

Wayne County Neighborhood Legal Services, Inc. and Office and Professional Employees International Union, Local 42, AFL-CIO and Organized Workers of Legal Services, Local 2. Cases 7-CA-37894 and 7-RC-20650

January 31, 2001

DECISION, ORDER, AND CERTIFICATION OF RESULTS OF RUNOFF ELECTION
BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On May 1, 1996, Administrative Law Judge Robert T. Wallace issued the attached bench decision. The General Counsel filed exceptions and a supporting brief.

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

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,¹ and conclusions only to the extent consistent with this Decision and Order.

The complaint alleges that the Respondent rendered unlawful assistance and support to the incumbent Union, in violation of Section 8(a)(2) and (1) of the Act, by informing employees that the incumbent would continue to be their bargaining representative until the Board determined otherwise, and by continuing to deduct dues from their paychecks, after the incumbent had failed to garner enough votes in a Board election to be on the ballot in the runoff election. The judge found that the Respondent had not acted unlawfully and recommended that the complaint be dismissed. The General Counsel excepts. We find merit in the exceptions.

The facts are not in dispute. The incumbent Union, Organized Workers of Legal Services, Local 2 (OWLS II), was certified in 1978 to represent a unit of the Respondent's clerical and paralegal employees. The parties' last collective-bargaining agreement was effective until October 1, 1994, but was automatically renewed for 1 year when neither party sought to modify its terms.

On July 6, 1995,² Office and Professional Employees International Union (OPEIU) Local 42, petitioned for an election in a unit of the Respondent's full-time and regular part-time nonprofessional employees. On August 18 the Regional Director ordered an election in the peti-

¹ In fn. 2 of his decision, the judge stated that the Respondent ceased to recognize the incumbent Union in February 1995. We find no support in the record for that statement. The judge also stated that the Respondent's letter to its employees was sent on November 1, 1995; it was sent several days later. We correct the errors.

² Unless otherwise noted, all dates refer to 1995.

tioned-for unit, in which the employees would vote for either OPEIU, OWLS II, or no union.³

The election was held on September 13. Of approximately 106 eligible voters, 38 voted for OPEIU, 19 voted for OWLS II, and 20 voted for no union. There was one determinative challenged ballot, but no objections were filed. On October 19 the Regional Director sustained the challenge to the ballot in question. Because no choice had received a majority of the valid ballots cast, the Regional Director ordered a runoff election in which employees would vote on whether or not they wished to be represented by OPEIU.

Despite the fact that OWLS II had received the fewest votes in the election and had been eliminated from further contention, the Respondent continued to withhold dues from unit employees' paychecks pursuant to the contract with OWLS II until some time in February 1996.⁴ It also stated, in a letter to employees in early November, that "[we have] been a unionized company for more than 17 years. OWLS II *is still* the collective bargaining representative of certain employees . . . OWLS II *will continue* to be that representative unless the National Labor Relations Board determines differently." (Emphasis in the original.)

The runoff election was held on December 14. Seventeen votes were cast for, and 38 against, OPEIU, with 6 nondeterminative challenged ballots. OPEIU filed five objections; four were later withdrawn, and the other was overruled. However, the Regional Director noted that the statements alleged to be unlawful in the unfair labor practice case before us (which were not the subject of objections) could have a bearing on the representation case, and ordered the cases consolidated and set for hearing.

The judge found that the Respondent's conduct was not unlawful. He noted that, even though OWLS II had been eliminated from contention in the September election, no choice received a majority of the votes cast in that election, and a runoff was necessary to determine whether the employees wanted continued representation by a union. Thus, in the judge's view, OWLS II had not

³ As the Regional Director discussed in the Decision and Direction of Election, the petitioned-for unit was more extensive than the unit OWLS II had been representing, and both the Respondent and OWLS II urged that the petitioned-for unit was not appropriate. However, there apparently was no request for review of the Decision and Direction of Election.

