Wright Brothers Paper Box Co., Inc. *and* District 10, International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 30-RC-4012

May 28, 1982

DECISION AND DIRECTION

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered determinative challenges and objections in an election held August 14, 1981,[1] and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and brief and hereby adopts the Hearing Officer's findings[2] and recommendations[3] only to the extent consistent herewith.

The Petitioner excepted to the Hearing Officer's finding that a statement by a union representative constituted objectionable conduct which warranted setting aside the election and directing a new election. We find merit in that exception. The credited testimony is that, 3 weeks prior to the election, a union representative stated at a meeting of employees that initiation fees would not be required until a "new union" was formed. It is sufficiently clear that, under the Union's offer, employees have the opportunity to join the Union after the election without paying an initiation fee. In circumstances such as here, a "new union" is not created at the moment the election occurs, but at a later date. The International and newly represented employees must first determine whether to form a new local or merge the new unit into an existing local, and then must implement that decision by complying with the procedures under the International's constitution. Thus, under the Union's statement here, in order to avoid the initiation fees employees need only join by a time which is after the election date. The statement is therefore not objectionable under *N.L.R.B.* v. *Savair Manufacturing Company*, 414 U.S. 270 (1973), and the election results will not be set aside.[4]

The Employer excepted to the Hearing Officer's recommendation that the challenge to Edmund Kraus' ballot be sustained. We find merit in that exception. In concluding that Kraus did not share a community of interest with the production and maintenance employees, the Hearing Officer relied on three factors: Kraus' salary was much higher than any production employee; even though some mechanics earn roughly what Kraus makes, there is no evidence that he is a qualified mechanic or spends much time repairing machines; and Kraus' working conditions differ from unit employees, in that he is salaried, does not punch a timeclock, works different hours, and has a private extension phone. However, based on the record before us, we cannot agree with the Hearing Officer's ultimate conclusion. The evidence demonstrates that Kraus' earnings are not greater than all maintenance employees. Kraus spends approximately 20 hours per week on the production floor performing work normally performed by mechanics, and Kraus' usual work hours of 7:30–5 p.m. are not significantly different from the unit employees' normal work hours, excluding overtime, of 7:30–4 p.m. The fact that he is salaried, does not punch a timeclock, and has a private extension phone does not, without more, establish an absence of community of interest, (*Container Research Corporation*, 188 NLRB 586 (1971); *Risdon Manufacturing Company Inc.*, 195 NLRB 579 (1972)), nor does the fact that he may act as a foreman occasionally. We therefore will include Kraus' ballot in the voting tally.

[1] The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 35 for, and 32 against, the Petitioner. The ballots of four voters were challenged.

[2] The Employer and the Petitioner have excepted to certain credibility resolutions made by the Hearing Officer. It is the Board's established policy not to overrule a hearing officer's resolutions of credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *The Coca-Cola Bottling Company of Memphis*, 132 NLRB 481, 483 (1961). We have carefully examined the record and find no basis for reversing his findings.

[3] The Employer excepted to the Hearing Officer's recommendation that the presence of Ernest Anderson in the polling place during voting was not a basis for setting aside the election results. We adopt the Hearing Officer's recommendation. In the absence of exceptions thereto, we adopt, *pro forma*, the Hearing Officer's recommendations to overrule the challenges to the ballots of Richard Sell and Thomas Streeter, and to sustain the challenge to the ballot of Lisa Lauters.

[4] The Hearing Officer relied on *Inland Shoe Manufacturing Co., Inc.*, 211 NLRB 724 (1974); *The Coleman Company, Inc.*, 212 NLRB 927 (1974); and *California State Automobile Association*, 214 NLRB 223 (1974), in his report. Each of those cases involved a statement that initiation fees would not be charged to "charter members." In this case the Union offered to waive initiation fees for those who joined by the time a "new union" was formed; there was no reference here to "charter members." We thus find that the statement made here, unlike those made in *Inland Shoe, Coleman*, and *California State*, is not ambiguous and does not violate the *Savair* standard. In any event, Member Fanning would adhere to his dissent in *The Coleman Company, Inc.*, 212 NLRB 927.

DIRECTION

It is hereby directed that the Regional Director for Region 30 shall, within 10 days from the date of this Decision and Direction, open and count the ballots of Richard Sell, Thomas Streeter, and Edmund Kraus. Thereafter, the Regional Director for Region 30 shall prepare and cause to be served on the parties a revised tally of the ballots, including therein the count of such ballots, upon the basis of which he shall issue the appropriate certification.