In the

Supreme Court of the United States

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

SAVAIR MANUFACTURING COMPANY,

Respondent.

No. 72-1231

Washington, D.C.
November 12, 1973

Pages 1 thru 28

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NATIONAL LABOR RELATIONS BOARD, Petitioner,	:	
v.	:	No. 72-1231
SAVAIR MANUFACTURING COMPANY, Respondent.	:	

Washington, D. C.
Monday, November 12, 1973

The above-entitled matter came on for argument at 11:02 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

NORTON J. COME, ESQ., Deputy Associate General Counsel, NLRB, Washington, D. C.; for the Petitioners

ROBERT J. SOLNER, ESQ., 1100 N. Woodward, Birmingham, Michigan 48011; for the Respondent

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C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in No. 72-1231, National Labor Relations Board v. Savair Manufacturing Company.

Mr. Come, you may proceed whenever you are ready.

ORAL ARGUMENT OF NORTON J. COME, ESQ.,

ON BEHALF OF THE PETITIONER

MR. COME: Mr. Chief Justice, and may it please the Court:

This case is here on certiorari to the Sixth Circuit, and the basic question is whether it is permissible for the National Labor Relations Board, in the exercise of its broad discretion to establish the standards and safeguards for conducting a fair and free representation election, to conclude that a union's offer to waive initiation fees for all employees who sign union authorization cards before the election should the union win the election, does not tend to interfere with employee free choice in the election.

The facts are these: In September of 1970, pursuant to a representation petition filed by the Mechanics Educational Society of America, the Board conducted a secret ballot election among the production and maintenance employees of the Savair Manufacturing Company. The union won the election by a vote of 220-to-20. The company filed objections to the election, alleging, among other things, that union representatives

had improperly coerced certain employees by leading them to believe that if they failed or refused to sign a card requesting an election, and the union were successful, they would be fined from $20 to $200 before they could join the union.

These objections were investigated and set down for hearing before a hearing officer of the Board who found that prior to the filing of the representation petition, Bennie McKnight, an employee supporter of the union, solicited employees to sign cards applying for membership in the union, which cards were to be used to support the petition. As this Court no doubt knows, generally the Board would declare as a support of 30 percent in cards before they would process a representation petition.

McKnight told employees that if they did not sign the card now, they would be subject to an assessment or a fine if the union won the election. When the employees questioned McKnight about the union's policy, he told them to call Alfred Smith, the union Secretary-Treasurer, whose phone number he gave them.

After the election petition was filed, but before the election was held, Smith addressed a group of about twenty employees. In response to a question about the assessment, he explained that it was the union's policy to waive initiation fees in organizing new shops, but to require a small fee be paid by persons joining the union after a contract had been

negotiated. In fact, the union's constitution and by-laws provide for the local union to set the initiation fees which in no event can it exceed $10.

Smith added that there was no assessment or phone in our organization in regards to this situation of membership. The only time a fine was imposed was for violation of the union's constitution or by-laws.

The hearing officer concluded that what the union did through Smith and McKnight was to inform employees that the initiation fee would be waived in the eventuality of a successful election by the union. He further found that whatever confusion may have existed with respect to the terminology utilized by McKnight, the union's policy was clarified at this initial organizational meeting at which Smith explained the union's policy, and he held a subsequent meeting shortly before the election going over the same ground.

Q How many were there?

MR. COME: At the first meeting, there were about twenty employees, and he indicated that about the same number were at the second meeting. The first meeting was attended by the card signers, as he explained that those were the only names and addresses that he had and that is what the notice went out to. But there is no indication as to who in addition may have been present at the second meeting.

Following the Board's decision in DIT-MCO, the

waiver of initiation fees prior to an election is not an improper inducement to vote for the union, regardless of whether it was contingent upon the results of the election, the hearing officer concluded that the union's waiver offer did not impair free choice in the election and recommended that the union be certified.

I should point out that DIT-MCO represents a reversal of the Board's earlier position in Lobue, in which the Board had concluded that if the waiver was tied to the outcome of the election it was improper.

Q Is there a copy of the cards in the record?

MR. COME: There is not a copy of the cards in the record. What you do have in the record is a -- is testimony by the union agent --

Q Well, isn't it even among the -- isn't it here in any form, the cards?