⁴ The General Counsel and the Respondent stipulated that the Respondent continued to deduct OWLS II dues "from October 1995 through 8 biweekly pay periods," a period lasting several weeks after the runoff. The dues apparently were not remitted to OWLS II. The employees were reimbursed for the dues deducted, and counsel for the General Counsel stated at the hearing that in the General Counsel's view, the unlawful withholding of dues has been remedied.

been decertified before the December runoff election because not until then would the employees make their ultimate choice between OPEIU Local 42 and no union. In those circumstances, the judge found, it would be “unduly harsh” to require the Respondent to cease recognizing OWLS II after October 19, because that would invalidate the existing collective-bargaining agreement and deprive the unit employees of union representation before they chose whether or not to have continuing representation (by another union) in the runoff. He therefore found that the intent of the Act would best be served by maintaining the existing collective-bargaining relationship during the period before the runoff.

1. In his exceptions, the General Counsel contends that the results of the first election demonstrated that OWLS II had lost the support of a majority of employees. Relying on *Maramont Corp.*⁵ and *Point Blank Body Armor*,⁶ the General Counsel argues that when OWLS II was eliminated from contention as a result of the initial election, the Respondent violated Section 8(a)(2) and (1) by thereafter continuing to recognize OWLS II as the employees’ bargaining representative and continuing to deduct dues. We agree.

Section 7 of the Act assures employees of, among other things, the right to bargain collectively through representatives *of their own choosing*. In this context, then, the “intent of the Act” is to assure employees that their uncoerced choice of bargaining representative will be honored by their employers. Accordingly, an employer may not lawfully continue to recognize a union as the exclusive bargaining representative of its employees when the employer has objective evidence that the union no longer represents a majority of the employees.⁷ An employer that continues to recognize a union that has lost its majority status violates Section 8(a)(2).⁸ We find that those principles govern this case.

In the September 13 election, OWLS II received only 19 out of 77 votes, compared with 38 for OPEIU and 20 for “no union.” No party filed objections. When the lone challenge was resolved and the ballot tally became final, it was manifest that OWLS II would no longer be the bargaining representative of the unit employees. True, the final outcome of the representation proceeding was not known at that time, because not until the runoff election had been held would it be clear whether the employees would choose OPEIU as their representative. But as far as OWLS II was concerned, the outcome *was*

known. Three-fourths of the employees who voted, and a majority of the 106 employees in the unit, had rejected OWLS II as their bargaining representative. There was no prospect that they would reconsider their decision in the runoff, because OWLS II would not be on the ballot in that election. As the employees had made their choice in a valid, Board-conducted election, it is difficult to imagine a more definitive, reliable expression of their preferences.

In these circumstances, the judge and our dissenting colleague would turn the “intent of the Act” on its head by allowing (indeed, by requiring) the Respondent to continue to recognize OWLS II as the representative of the unit employees, and to require the employees to support OWLS II with their dues, after they have definitively stated in a Board election that they no longer want OWLS II to be their representative. While the goal of preserving the stability of collective-bargaining relationships is a laudable one, it does not warrant maintaining a collective-bargaining relationship that has been unequivocally rejected by the employees themselves. Thus, if anything would be “unduly harsh,” it would be the result reached by the judge and our dissenting colleague.

Finally, we reject our dissenting colleague’s assertion that our decision is flawed because it “imposes a rule of law that would deprive the employees of union representation entirely” although “a majority of unit employees did not vote against union representation” in the initial election. Rather, we find that it is our dissenting colleague’s position that is flawed.

As explained above, Section 7 of the Act guarantees employees the right “to bargain collectively through representatives of their own choosing.” Here, the employees in the initial election had three choices—representation by OWLS II, representation by OPEIU, and no union representation. In definitively rejecting OWLS II in the initial election,⁹ the unit employees, in

⁵ 317 NLRB 1035 (1995).

⁶ 312 NLRB 1097 (1993).

⁷ *Maramont Corp.*, 317 NLRB at 1035; *Point Blank Body Armor*, 312 NLRB at 1097 fn. 1, and 1100.

⁸ *Maramont Corp.*, 317 NLRB at 1036.

