Chipman Union, Inc. *and* Amalgamated Clothing & Textile Workers Union, AFL–CIO, Petitioner. Case 10–RC–14388

January 24, 1995

DECISION AND DIRECTION

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND TRUSDALE

The questions presented to the Board in this election proceeding encompass the hearing officer's refusal to expand the investigation of objections to include consideration of a letter sent by United States Representative Cynthia A. McKinney to unit employees before the election, the hearing officer's recommended resolution of challenges to 12 ballots, and the disposition of several procedural motions by the Employer.[1] The Board has reviewed the record in light of the exceptions and briefs, and has decided to adopt the hearing officer's findings and recommendations, as modified below with respect to the Employer's objection to the McKinney letter.[2]

As indicated, the hearing officer relied on procedural grounds to overrule the Employer's objection to Congresswoman McKinney's letter. We agree that the objection should be overruled, but we do so based on our finding that evidence proffered by the Employer fails to prove any interference with unit employees' free choice in the election.

Several days before the election, Congresswoman McKinney sent a one-page letter on congressional stationery[3] to all unit employees. The entire letter stated:

Chipman-Union, Inc. Employees
510 Plaza Drive, Suite 1520
College Park, Georgia 30349

This letter is written in support of your struggle for respect, dignity, and justice as employees with Chipman-Union, Inc. I urge you to continue to fight and strive for fairness in the workplace. It is important to unite, organize and support each other. Both internal and external support are important. Where there are numbers, there is strength.

During my tenure as a State Representative, I supported those who were voiceless. I supported those who were forgotten. I supported those who had lost hope. I have always been on the side of those striving to be included.

As a U.S. Representative, my support for you who are neglected, and striving to be included continues. I embrace you, Chipman-Union employees, in your struggle for fairness and justice in the workplace.

With warm regards, I am

Sincerely,

Cynthia A. McKinney
Member of Congress

Contrary to argument by the Employer and by amicus Council on Labor Law Equality, we find that unit employees would not reasonably construe the foregoing letter as an official institutional endorsement by the Federal Government of a vote for the Petitioner in the representation election. The letter does not even mention the Petitioner, the election, unionization, Congress as a whole, or the National Labor Relations Board, which is, of course, the independent administrative agency directly charged with the neutral conduct of representation elections. Furthermore, the letter does not indicate, and the Employer does not claim, that Congresswoman McKinney had any specific authority over labor matters within Congress.

Even assuming, as the hearing officer concluded, that the employees would view the McKinney letter as implicitly encouraging them to vote for the Petitioner in the upcoming election, we agree with her further observation that this letter ''reads as the personal expression of a political and partisan being speaking for herself.'' We also agree with the hearing officer that this case is readily distinguishable from *Columbia Tanning Corp.*, 238 NLRB 899 (1978). In that case, a Massachusetts commissioner of labor sent a letter to employees that specifically endorsed the petitioning union. The Board sustained an objection to this conduct because the employees, many of whom were recent Greek immigrants, lacked familiarity both with English and with the complexities of state and Federal jurisdiction over labor relations. Consequently, such employees could reasonably have confused the state commissioner of labor with the Board. In this case, the Employer has not referred to any potential evidence

[1] The National Labor Relations Board, by a three-member panel, has considered the objections and determinative challenges in an election held on July 27, 1993, and the hearing officer's report recommending disposition of them. The election was held pursuant to a Regional Director's Decision and Direction of Election. The tally of ballots shows 270 for, and 237 against the Petitioner, with 45 challenged ballots and 1 void ballot.

[2] In the absence of exceptions, we adopt, pro forma, the hearing officer's recommendation to overrule the Employer's Objections 1, 2, and 3, to her recommended disposition of ballots challenged at the count and of challenges to ballots cast by Mary Vandiver, Amanda Futrelle, Herberina Turner, Bobby Mapp, Orland Springer, Lydelle Rowland, Lee Morris Hutchinson, Keeno Weaver, Brenton Wright, Cedric Thornton, Donna Huff, and Laura Stapleton.

[3] The Employer also contends that Congresswoman McKinney sent the letter by franked mail, although the envelope which it has offered for the record is unfranked. We find the issue of whether or not Congresswoman McKinney used franked mail to be immaterial to the outcome. We also find it immaterial whether Congresswoman McKinney sent the letter because the Petitioner and its members had provided support to her. What matters here is the content of her letter, not why she wrote it. Consequently, we affirm the hearing officer's evidentiary rulings excluding evidence of any financial relations between the Petitioner and Congresswoman McKinney.

which would show that its employees could not discern the difference between statements about labor relations by an individual member of Congress and statements by the Board and its representative. See also *Ursery Cos.*, 311 NLRB 399 (1993); *Huntsville Mfg. Co.*, 240 NLRB 1220, 1223 (1979).

In support of its contention, both the Employer and the amicus Council on Labor Law Equality cite *Richlands Textile, Inc.*, 220 NLRB 615 (1975). *Richlands* does not stand for the proposition for which it is cited. Contrary to the Employer and the amicus, the Board in *Richlands* did not find that ''a threatening letter on official letterhead from a member of the North Carolina General Assembly tainted the exercise of full choice by employees and was grounds for setting aside the election.'' Instead, the Board found that the employer violated Section 8(a)(1) of the Act by not repudiating a statement of purported employer policy—a threat that the employer would begin to close the business if the employees voted for the union—made by a member of the North Carolina General Assembly. Here, it was clear that Representative McKinney was speaking only for herself and that her message contained no threat or coercive statement whatsoever.

Accordingly, we find no merit in the Employer's objection to the McKinney letter.

DIRECTION

IT IS DIRECTED that this case be remanded to the Regional Director for Region 10, who shall, within 14 days of this Decision and Direction, open and count the two ballots challenged at the count because they were folded together, and the ballots cast by Kenny Fulton, Kenneth Thomas, Timothy Wingfield, Barbara Hadden, Ethel Trammell, Daniel Nicholson, Cathy Vandiver, Lynn Sorrow, Christine Osborne, Franklin Combs, Gwenell Moon, Scott Bradley, Kenneth Futrelle, Jerome Hall, Curtis Brooks, Tracey Greene, Mark Yearwood, Carolyn Smith, Otis Mize, Bobby Mapp, Orlando Springer, Lydelle Rowland, Lee Morris Hutchinson, Keeno Weaver, Brenton Wright, Betty Lunceford, Brenda Lindsey, Willie Callaway, Francis Barnes, Robert Swann, and Terry Callaway. Further, the Regional Director shall prepare and cause to be served on the parties a revised tally of ballots and, if appropriate, a certification of representative or of results. If the revised tally of ballots does not determine the results of the election and the remaining unresolved challenged ballots cast by Carl Giles, Willie B. Merritt, and Jeanette Mapp are determinative of the results, the Regional Director will take such additional action as is necessary to make to resolve those challenges.