MR. COME: No, it is not.

Q Well, was it an application for membership as well as --

MR. COME: Yes, it was. It was an application for membership, and it authorizes the union to represent the employee in collective bargaining.

Q And did it say that if the union won the membership fees would be waived?

MR. COME: No, the card did not say that. It was a

typical authorization card which, as I say, was an application for membership and authorized --

Q Well, did it say that if the union lost, the application was void?

MR. COME: No, it did not say that.

Q So I suppose the application still stands if the union lost.

MR. COME: Except that the union agent, Mr. Smith, testified that it was the practice of the union not to collect any initation fees.

Q Practice?

MR. COME: Yes, sir, unless they won the election and they got a contract, which is not atypical, as I understand the practice of the union organization.

Q That is if the employee was applying for membership?

MR. COME: He was applying for membership.

Q His dues would only be waived if the union won?

MR. COME: His initiation fee would be waived if the union won.

Q I mean initiation fee would be waived.

MR. COME: However, the union is not in a position under the Act, as I hope to -- as I was planning to get to, to compel an employee to pay initiation fees until (a) it wins the election, (b) it manages to negotiation a contract with an

employer, and (c) gets a contract which has a union security clause in it which requires the payment of dues and fees as a condition of continued employment.

Q Well, can't the union sue, at least as a theoretical matter, for back dues in court without enforcing it through a union security clause?

MR. COME: I know of no such situations where they have done so merely on the basis of an authorization card of the kind we had here.

Q Mr. Come, if the issue here were a little different, if the issue were that of a card majority, would the Board's position be any different?

MR. COME: The Board's position, as I understand it, would not be any different. I do think, however, that the fact that you do have an election here makes this an easier case, because in terms of the employee who does not want the union and merely signs the card as a hedge, he has a double insurance by voting "no" in the election.

Q Is it possible -- isn't it conceivable that some of the 22 employees who voted against the 20 would decide to hedge by both signing a card and voting for the union so that if the union won the election they would be relieved of this fee obligation? Isn't that what this case is about, whether this is an improper inducement?

MR. COME: That is correct, Your Honor. I think that

that is the question. I think that there is no question that it is an inducement to sign a union card. The question is whether it is the type of inducement which is likely to influence the employee's vote in the election. For example, there is no question that if the union promises to get employees a wage increase if it wins the election, that may well be an inducement for the employees to vote for the union in the election. But that type of inducement, the Board and the courts have held, is not the kind that would predluce a rational choice.

Now, in this area of what inducement is going to fall on which side of the line, I submit that that can often be a fine question, but --

Q Well, I gather, Mr. Come, the Board in Lobue, at least initially thought that it fell on the coercive side of the line, didn't it?

MR. COME: The Board felt that it fell on the coercive side not with respect to the waiver of the initiation fee. The Board, almost from the beginning, has taken the position that an offer to waive initiation fees during an organizational campaign was a legitimate type of inducement and did not interfere with employee free choice. It serves the legitimate purpose --

Q Well, what was Lobue?

MR. COME: Well, in Lobue, the thing that the Board

felt it made it improper was that in addition to offering to waive it, the card that the union furnished was a membership card and on the bottom of it, it said the employee shall be entitled to a book of -- a paid-up initiation fee upon -- if the union wins the election. It was the addition of "if the union wins the election" that the Board felt tipped the scales.

Now, on reconsideration in DIT-MCO, which was applied here, it was the Board's judgment that whether you explicitly stated that the waiver would be effective if the union wins the election or you didn't so state didn't make any realistic difference because that fact would be understood in any event, because the way the thing operates, as I explained before, is that the only time that the union is in a position to force an employee to pay an initiation fee is if it wins the election, it gets a contract, and the contract has a union security clause in it.

So in effect what the Board concluded in DIT-MCO was that it was really relying upon an artificial factor in making the propriety of the waiver turn upon whether or not the union said anything or whether they were candid enough to add that the waiver is effective only if we win the election. Now --

Q On that thesis, why doesn't the union waive the initiation fee for everybody and not just card signers?