⁹ As our dissenting colleague admits, this is not a case where OWLS II could have retained its status as the exclusive collective-bargaining representative of the unit employees as a result of the outcome of the runoff election because OWLS II was not on the ballot in that election. In the runoff election, the employees were asked only whether or not they wanted to be represented by OPEIU. Accordingly, there can be no justification for retaining OWLS II as the collective-bargaining representative of the unit employees pending the outcome of the runoff election. *W. A. Krueger*, 299 NLRB 914 (1990), is distinguishable on this basis. In that case, the incumbent union was the arithmetic loser of the election. The union filed objections. The Board held that the employer was required to continue recognition until the results were certified. Until that time, there was a chance that the election would be set aside and the incumbent would remain the representative. By contrast, in the instant case, there being no objections to the September 13 election, and therefore no chance that the incumbent would remain the representative, the presumption of majority status was definitively rebutted at that time.

effect exercised their Section 7 right to no longer be represented by that union. Our decision today vindicates that Section 7 right. By contrast, our dissenting colleague ignores that Section 7 right by requiring continued recognition of OWLS II even after the unit employees have chosen otherwise. While our dissenting colleague asserts that such a result furthers the policy goal of bargaining stability, we do not agree that that goal may properly be achieved by sanctioning a minority union's representation of employees who have expressed their desire through a Board-conducted election to no longer be represented by that union.

Similarly, our colleague says that continued representation by OWLS II "would do no appreciable harm to anyone or to the purposes of the Act." We disagree. In our view, continued representation by OWLS II would do appreciable harm to the Section 7 rights of employees, a majority of whom definitively expressed, in the September election, that they did not want to be represented by OWLS II.

For all these reasons, we find that the Respondent was no longer entitled to continue to recognize OWLS II as the employees' bargaining representative or to continue to collect dues payable to OWLS II.¹⁰ By doing so, the Respondent unlawfully provided support to OWLS II, in violation of Section 8(a)(2) and (1).¹¹

2. The General Counsel also contends that the results of the runoff election should be set aside because of the Respondent's unlawful conduct. We reject that contention.

The Board's normal policy is to direct a new election when an unfair labor practice is committed during the critical period, because "conduct violative of Section 8(a)(1) is, *a fortiori*, conduct which interferes with the exercise of a free and untrammelled choice in an election."¹² The only exception to this policy is for violations as to which it is virtually impossible to conclude that they could have affected the election results.¹³ We find that the Respondent's conduct in this case falls within that exception.

¹⁰ Although the contract automatically renewed on October 1, it became null and void on October 19, when the final results of the September election were announced and OWLS II was no longer the employees' collective bargaining representative. See *RCA del Caribe*, 262 NLRB 963, 966 (1982). It was unlawful for the Respondent to deduct dues, even though it apparently never remitted the dues to OWLS II. *Maramont Corp.*, 317 NLRB at 1035-1036.

¹¹ *Id.*

¹² *Establishment Industries*, 284 NLRB 121, 130 fn. 17 (1987), *enfd.* mem. 838 F.2d 1217 (9th Cir. 1988), quoting *Super Thrift Markets*, 233 NLRB 409, 409 (1977), and *Dal-Tex Optical Co.*, 137 NLRB 1782, 1786-1787 (1962).

¹³ *Establishment Industries*, 284 NLRB at 130 fn. 17.

As we have found, the Respondent unlawfully assisted OWLS II by announcing to the employees that OWLS II was still their collective-bargaining representative and would remain such unless the Board determined differently, and by continuing to deduct OWLS II dues, after the employees had rejected OWLS II as their representative in the September election. However, OWLS II was not on the ballot in the runoff, and therefore it could not possibly have benefited in the runoff election from the Respondent's conduct. Moreover, although the Respondent's statement appeared in a memorandum disparaging OPEIU, we do not think that OPEIU would have been adversely affected in the runoff by that statement. We recognize that the Respondent's statement was unlawful because it announced a violation of Section 8(a)(2). However, even if such a statement might cause employees to vote in favor of a "Section 8(a)(2)" union, it is difficult to see how the statement would affect employees in an election that does not involve that union.¹⁴ Further, we do not believe, given the choices on the ballot, that the statement could have been interpreted by reasonable employees as suggesting that if they voted against OPEIU in the runoff, they would still be able to have representation by OWLS II.¹⁵ We therefore find that the runoff election should not be set aside, and we shall certify its results.

