him because he found that Johnson's statement was closely related to the issue of the wage increase set forth in Objection 1 and because the Employer had full opportunity at the hearing to present evidence on this issue. The hearing officer relied on *American Safety Equipment*, 234 NLRB 501 (1978), in which the Board held that "the *Regional Director* is not required to, nor can he properly, ignore evidence relevant to the conduct of the election . . . simply because the Union may not have specifically mentioned such conduct in its objections." 234 NLRB at 501 (emphasis added), quoting *Thomas Products Co.*, 169 NLRB 706 (1968).

The Employer excepts to the hearing officer's finding that Johnson's statement constituted objectionable conduct, arguing that the hearing officer exceeded his authority because Johnson's statement was not alleged as objectionable conduct in the objections set for hearing by the Regional Director. The Employer cites *Iowa Lamb Corp.*, 275 NLRB 185 (1985), in support of its argument. In *Iowa Lamb*, the Board found that a *hear-*

<sup>1</sup>The hearing officer found that the Employer decided to raise wage rates before the Petitioner's organizing campaign began and that the Employer's decision to implement the increase was made for legitimate business reasons. Therefore, the hearing officer recommended overruling this portion of Objection 1. Further, the hearing officer concluded that the Employer's creation of a disparity between the wage rates for existing employees and the wage rates for new hires was inadvertent and was not motivated by a desire to affect the results of the election. The hearing officer recommended overruling this portion of Objection 1 because the situation was unprecedented and because the alternatives for remedying the situation would have required a departure from the Employer's past practice, thereby leading to charges of objectionable conduct. In the absence of exceptions, we adopt these findings pro forma.

In addition, the hearing officer found that Objections 2 and 5, which alleged that the Employer unlawfully distributed T-shirts and permitted procompany employees to campaign during working hours, were without merit and recommended that they be overruled. No exceptions were taken to these findings and we adopt them pro forma.

ing officer erred in considering an issue that was not alleged by the petitioner in its objections, was not identified by the Regional Director as an issue to be included in the hearing, was “wholly unrelated” to the issues set for hearing, and was an issue which the hearing officer did not indicate at the hearing would be included in his report. For the reasons that follow, we find merit in the Employer’s exception.<sup>2</sup>

The Petitioner initially protested the Employer’s references to negotiating from square one in its Objection 4. The Petitioner, however, withdrew that objection and the Regional Director approved the withdrawal in his order directing a hearing. The Employer had notice that the statement would not be an issue at the hearing—indeed, that the Petitioner had specifically withdrawn that allegation. Thus, this is not a case in which the Regional Director’s investigation revealed possible objectionable conduct that the Regional Director then set for hearing. On the contrary, in this case the Petitioner alleged the statements as objectionable conduct, but withdrew that objection and the Regional Director approved the withdrawal while at the same time setting other issues for hearing. In these circumstances, we find that *American Safety Equipment*, supra, is distinguishable, and that this case is governed instead by the precepts of *Iowa Lamb*, supra, having to do with the lack of authority of a hearing officer to consider issues that are not reasonably encompassed within the scope of the objections that the Regional Director set for hearing.<sup>3</sup>

<sup>2</sup> The Employer also contends that, even if properly considered by the hearing officer, Johnson’s statement did not constitute objectionable conduct. We need not resolve this question because we agree that the hearing officer exceeded his authority in considering the issue.

<sup>3</sup> Of course, a hearing officer may consider an objecting party’s allegations that “do not exactly coincide with the precise wording of the objections,” if the new matters are “sufficiently related” to the objections set for hearing. *Fiber Industries*, 267 NLRB 840 fn. 2 (1983). Accord: *Best Western Executive Inn*, 272 NLRB 1315 fn. 1 (1984). Cf. *Iowa Lamb* (hearing officer erred in considering a statement “wholly unrelated to the issues set for hearing”). Here, however, the bargaining from scratch allegation was not a new matter developed for the first time at the hearing, but rather had been included in an objection that was specifically withdrawn prior to the hearing.

Moreover, the record shows that, in response to evidentiary objections by the Employer’s counsel, the hearing officer assured the parties that he was not there to “hear objections that have not been made by the Petitioner” and that he would “limit what [he was] listening to in that respect.” In response to a further objection by the Employer’s counsel regarding testimony about where the Employer had indicated that bargaining would start, the hearing officer stated that “that is certainly not any kind of conclusion I can draw from this, but I do think that it bears on the issue of the wage increase . . . I’m not going to go off on a different Objection based on this, but I do think it bears on the objection that is before us [i.e., the Employer’s decision to grant the wage increase and its announcement of that decision] and I’ll allow it.” Thus, the hearing officer implied that the testimony allowed at the hearing would be used only to determine the lawfulness of the increased wage rates. The Employer remained on notice, prior to and during the hearing, that comments made by Johnson regarding bargaining were not going to be litigated as objections to the election. In these circumstances, the Employer had good reason to believe that the hearing officer would not consider this issue as a separate basis for setting aside the election.

For the reasons discussed above, we find that it was improper for the hearing officer to rely on Johnson’s comments in recommending that the election be set aside. We therefore reverse the hearing officer’s finding that Johnson’s statement constituted objectionable conduct and we overrule all of Objection 1. Because all of the Petitioner’s objections have been overruled, we shall issue a certification of results of election.

#### CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW and that it is not the exclusive representative of these bargaining unit employees.