MR. COME: Well, I think that the reason that the union -- well some do, I might say, but generally the reason why they do not is that they want to speed up the election campaign and get a quick election, because the longer the campaign may be dragged out, the -- not only the more expensive it may be but the more likelihood for other factors entering into the picture. But the waiver scores the legitimate function, as the Second Circuit pointed out in the Edro case which was solely a card case, I might point out, there was no election there, that the waiver serves the legitimate purpose of removing what might have been an artificial barrier to union membership, namely making employees pay before the union has not only done anything for them but before it is even certain that they are going to be their bargaining representative.

Now, I might say that the DIT-MCO decision of the Board was approved by the Eighth Circuit, and it was also approved by the Ninth Circuit in the Turner case, in which it was also applied.

The Sixth Circuit here disapproved of the DIT-MCO decision largely, as we read their decision, because they felt that they had been locked in by their earlier decision in Gilmore --

Q Well, they went beyond that, didn't they, Mr. Come? The facts of this case indicate that Lobue and Gilmore

-- Gilmore enforced Lobue, by sound decisions.

MR. COME: I agree that they did go beyond that, and I am not resting solely upon that, but --

Q I have difficulty -- I read your brief, and I can't read Gilmore, the decision here as saying they were locked in by Gilmore. I think they said frankly and candidly they thought Gilmore and Lobue were rightly decided and DIT-MCO wasn's.

MR. COME: Well, I think that they unquestionably came out with that holding. However, in distinguishing DIT-MCO and -- that is, the Eighth and Ninth Circuits' opinions, they pointed out that in neither of those cases was the court called upon to overrule a controlling precedent of its own, and then earlier they had sort of thought that we were urging that merely because the Board had overruled Lobue that that ultimately --

Q What year was Lobue?

MR. COME: Lobue was in 1954.

Q And DIT-MCO?

MR. COME: DIT-MCO was in 1967.

Q Thirteen years later. Changed membership?

MR. COME: I believe so, Your Honor.

Q At least twice.

MR. COME: Now --

Q Do you really suggest that the hooker and the

offer, that if the union wins membership will be waived, is just meaningless?

MR. COME: That is correct, Your Honor.

Q Although the union must think it is an effective device or it wouldn't do it?

MR. COME: Well, I think that they --

Q They wouldn't just do this for nothing. They think it is effective enough to draw the attention and get favorable action out of some of the employees.

MR. COME: Well, I think that they believed that to waive an initiation fee is effective, for the reason -- for the legitimate reason that I have indicated.

Q Get the 30 percent?

MR. COME: Get the 30 percent into --

Q So, in short, some people would vote for the union who otherwise might not vote for the union, that is why they do it?

MR. COME: Well, there is some of that, but there is also a factor, a large factor of those that may be favorable to the union but are hesitant about signing because they don't want to incur --

Q I would include those within what I have said. I mean some people --

MR. COME: However, granted that you have these complex factors, I submit that the Board would seize an awful

lot of these election cases, is not unreasonable in concluding that --

Q What do you suggest is the standard of judicial review of that judgment of the Board?

MR. COME: Whether the Board was arbitrary and capricious.

Q That is the only standard?

MR. COME: Yes, Your Honor, because I think that this is within the area of the Board's discretion to establish the safeguards in standards for conducting a fair representational election.

Getting back to the point that I was making, the likelihood that -- at least this is the Board's judgment, which I submit is a reasonable one -- that someone who was opposed to the union would sign a card because of the inducement that initiation fees would be waived, and then vote yes for the union merely to protect that contingent benefit is remote enough for the Board to have discounted for the simple reason that the voter who must be assumed to have some element of reason and be aware of the real world cannot help but recognize that a yes vote would not only -- it might save him the disability of having to pay the initiation fee, but it would insure that he would get a bargaining representative that he doesn't want, and, secondly, that the initiation fees are only the beginning, because much more significant is the requirement

of having to pay periodic dues and whatever other assessment the union might impose.

So for those reasons, I submit that the Board could reasonably conclude that there was no improper inducement here. Now, my brother is going to seek to defend the court's decision on the further ground here that the regional director did not conduct an adequate investigation of the election objectives.

Q Mr. Come, before you get to that, was the Board's switch from Lobue to its present rule accompanied by any rulemaking notice, or was it simply done by adjudication?

MR. COME: It was done by adjudication, Your Honor.