AMENDED CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. OWLS II and OPEIU Local 42 are labor organizations within the meaning of Section 2(5) of the Act.

3. By continuing to recognize OWLS II as the exclusive collective-bargaining representative of certain of its employees, and by continuing to deduct OWLS II dues

¹⁴ Our dissenting colleague accuses us of seeking to have it "both ways" because while we have found that the Employer unlawfully favored the "incumbent" Union by continuing to recognize it and by requiring the employees to support it with their dues, we also find that that conduct "did not interfere with an election in which another Union unsuccessfully sought to replace the incumbent." As explained above, the "incumbent" Union, OWLS II, was no longer the "incumbent" after the initial election and, indeed, this was the basis for our finding of the 8(a)(2) violation. In these circumstances, our dissenting colleague is simply incorrect when she states that in the runoff election, OPEIU "sought to replace the incumbent." Further, since OWLS II was not on the ballot in the runoff election, we cannot find, as our dissenting colleague would have us do, that the Respondent's unlawful support of OWLS II influenced an election in which that union did not participate.

¹⁵ Although the statement that OWLS II would remain the bargaining representative until the Board determined otherwise may have implied that the outcome would be decided by government fiat rather than by the employees' free choice, we find that it was at worst a misrepresentation of Board actions that should not invalidate the election. See *Riveredge Hospital*, 264 NLRB 1094, 1095 (1982), modified on other grounds 789 F.2d 524 (7th Cir. 1986).

from employees' compensation, after the final tally of ballots from the September 13, 1995 election had issued, the Respondent provided unlawful support to OWLS II in violation of Section 8(a)(2) and (1) of the Act.

REMEDY

Having found that the Respondent violated the Act as alleged, we shall order the Respondent to cease and desist from its unlawful conduct and to take certain affirmative actions necessary to effectuate the purposes of the Act. Specifically, we shall order the Respondent to withdraw recognition from OWLS II as the representative of its employees unless and until OWLS II demonstrates its majority status among employees in an appropriate bargaining unit in a Board-conducted election. Because the dues unlawfully deducted have been refunded to the employees, we find that no affirmative action is necessary to remedy that violation.

ORDER

The National Labor Relations Board orders that the Respondent, Wayne County Neighborhood Legal Services, Inc., Detroit, Michigan, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Recognizing Organized Workers of Legal Services, Local 2 (OWLS II) as the exclusive collective-bargaining representative of its employees, or deducting OWLS II dues from employees' compensation, unless and until OWLS II demonstrates its majority status among the employees in an appropriate bargaining unit in a Board-conducted election.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold recognition from OWLS II as the exclusive collective-bargaining representative of its employees unless and until OWLS II demonstrates its majority status among the employees in an appropriate bargaining unit in a Board-conducted election.

(b) Within 14 days after service by the Region, post at its facilities at Wayne County, Michigan, copies of the attached notice marked "Appendix B."¹⁶ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent

and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since October 19, 1995.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for any labor organization in either the original or the runoff election conducted in Case 7-RC-20650, and that no labor organization is the exclusive representative of these bargaining unit employees.

MEMBER LIEBMAN, dissenting in part.

Unlike my colleagues, I would not find the Respondent to have committed an unfair labor practice by continuing to recognize the incumbent Union, Organized Workers of Legal Services, Local 2 (OWLS II) between the initial and runoff elections. I agree with the judge that requiring the Respondent to discontinue its longstanding collective-bargaining relationship with OWLS II before the Board has certified the outcome of the runoff election is not sound policy. I therefore dissent.

