

G.R.D.G., Inc., A.M. & N., Inc., d/b/a Crystal Art Gallery and Knitgoods Workers Union, Local 155, Union of Needletrades, Industrial and Textile Employees (UNITE), AFL-CIO, Petitioner. Case 29-RC-8576

March 11, 1997

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

The National Labor Relations Board has considered objections to an election held March 29, 1996, and the hearing officer's report recommending disposition of them. The election was held pursuant to a Stipulated Election Agreement. The tally of ballots shows 71 for and 48 against the Petitioner, with 4 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the entire record in light of the exceptions and briefs, has adopted the hearing officer's findings¹ and recommendations as explained below, and finds that a certification of representative should be issued.

The hearing officer recommended overruling all the Employer's objections to the election, including allegations that the Petitioner forged employee signatures on union authorizations which interfered with the employees' free choice (Objection 4), and created the impression among the voters that opposition to the Union was futile (Objection 5).

In so holding, the hearing officer recited the testimony of two witnesses who believed that forged cards had been submitted on their behalf. Further, although the Employer contended that 17 of the 27 authorization cards in Joint Exhibit 1² were forged, the hearing officer stated that his inspection of the cards and the corresponding work documents revealed that the signatures on "many, if not most" of those cards appeared to be genuine. He further noted that his posthearing *in camera* inspection of all (approximately 100) of the Petitioner's signed authorizations and corresponding

¹ The Employer has excepted to some of the hearing officer's credibility findings. It is the established policy of the Board not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that the resolutions are incorrect. *Coca-Cola Bottling Co. of Memphis*, 132 NLRB 481 (1961). We find no sufficient basis for disturbing the credibility resolutions in this case.

In affirming the hearing officer's findings, we disavow his speculative remarks that certain alleged objectionable conduct might have caused an opposite effect from the one intended.

² Jt. Exh. 1, containing 27 allegedly forged authorization cards and employer work records (W-4 and I-9 forms) that purportedly contained the signatures of those same employees, was agreed to by the parties in settlement of the Employer's subpoena duces tecum for all the authorizations composing the Petitioner's showing of interest.

work documents³ disclosed that all the cards predated the representation petition. The hearing officer further found that the Petitioner had announced to members of its "communications group," at a meeting prior to filing the petition, that it had collected over 100 signed authorizations, but there is no evidence that it thereafter showed any cards to employees or made reference to the number of authorizations or identity of signers. The only discussions that occurred between the petition and the election that possibly alluded to cards were ones in which the Petitioner's director of organizing, Louis Acevedo, sought the assistance of approximately 10 employees in attempting to locate and arrange home visits to employees who had not signed authorization cards and whose names appeared on the *Excelsior* list.

The hearing officer concluded from the foregoing that there was no evidentiary support for finding that the Petitioner's alleged use of forged authorization cards created the impression that opposition to the Union was futile or otherwise interfered with the election.

The Employer excepts to the above finding and also asserts that the forged signatures tainted the Petitioner's showing of interest. We affirm the hearing officer's overruling of Objections 4 and 5, and for the following reasons, we further find no merit in the Employer's contention that the showing of interest was tainted.

The Board's first action upon the receipt of a representation petition is to examine the showing of interest to determine whether there is sufficient employee interest to warrant the expenditure of time, effort, and funds to conduct an election.⁴ The showing of interest does not purport to be the definitive measure of the level of support for a union among the unit employees. That is determined in the subsequent secret-ballot election conducted by the Board. The Board's policy concerning the showing of interest is reflected in the National Labor Relations Board Casehandling Manual (Part Two), Representation, Section 110020 (CHM) which states, in pertinent part:

The determination of the extent of interest is a purely administrative matter, wholly within the discretion of the Board. While any information offered by any party bearing on the validity of the evidence offered in support of an asserted interest should be received, weighed, and, if appropriate,

³ The Employer excepts to the hearing officer's refusal to admit all of the authorization cards into evidence, and argues his posthearing *in camera* inspection exceeded his authority. We find no merit in the Employer's exceptions, and note that *in camera* inspections of employee authorizations are frequently conducted by hearing officers in lieu of admitting them into evidence.