Q Has the Board ever had a case of the employee who voted against the union and who was then charged initiation fees later who made a claim that this couldn't be done, that this was discriminatory by the union?

MR. COME: Not to my knowledge.

Q Would it be reasonable to say that if an employee wanted to play it both ways he would sign the card so as to hedge in that direction and then vote against the union?

MR. COME: Yes, Your Honor.

Q Then if you concede that, then hasn't the proffer of the waiver of the initiation fee influenced the outcome in his case?

MR. COME: I don't know that you could say that it has influenced. I mean it might be --

Q Influence, I am using a neutral term. It has had an impact on the results, if you have this unusual fellow, if it would be unusual to play it this way.

Q And if there are a number of them and we had the majority of cards, we wouldn't have an election, would we?

MR. COME: What's that, Your Honor? If you had enough of them you wouldn't have an election?

Q This influence, of which the Chief Justice speaks, were sufficient so that the organizer ended up with a card majority, we might not even have any election.

MR. COME: Well, if you are referring to the Gissel decision, where the Board would give a bargaining order based upon cards, is that the --

Q Isn't this a possibility, is all I am saying?

MR. COME: Well, the Board does not ordinarily give a bargaining order based upon cards absent employer unfair labor practices.

Q As Gissel said, Gissel indicates that if the employer wants it, he can have it if he hasn't been guilty of an unfair labor practice?

MR. COME: That is correct, Your Honor.

Q Mr. Come, I don't want to go into any great detail at this late point in the argument, but what substantial evidence do you find in this record to contradict the testimony of the two witnesses who said they were coerced and

that this charge was characterized as a fine or a penalty? McKnight, the fellow who was alleged to have done the coercing, was not put on the witness stand, and the Hearing Officer, at the end of the evidence reproduced in the Appendix, stated, as I read his testimony on page 79 and 80, that -- he asked why they didn't put McKnight on, and he said, "I am not going to take the testimony of Mr. Smith," which is clearly hearsay, Smith wasn't present.

MR. COME: First of all, Your Honor, I believe that the testimony of individuals as to whether or not they were coerced or not given after the event, both the Board and the courts have recognized is highly subjective and of very little probative value. The test is whether or not the circumstances are such that you can objectively conclude whether it is reasonable to believe that there was coercion or not. And I submit that the circumstances here weren't that inference.

Now, with respect to the statement of the testimony of Bridgeman and Rice, who are the two that the company relies on here, the Hearing Officer found that Bridgeman's testimony was of no probative value at all because of his propensity to confuse a fine, an assessment, and an initiation fee, and therefore, based upon his testimony as a whole, he found no basis for believing that there was or had been a threat of a fine either before or after the election petition.

With respect to Rice, the Hearing Officer found --

credited his statement that McKnight had mentioned the word "fine" prior to the filing of the petition. But then he went on to find that Smith's explanations at the organizational meetings which were held shortly thereafter completely clarified the union's position.

I just wanted to say that, with regard to the failure to conduct an adequate investigation, the Court of Appeals examined that contention and found no merit to it.

Since my time is up, I would have to refer the Court to our further position on that.

Thank you.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Come.

Mr. Solner?

ORAL ARGUMENT OF ROBERT J. SOLNER, ESQ.

ON BEHALF OF THE RESPONDENT

MR. SOLNER: Mr. Chief Justice, and may it please the Court: My name is Robert Solner, and I am the attorney representing Savair Manufacturing Company, a small manufacfur-company located in Warren, Michigan.

There are two issues in this particular case and, of course, the first issue, which counsel has gone through in detail and facts, and I don't want to be redundant going over those facts, the main issue of this case -- and naturally that is why we are here, because of this conflict among the circuits.

This issue, as I see this issue, involves several cases that involve a little different set of facts in each one. We talk about an authorization card in one. In Gilmore, they said the card was immaterial. Others, they talked about what was said by a union representative as to the outcome of the election and the effect it had.

In our particular case here, under these set of facts, there was an authorization card. It is very clear from the record, at the time that the Hearing Officer had testimony -- it is on one page there, that this was an authorization card and it actually was an application to join the union.

Q When was it put in evidence, Mr. Solner?