The Organized Workers of Legal Services, Local 2 (OWLS II), has represented the Respondent's employees since 1978 under successive collective-bargaining agreements. Pursuant to a petition filed by the Office and Professional Employees International Union, Local 42 (OPEIU), an election was held on September 13, 1995. OPEIU received 38 votes, 19 were cast for OWLS II and 20 for "no union." Since there were 106 eligible voters, no choice received a majority of votes cast, and the Board directed a runoff election in which unit members would vote for OPEIU or "no union." Prior to the runoff vote, Respondent continued to deduct dues from the paychecks of employees represented by OWLS II, and in a letter sent on November 1, it stated: "[We have] been a unionized company for more than 17 years. OWLS II *is still* the collective bargaining representative for certain employees . . . [it] *will continue* to be that representative unless the National Labor Relations Board determines

¹⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

differently.” On December 14 a runoff was held and a majority of employees chose “no union.”

Reversing the judge, the majority finds that the Respondent, by this conduct, violated Section 8(a)(2) and (1) of the Act, reasoning that the initial vote demonstrated that OWLS II had lost the support of a majority of employees. It holds that, since it was clear that OWLS II had been eliminated from further contention, the Respondent could no longer continue to recognize it as the exclusive majority representative, not even until the election outcome was decided. In my view, this approach is both impractical and unsound policy.

True, the initial election did take OWLS II out of the running. However, the first vote results were inconclusive and left the question concerning representation completely unresolved. The flaw in the majority’s reasoning is that a majority of unit employees did not vote against union representation. The initial election did not demonstrate that the employees preferred no union representation to some union representation. And, it certainly did not show that a majority of them rejected union representation even for the period when the election process was wending its way to a conclusion. Yet, based on the vote of only 20 employees who chose “no union” in the first election, the majority imposes a rule of law that would deprive the employees of union representation entirely—and with it their contractual benefits—pending the final tally of the runoff election.

Under the majority’s approach, had OPEIU ultimately won the runoff (which it did not), the employees would have had OWLS II representation until September 13, no representation from then until the runoff on December 14, and then OPEIU representation would commence. That result makes no sense. Imposing a no-union interregnum by compelling the employer prematurely to cease recognition of OWLS II between September and December, and then to recognize OPEIU, achieves no statutory goal, only needless disruption. The hindsight fact that OPEIU did not win does not change my view. A hiatus period of continued representation would do no appreciable harm to anyone or to the purposes of the Act, but, to the contrary, would further stability, a central aim of the Act. It also would likely be more efficient. Even in that case, however—where the ultimate outcome is no union representation—forcing an early no-union regime, before the results of the runoff are known, serves no policy or practical purpose.

In my view, the wiser course is for the incumbent union to remain the representative of the employees, even if it loses an initial election, until the representation question is resolved and a certification issued. During that interim period, any contract between the employer and

the incumbent union would remain in effect. The employees—who once freely chose to be represented by a union—would retain the benefits of representation, as well as those contained in the contract, until their final choice in the runoff was known and certified. This approach best preserves stability pending the outcome of the runoff and avoids the disruption that would otherwise result from the majority’s approach.

The approach I advocate is also consistent with the Board’s longstanding treatment of an employer’s obligations in cases where an election has been held but the certification has not yet issued. The Board has long held that an employer is privileged, indeed obligated, to continue to recognize and bargain with an incumbent union, even if an election has been held in which that union did not receive a majority of the votes cast, if the election results are not final due to pending objections. *W. A. Krueger Co.*, 299 NLRB 914 (1990); *Trico Products Corp.*, 238 NLRB 1306 (1978).

The well-established rule concerning election results is that they are not effective until certification. To hold otherwise is to invite instability during the transition period when the employees’ choice of representative is in doubt. Election results are not always determinative. If the status of the parties were to change immediately upon the tally of ballots, the possibility of sustained objections and rerun elections might lead to a number of changes in the collective-bargaining relationship before a representative is finally certified. The general rule that the election results are not effective until certification lends certainty and stability to the process, since the parties may safely maintain the status quo until the representation question is conclusively resolved by the Board.