⁴ *NLRB v. J. I. Case Co.*, 201 F.2d 597 (9th Cir. 1953); and *Stockton Roofing Co.*, 304 NLRB 699 (1991).

acted on, there is no *right* in any such party to litigate the subject, either directly or collaterally.⁵

The Board's retention of exclusive discretion over its administrative determination of the showing of interest⁶ and refusal to permit litigation of it by the parties⁷ are grounded on the imperative of avoiding the harmful effect that disclosure of information contained therein could inflict on the employees' exercise of their Section 7 rights and acknowledgment that the question of whether the employees desire representation is determined by the election, not by the showing of interest.⁸

Here, the showing of interest was administratively determined to be adequate at the time it was submitted, and the Employer did not question its validity until after the election and almost 2 months after it was submitted. Pursuant to established policy, the adequacy of the showing of interest is irrelevant after the election.⁹

Moreover, the Petitioner submitted approximately 100 authorization cards to support its petition in a unit consisting of approximately 131 employees, well in excess of the 40 cards needed for a 30-percent showing. Even accepting the Employer's contention as accurate, i.e., that at most 17 cards may have been forged, it is clear that the number of unchallenged authorization cards are sufficient in number to support the adequacy of the Petitioner's showing of interest.¹⁰

Finally, we are not persuaded that there were in fact any forgeries. In support of its allegations regarding forged cards, the Employer presented three witnesses.

⁵ The CHM also offers guidance to the Regional Offices for investigating allegations of fraud, e.g., obtaining affidavits from authorization card procurers, comparing signatures on the cards with the employer's records, and questioning of signatories, and it provides for dismissal of the petition if an investigation discloses a sufficient number of tainted cards to affect the 30-percent showing of interest.

⁶ *S. H. Kress & Co.*, 137 NLRB 1244, 1248 (1962).

⁷ See *Wright Memorial Hospital v. NLRB*, 771 F.2d 400, 406-407 (8th Cir. 1985), cert. denied 455 U.S. 989 (1986); and *Gaylord Bag Co.*, 313 NLRB 306, 307 (1993), and cases cited there.

⁸ *NLRB v. J. I. Case Co.*, supra.

⁹ *Gaylord Bag Co.*, supra at 307.

¹⁰ The evidence does not suggest, and the Employer has not contended, that the Union ever displayed the purportedly forged authorization cards in a manner objectionable under *Midland National Life Insurance Co.*, 263 NLRB 127, 133 (1982).

Although employee Navarro denied that he signed a card, he admitted that he authorized former employee Garcia to fill out a card on his behalf. Subsequently, Garcia informed Navarro that he had filled out the card, signed it on Navarro's behalf, and had given it to the Petitioner. Employee Munoz, in conflicting testimony, ultimately stated that he had not signed a card. However, the hearing officer noted that a card with a signature similar to that of Munoz was submitted. Employee Rivera denied signing a card. But employee Minaya testified that Rivera had stated that he had in fact signed a card. In light of the above, we consider the Employer's evidence of forgery to be far from convincing. In addition, we are somewhat skeptical of the testimony of employees who, under examination by the Employer's counsel, are understandably reluctant to admit that they signed union cards. As the Supreme Court observed in *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 607-608 (1969) (employees are more likely than not, many months after a card drive and in response to questions by company counsel, to give testimony damaging to the Union).

Assuming that there were forgeries, there is no evidence that the Petitioner was involved in the forgeries. In these circumstances, we shall overrule the objections and certify the Petitioner.

Accordingly, we adopt the hearing officer's recommendation and shall certify the Petitioner as the exclusive bargaining representative of the Employer's employees in the unit found appropriate.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for Knitgoods Workers Union, Local 155, Union of Needletrades, Industrial and Textile Employees (UNITE), AFL-CIO and that it is the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance, shipping and receiving employees located at 58-25 59th Avenue, Maspeth, New York, but excluding all other employees, office clericals, guards and supervisors within the meaning of the Act.