MR. SOLNER: At the time when we were here before the Hearing Officer -- the Hearing Officer, as I recall, off the record, asked if someone had one, and no one had one with them. However, the representative of the union, Mr. Smith, said that it was a standard authorization card. I had never seen one.

Q I don't know what a standard authorization card is.

MR. SOLNER: I hadn't seen one, so I didn't know myself, but they explained what it said, and it said something to the effect that "I authorize the M.E.S.A. to act as my representative to bargain with" -- and there was a blank space and they fill in the company name, and that "I do hereby

make application to join the union."

And in the testimony of Mr. Smith, he made it very clear, because I cross-examined him on this, whether this man could join the union before the election, because they were getting these cards signed up -- and we are not talking about pre-petition, before the petition was filed for the election, these were cards that were signed after the petition and an election had been scheduled, that they were getting cards signed.

I asked him if he had a card signed if he could join, this man could join the union. He made it very clear that that was merely an application and until such time as they had a contract they could not belong to the union. And once --

Q He could not?

MR. SOLNER: He could not belong to the union. He said the only ones he allowed to belong to the union were with a withdrawal card from a shop where they had had a contract or the representatives of the union who were members, who were dues paying but they were actually business agents and that sort. But the card itself was merely an application to join the union, and it was this authorization card --

Q When would a union ever act on that application?

MR. SOLNER: Well, I assume as soon as they would negotiate a contract, then at that point they would then say all of these people who signed cards don't pay any initiation

fee, they become members, and of course it was a closed shop, they would say that you have the check-off system in the shop for the other employees to withhold their initiation fee and their dues, and those that had signed the card would get a waiver.

Of course, I am not in disagreement with the right of the Board, of course, to have a blanket waiver of initiation fees. They don't themselves interfere with the choice. In other words, if the union wants to waive for all, and it is equal to all and all participate the same way, I agree with the Board's position in that regard.

However, in this particular case, this was where they obtained the card on an economic inducement and based it on the outcome of the election for those people that signed the card, and I say that is a moral commitment that that person is asked to make based on an economic inducement.

In other words, he has him sign the application, the union representative, and say, now, okay, you have made a commitment to have this union represent us. The signing of his card is definitely, I think, material to the union's position of wanting this commitment because it leaves that employee absolutely no alternative, he cannot afford not to sign the card, because if he doesn't sign the card and the union is elected, then he is penalized. Secondly, if he doesn't show an interest for the union when he is asked to sign a card,

then he may feel the wrath of the union later when they get in and say this man didn't have the interest that he should have had, and there is a great deal of pressure put on these fellows between the time that the election was scheduled and that final date when that election was held to sign those cards because several of them signed it right the last day, just as a hedge.

Q Do you agree with Mr. Come, that in the standard of judicial review of the Board's determination that this falls outside the line of coercion?

MR. SOLNER: No, I do not agree with that.

Q What is your view of the standard of judicial review?

MR. SOLNER: Well, I think that the lab conditions have to be equal for both parties, in other words they have to be equal for the employer or the union. It ought to be clear that free choice --

Q That must be an argument then that coercion nevertheless always exists unless everyone, all the emply ees have the same --

MR. SOLNER: That is correct. That is my--

Q As a matter of law, then, I guess.

MR. SOLNER: That is what my position would be. that it would have to be a matter of law. It should be free. All the parties should be equal in that treatment, and that that --

it is no different than the -- I cannot picture an employer being able to be put in the position of saying we want a showing of strength so we will ask a man to come off the line, come in and sign a petition to say that we don't want the union.

Q Well, would you say --

MR. SOLNER: That employee wouldn't have anything to say about it.

Q Would you say that any other construction of the Act is wholly foreclosed by this language and legislative history? Do you think there is no room for having a different view of what coercion is under the statute?

MR. SOLNER: Oh, no. Certainly, they -- the Board has the right -- and I am not disagreeing with the law in that regard --

Q Let's assume there is room for two views, two constructions of the Act under its language and its legislative history. Let's assume there are two views. And now the Board having held one view for thirteen years decides it wants to hold the other view, the other reasonable view. Now, what are we supposed to do about that, say that it is unreasonable? But we have just by definition said it might be reasonable.