Trico Products Corp., supra at 1307. Thus, in either a decertification election or an election involving more than one union, even if the election results show that the incumbent union no longer enjoys majority support, the employer does not act unlawfully by continuing to recognize and bargain with the incumbent until the election results are finally certified. *Heritage at Norwood*, 322 NLRB 231, 233 fn. 5 (1996); *W. A. Krueger*, supra, 299 NLRB at 916.

I recognize, as my colleagues point out, that these cases are not precisely apposite because in this case there were no objections filed by any party, and thus no party contended that the initial vote, in which OWLS II did not receive sufficient votes to remain on the ballot, was invalid. Nevertheless, there is still a “transition period when the employees’ choice of representative is in doubt” (*Trico Products*, supra, 238 NLRB at 1307), and, in my view, there is a similar need for stability during that period, even if no party has challenged the validity of the

first election. A question concerning representation is still pending, and a majority of the employees have not said that they do not wish to be represented by a union. In these circumstances, stability is better served by requiring the maintenance of the status quo, just as we require the parties to maintain the status quo while the employees' choice is still uncertain due to pending objections. At a time when the outcome of the election is still in doubt, it would be more disruptive to yank the employees' bargaining representative away from them, along with all of their contractual benefits, than to simply allow them to continue to be represented pending a certification of the final results of the election.

Under this analysis, I would not find that the Respondent violated Section 8(a)(2) and (1) by informing the employees, after the initial election results were known, but before the runoff, that it would continue to recognize OWLS II until the Board determined that OWLS II was no longer their representative, or by continuing to deduct dues for OWLS II. Both actions were lawful because, during that period, OWLS II remained the employees' representative and the checkoff provisions of the contract remained in effect.¹ For this reason, I would not find that the Respondent's conduct interfered with the results of the runoff election. However, had I agreed with the majority in finding the Respondent's conduct to be unlawful, I would certainly disagree with their conclusion that this conduct was not objectionable. The appearance that the Employer favored OWLS II certainly might interfere with the employees' selection of OPEIU as their representative. The Employer's conduct, if indeed unlawful, would furnish grounds to hold a new election. The majority, however, seeks to have it both ways, by holding that the Employer unlawfully favored the incumbent Union by continuing to recognize and bargain with it in violation of Section 8(a)(2), but at the same time did not interfere with an election in which another union unsuccessfully sought to replace the incumbent.

Accordingly, I would hold that the Employer acted lawfully by simply maintaining the status quo during an uncertain transition period, and thus it did not improperly favor the incumbent. I would also conclude that there was no interference with the election.

¹ I agree with the majority, however, that the Respondent violated Sec. 8(a)(2) and (1) by continuing to deduct dues for OWLS II *after* the final tally of ballots from the runoff was issued.

APPENDIX B

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.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT recognize Organized Workers of Legal Services, Local 2 (OWLS II), as the exclusive collective-bargaining representative of our employees, or deduct OWLS II dues from employees' compensation, unless and until OWLS II demonstrates its majority status among employees in an appropriate bargaining unit in an election conducted by the Board.

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.

WE WILL withdraw and withhold recognition from OWLS II as the exclusive collective-bargaining representative of our employees unless and until OWLS II demonstrates its majority status among employees in an appropriate bargaining unit in a Board-conducted election.

WAYNE COUNTY NEIGHBORHOOD LEGAL SERVICES, INC.

Amy Roemer, Esq., for the General Counsel.

Theresa Horner, for Intervening Union (OWLS II) *Chui Karega, Esq.*, for Respondent Employer.

Robert Garvin, for the Charging Union (OPEIU).

BENCH DECISION

ROBERT T. WALLACE, Administrative Law Judge. This case was tried in Detroit, Michigan, on April 8, 1996. The charge was filed on November 13, 1995,¹ and the complaint issued on February 13, 1996.

Respondent, a nonprofit corporation with offices in Metropolitan Detroit, including Highland Park, Inkster, and Detroit, provides legal services to indigents. It admits, and I find: (1) that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act

¹ All dates are in 1995 unless otherwise indicated.

and (2) that OPEIU and OWLS II are labor organizations within the meaning of Section 2(5) of the Act.

