

Whiting Manufacturing Company, Inc. and Jean Trent, Petitioner, and Chicago and Central States Joint Board, Amalgamated Clothing and Textile Workers Union, AFL-CIO. Case 9-RD-986

September 30, 1981

**DECISION, ORDER, AND DIRECTION
OF SECOND ELECTION**

**BY MEMBERS FANNING, JENKINS, 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 objections to an election held on December 11, 1980,¹ and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions² and briefs and has decided to adopt the Hearing Officer's findings and recommendations to the extent that they are consistent with the findings below.

We agree with the Hearing Officer's finding the Employer's promise of a new employee handbook if the employees voted to decertify the Union constituted objectionable conduct requiring the election to be set aside. In addition, we find that the following conduct also warrants the conclusion that the election should be set aside.

The Hearing Officer found that at a meeting with employees, the day before the election, the Employer's president, C. Ross Whiting, stated that a union shop would run him out of business. After Whiting made this statement, his labor relations advisor, Harold Craft, threw up his hands and told Whiting he could not say that. Craft and Whiting

then left the meeting for a brief caucus. When they returned, Craft explained to the employees that Whiting had meant to say that the Employer was in competition with nonunion States of the South, and was already paying the employees all it could and remain competitive.

The Hearing Officer found that although Whiting's statement that a union shop would run him out of business was not based on objective fact and would, therefore, be objectionable, its coercive effect was dissipated by Craft's explanation of what Whiting had meant to say. We disagree. While objectionable statements made by an employer in the course of an election campaign can be neutralized by a clear and unambiguous statement of repudiation by an authoritative representative of the employer,³ the record in this case establishes that Craft's statement, instead of repudiating the statement of Whiting, actually reinforced it. Craft's "explanation" merely rephrased Whiting's statement and carried the clear implication that a union victory in the election would deprive the Employer of its ability to compete. Under these circumstances, and particularly where, as in this case, the Employer has raised and emphasized the issue of a union-shop agreement by telling the employees that it had been requested by the Union in contract negotiations, Whiting's statement that a union shop would run him out of business was objectionable conduct affecting the outcome of the election and was not in any manner neutralized or repudiated by the later statement of Craft. Accordingly, we find that Whiting's statement that a union shop would run him out of business constitutes an additional reason for setting aside the election.

ORDER

It is hereby ordered that the election held on December 11, 1980, be, and it hereby is, set aside.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 102 for, and 154 against, the Union; there were 7 challenged ballots, an insufficient number to affect the results.

² The Employer has excepted to certain credibility resolutions made by the Hearing Officer. It is the Board's established policy not to overrule a hearing officer's credibility resolutions 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 *Interlake, Inc.*, 218 NLRB 1043 (1975). Because we find that Whiting's objectionable statement was not neutralized or repudiated by the statement of Craft, we need not decide whether Craft was, in fact, an authoritative spokesperson for the Employer.