MR. SOLNER: Well, the Board is charged with the duty to conduct an election under conditions which give employees complete freedom of choice, and if the Board in setting those standards does that, then I assume that the Court can't

interfere. What I am saying under these facts, however, is that they do give him --

Q Well, don't we have to say that there is no other view, no other tenable view of the Act, construction of the Act before we can disagree with the Board here? Is that the standard or not?

MR. SOLNER: I think so, yes. You have to interpret the Act to say that this Act gives a certain obligation on that Board, and if that Board doesn't follow the Act and isn't following the Act, then it is a matter of law that they are not following the Act.

Q Well, if a reviewing court, the judges of a reviewing court reach the conclusion that it was contrary to ordinary human experience to say that this conduct on the part of the union did not influence the result, then it would be, it would follow it was an arbitrary action and could be reversed.

MR. SOLNER: That is correct.

Q The fact that they once had one view and now took another doesn't make both views permissible, does it?

MR. SOLNER: Under the facts and circumstances of the cases in which they reversed themselves, I am inclined to think it could. It could, because they do say in effect that one is a card and doesn't affect the card, and one says it does. I think you have to take a general principle and tie

the two together to the case to understand which way they are going. I think that Lobue and DIT-MCO completely reversed each other. I don't. I mean I think if you study the facts of each case, they are different enough that I think the Board indictive, they said in effect, reversing it themselves, but I don't think they were really doing it for that reason. I think it was based on the facts of the two separate cases. But I think you are in a position, this Court is in a position where they have to determine if they are going to set a full principle of what can be done and what cannot be done by the union in regard to an election. They have to set down whether the Board is acting arbitrarily or not, and they have to make that decision. And I see that there is a certain commitment that means something with having that signed card, that the NLRB wants to ignore that and say, well, a man can sign a card and yet he can vote against the union and the signing of that card means nothing. I think the fact that he is coerced into signing that card is some kind of a moral principle that he may not want to abide by but he has to to protect himself and it may be against his own grain or against his integrity, and I say that is not giving him a free choice and the full freedom and right of having an election.

Secondly, there is a good question as to whether or not the obtaining of this card isn't a violation of the National Labor Relations Act as an unfair labor practice in

itself. Under section 158 of the National Labor Relations Act, it provides there the expressive views, arguments or opinions or the dissemination thereof, whether in written, printed, or graphic or visual form, shall not constitute or be evidence of unfair labor practice under any of the provisions of this subchapter if such expression contains no threat of reprisal or force or promise of a benefit.

Well, he is asked to sign something here and he certainly is under either the threat of a reprisal in my set of facts because he was told or threatened with a fine, or he was given some kind of a benefit. And if it is an unfair labor practice, then it certainly doesn't give the man the freedom of choice, and I think for that reason that there is another reason that this is an arbitrary decision on the Board in coming to he conclusion that they did.

Now, there is a second issue in my case that is a secondary issue, however, it is one that I am very concerned with because I was involved in it, and I think the Regional Director has a certain obligation to investigate and make sure that this election is held and that this election is held under the conditions that there is freedom of choice.

We filed objections to the election, four objections, and at the hearing there were -- there was no evidence adduced as to objection number three, as to certain promises that were given to the employees. There was a letter received by the

District Director of the NLRB from an employee in which he said that -- he alleged certain conduct that had been set forth, was not necessarily grounds for setting the election aside, such as the buying of drinks, or the union's promises of what it would accomplish if it were to be selected as the bargaining agent.

They replied to that letter and said, in effect, that Mr. Reibling was not a party to the proceedings and that his objections were not timely filed, and that what was in there appeared to be extraneous to the objections filed to the company.

Well, I think there are two things that they violated there. One, I don't think they can hide behind that technical requirement that a party be the company or the union to file objections. I think that once they have had a letter like that that alludes directly to the objections, that they should bring that person in or at least allow him or tell him or notify him that he can appear at that hearing.

I think there is a second obligation on their part to notify the company or the union of this objection, and that that they -- of this employee, so that they can investigate it at that point to determine whether in fact there was some conduct that went on that should be investigated to make sure there was a fair and an impartial election.

And since there was no investigation, they did not

allow this man to appear in effect by not telling him that he had the chance to appear, that they cannot certify this union as the bargaining agent.

I thank you very much.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen. The case is submitted.

[Whereupon, at 11:45 o'clock a.m., the case was submitted.]

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