OWLS II has represented Respondent's clerical and paralegal employees since 1978 under successive collective-bargaining agreements, including automatic renewals of an agreement which otherwise would have expired on October 1, 1994.

Pursuant to a representation petition filed by OPEIU in Case 7-RC-20650, a Board ordered election was held on September 13. The results as set forth in a Board order dated October 19 were: 38 votes for OPEIU, 19 for OWLS II, and 20 votes for "no union." Since there are 106 eligible voters in the unit, no choice received a majority of the votes cast and the Board directed a runoff election in which unit members would vote for or against representation by OPEIU.²

Respondent continued to deduct from paychecks of employees represented by OWLS II; and, in a letter sent to all non-professional employees on November 1, it stated in pertinent part:

[We have] been a unionized company for more than 17 years. OWLS II *is still* the collective bargaining representative for certain employees . . . [and it *will continue* to be that representative unless the National Labor Relations Board determines differently.

At issue is whether Respondent's continued recognition of OWLS II and deduction of dues after October 19 constituted assistance and support to a labor organization in violation of Section 8(a)(1) and (2) of the Act. I find no violation for the reasons stated by me on the record at the conclusion of trial. In effect, I have found that while OWLS II, as a result of the election on September 13, was eliminated from contention in the runoff election set for December 14, it was not decertified during the interim. This is because the question of whether Respondent's employees would opt for representation by another union (OPEIU) would not be determined until the runoff. During the interim, the intent of the Act is best served by favoring continued maintenance of an existing collective-bargaining relationship.

This decision is made under Section 102.35(a)(10) of the Board's Rules and Regulations; and, in accordance with Section 102.45 thereof, I certify the accuracy of my *rationale* reported on pages 70 through 74 of the trial transcript; and I attach as an Appendix A the gist thereof.

² The runoff election was held on December 14. OPEIU received 17 votes and 38 unit employees voted against OPEIU. The Board announced that result on February 14 but withheld further action pending determination of objections, the scope of which parallel issues raised in the instant complaint proceeding. On or about that time Respondent ceased to recognize OWLS II and refunded union dues collected from employees.

CONCLUSION OF LAW

I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act; that OWLS II and OPEIU are labor organizations within the meaning of Section 2(5); and that Respondent is not shown to have violated the Act in any way.

[Recommended Order for dismissal omitted from publication.]

APPENDIX A

JUDGE WALLACE: The basic issue is whether Respondent violated the Act by stating in a document (GC Exh. 3) that it would continue to recognize OWLS II notwithstanding the September 14th election and the Board's decision with respect thereto dated October 19. There is no dispute that Respondent issued the document to employees in early November.

The second issue is whether Respondent acted unlawfully by continuing to deduct union dues from employees wages after the election result was announced by the Board on October 19. Here too there is no factual issue, only a legal one.

General Counsel cites *Point Blank Body Armor*, 312 NLRB 1097 (1993) in support of the alleged unlawfulness. I find the decision inapposite.

In that case, the Board held unlawful an employer's continued recognition of a union after it had been presented with a petition wherein a majority of unit employees declared they no longer desired to be so represented.

Here, the election on September 13 elicited 38 votes for the challenging union (OPEIU), 19 for the incumbent union (OWLS 2), and 20 for "no union." This out of a unit composed of 106 employees.

In ordering a runoff election between OPEIU and OWLS II, the Board acted precisely because there was no majority and the purpose of the runoff was to see whether employees wanted continued representation by a union.

In these circumstance, to find that the Board's announcement of October 19 required the employer to decertify OWLS II would be unduly harsh because that action would invalidate the existing collective bargaining agreement, and unit employees would be without union representation prior to the runoff election in which they were to decide whether they wanted continued representation, albeit by another union.

I find nothing unlawful in Respondent's continued recognition of OWLS II during the interim.

Essentially the same reasoning applies to the withholding of dues. In doing so Respondent simply carried out the terms of the collective bargaining agreement.

In light of these determination, it follows that there is no basis for the objections in the "RC" case.