Saint-Gobain Abrasives, Inc. *and* International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL–CIO, Region 9A, Petitioner. Case 1–RC–21388
December 20, 2001

DECISION AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN AND WALSH

The National Labor Relations Board has considered objections to an election held August 23 and 24, 2001, and the Regional Director's report recommending disposition of them. The tally of ballots shows 406 votes cast for and 386 votes cast against Petitioner, with 18 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and briefs, has adopted the Regional Director's findings and recommendations, and finds that a certification of representative should be issued.

We adopt the Regional Director's recommendation to overrule the Employer's objections for the reasons stated in her report. Contrary to our dissenting colleague, we find that Congressman McGovern's statements to employees in support of the Petitioner did not upset the laboratory conditions for a fair election and do not warrant setting aside the election. In this regard, we find that the Employer failed to establish that employees "could not discern the difference between statements about labor relations by an individual member of Congress and statements by the Board and its representatives." *Chipman Union, Inc.*, 316 NLRB 107, 108 (1995), and cases cited therein. Nor do we see any basis for distinguishing between Congressman McGovern's statements which our colleague finds objectionable, and the Congressman's union endorsement and other opinions, which our colleague agrees are permissible.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for the International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, AFL–CIO, Region 9A 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 employees who work in the Abrasives branch (including Superabrasives) at the Employer's Greendale complex in Worcester, Massachusetts, including material management specialists, production support specialists, technical specialists, "facilities" employees, shipping, packing, receiving and traffic employees, group leaders, blottering employees, and powerhouse employees, but excluding all other employees including ceramics branch employees, exempt employees, office clerical employees, research and development employees (except for the production operator), confidential employees, professional employees, sales/marketing specialist, senior design technicians, managerial employees, guards and supervisors as defined in the Act.

CHAIRMAN HURTGEN, dissenting.

I would overturn the election because the requisite laboratory conditions for a fair election were not met.

The Union won the election by the relatively close vote of 406–386, with 18 challenged ballots. During the campaign, Congressman McGovern (who represents the Congressional District) campaigned vigorously for the Union. In one of his campaign documents (a letter to all employees), he stated:

> The Company has also refused to debate this important issue, claiming that federal labor laws do not allow a fair debate because the laws restrict what an employer can say. As a United States Congressman with a strong interest in labor law, I can assure you that the law does indeed allow for a fair debate. If the company *chooses* not to debate, that is their right, but they should not hide behind misstatements about federal regulations. In fact, the laws are structured in such a way as to make it extremely difficult for workers to organize—not the other way around. [Emphasis in original.]

In my view, this statement upset the requisite laboratory conditions. I do not question the right of Congresspersons to campaign for one side or the other in connection with a National Labor Relations Board election. However, because of their official position in the U.S. Government, they must be especially careful in opining on controversial issues of Federal law. In the instant case, Congressman McGovern ventured into the controversial area of whether Federal labor law, as interpreted by the Board, allows for a "fair debate" of the campaign issues.[1]

Congressman McGovern opined that the law gives employers a full opportunity to present their views, and

[1] As Professor Derek C. Bok concluded in his classic work on the Board's election procedures, restrictions on the content of campaign propaganda requiring truthful and accurate statements "resist every effort at a clear formulation and tend inexorably to give rise to vague and inconsistent rulings which baffle the parties and provoke litigation." See *The Regulation of Campaign Tactics in Representation Elections Under the National Labor Relations Act*, 78 Harv. L. Rev. 38, 85 (1964).

that unions do not have a countervailing opportunity. Without my wading into this area, suffice it to say that there is responsible view to the contrary. Some people and groups believe that the law imposes greater shackles on employer campaign tactics than it does on union campaign tactics. For example, Section 8(a)(1) is broader than Section 8(b)(1)(A). In addition, the line between prohibited 8(a)(1) speech and 8(c) opinion is fuzzy, and some believe that the line is sometimes drawn against 8(c) opinion.

As stated before, I offer no opinion on this issue. My view is simply that a Congressman should also stay away from that issue in the context of proparty comments in an ongoing organizational campaign.[2] The danger is that employees are likely to view that statement as definitive. After all, it comes from a Federal official. Conversely, an employer response would not carry the same weight. As to matters of law, employees are likely to view the response of a Federal official as more reliable than that of a private party to the election.[3]

I recognize that the Congressman is from the legislative branch of the U.S. Government, as distinguished from the other branches and independent regulatory agencies. However, I am far from certain that employees would draw that distinction and therefore discount the opinion of a representative of the legislative branch.[4]

Finally, I am not suggesting that the Congressman violated the Act or that his opinions were "wrong." I simply conclude that his proparty comments, made in the course of an ongoing campaign and on a controversial issue of law, upset the laboratory conditions required for a fair election.[5]

[2] Obviously, in a noncampaign context, the Congressman is free to opine on that issue or any other.

[3] *Chipman Union, Inc.*, 316 NLRB 107 (1995), is inapposite. In that case, the Congressman did not venture an opinion as to matters of law.

[4] In *Columbia Tanning*, 238 NLRB 899 (1978), the Board found that employees would confuse the Massachusetts Department of Labor and the National Labor Relations Board.

[5] It goes without saying that I would apply the same standard to proemployer comments made by a proemployer Congressman.