

Micro Pacific Development, Inc. d/b/a Saipan Grand Hotel and Commonwealth Labor Federation and Hotel Employees & Restaurant Employees, Local 5, AFL-CIO. Cases 37-CA-4979 and 37-RC-3720

April 23, 2003

SUPPLEMENTAL DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On August 18, 1998, the National Labor Relations Board issued its Decision and Order in Case 37-CA-4979.¹ The Board found that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the employees' certified representative and by refusing to provide the Union with requested information necessary for collective bargaining. The Board ordered the Respondent to bargain collectively with the Union and to provide the requested information. The Respondent refused to comply with this Order and, thereafter, petitioned for review of the Board's Order in the United States Court of Appeals for the District of Columbia Circuit. The Respondent contended, *inter alia*, that, in the underlying representation decision, the Board erred in finding that housekeeping supervisor, Edwin Melon, was not a supervisor within the meaning of Section 2(11) of the Act.² The General Counsel filed a cross-application for enforcement.

On June 18, 1999, the court granted the Respondent's petition for review in part, reversing the Board's finding that Melon was not a statutory supervisor.³ The court remanded the case for a determination of whether Melon's prounion conduct constituted objectionable conduct warranting a second election.

¹ 326 NLRB 80.

² Case 37-RC-3720. In one of its objections to the election, the Respondent alleged that Melon was a statutory supervisor who engaged in coercive prounion conduct during the election campaign, requiring that the election be set aside. In its unpublished Decision and Certification of Representative, the Board adopted the administrative law judge's finding that Melon was not a Sec. 2(11) supervisor. There were no exceptions to the judge's alternative finding that, in the event Melon was found to be a statutory supervisor, his prounion conduct would warrant setting aside the election.

³ 178 F. 3d 1325, 1328-1332.

On September 20, 1999, the Board advised the parties that it had accepted the court's remand and invited the parties to file statements of position. The Respondent filed a statement that noted the court's determination that Melon was a statutory supervisor, and the judge's unexpected-to finding that if Melon was found to be a 2(11) supervisor his prounion conduct was objectionable. The Respondent contended that these two points required the Board to dismiss the complaint in the unfair labor practice case, to revoke the certification, and to direct a second election in the representation case.

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

Having accepted the court's remand, we regard its opinion and determination that Melon was a statutory supervisor as the law of the case. Inasmuch as no exceptions were filed to the judge's alternative finding that, if Melon was found to be a statutory supervisor, his prounion conduct was objectionable, we adopt that finding and conclude that Melon engaged in objectionable conduct warranting the setting aside of the election.⁴ Accordingly, we shall vacate the Board's Decision and Order in Case 37-CA-4979, deny the General Counsel's Motion for Summary Judgment in that case, and dismiss the complaint. Further, we shall revoke the Certification of Representative in Case 37-RC-3720 and remand that case for the direction of a second election.

ORDER

The National Labor Relations Board orders that the Decision and Order in Case 37-CA-4979 be vacated, that the General Counsel's Motion for Summary Judgment in that case be denied, and that the complaint be dismissed.

IT IS FURTHER ORDERED that its Decision and Certification of Representative in Case 37-RC-3720 be revoked and that the case be remanded to the Regional Director for Region 20 for the purpose of conducting a second election as directed below.

[Direction of Second Election omitted from publication.]

⁴ "It is the Board's practice to adopt as a matter of course, findings . . . to which no exceptions are filed." *Anniston Yarn Mills*, 103 NLRB 1495 (1953). Findings adopted under such circumstances are not considered a precedent for any other case.