

**United Broadcasting Company of New York, Inc.
and Alvin V. Jayne, Petitioner and Local 121,
International Brotherhood of Electrical Work-
ers. Case 22-RD-551**

March 12, 1980

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

**BY CHAIRMAN FANNING AND MEMBERS
JENKINS AND PENELLO**

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties on April 16, 1979, an election by secret ballot was conducted in the above-entitled proceeding on April 27, 1979, under the direction and supervision of the Regional Director for Region 22 (Newark, New Jersey). Upon conclusion of the election, a tally of ballots was furnished the parties in accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended.

The tally of ballots revealed that there were approximately six eligible voters and that four cast valid ballots, of which three were for, and one against, the Union. There was one challenged ballot, insufficient to affect the results of the election.

On May 3, 1979, the Employer filed timely objections to conduct affecting the results of the election. In accordance with the Board's Rules and Regulations, the Regional Director for Region 22 conducted an investigation and on June 19, 1979, issued and served on the parties his order directing hearing and notice of hearing in which he ordered that a hearing be held before a duly designated officer for the purpose of taking evidence on the issues raised by Employer's Objection 2.

The hearing was held on July 18 and August 1, 1979, at Newark, New Jersey, before Hearing Officer C. John Cicero, duly designated for the purpose, at which time the Employer, the Union, and counsel for the Regional Director appeared and participated therein. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, to introduce evidence bearing upon the issues, and to present arguments and briefs to the Hearing Officer. On November 21, 1979, the Hearing Officer issued his report and recommendation on the objection in which he recommended that it be overruled. The Employer filed timely exceptions and a brief in support thereof.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this case the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved herein claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 2(6) and (7) of the Act.

4. We find, in accordance with the stipulation of the parties, that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All engineers employed by the Employer at its Carlstadt, New Jersey location, excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

5. The Hearing Officer recommended that Employer's Objection 2 be overruled. We disagree.¹

In Objection 2, the Employer alleges that, during the critical period prior to the election, the Union, by its agent and representatives, threatened, coerced, and intimidated eligible voters by telling them that they would be deprived of their employment in the industry if they failed to support the Union.

In testimony credited by the Hearing Officer, employee Ralph Persico stated that on April 24, 3 days before the election, Union Shop Steward Davila heard and acquiesced in statements made by another employee telling Persico that if he voted against the Union his name would be placed on a blacklist which would be sent to all the radio stations and would serve to deprive him of future employment. Credited testimony also establishes that on April 25 Davila personally advised Persico that if he voted against the Union his name would go on a blacklist and that he would not get another job in a radio station.

The Hearing Officer finds that, although the above statements would reasonably tend to interfere with, restrain, and coerce an employee in the exercise of his/her Section 7 rights, the results of

¹ In adopting the Hearing Officer's overruling of that part of Employer's Objection 2 that involves misrepresentations, Member Penello does so for the reasons set forth in *Shopping Kart Food Market, Inc.*, 228 NLRB 1311 (1977), the principles of which he still adheres to. See his dissenting opinion in *General Knit of California, Inc.*, 239 NLRB No. 101 (1978).

the election were not affected thereby. He reasoned that because Persico was delayed in traffic and did not reach the polls in time to vote and, of the two employees who had either overheard or were told about the threats one was ineligible to vote and the other had cast the undeterminative challenged ballot, these statements could not have affected the outcome of the election.

We disagree with this conclusion. The proper test is whether the conduct involved reasonably tends to interfere with the free and uncoerced choice by the employees. The situation presented here deals with a threat to retaliate against an employee by means of a blacklist. While there is no evidence that the Union had ever engaged in such practice, this is the kind of economic reprisal which an employee may reasonably believe is within a union's power. Because the determination of whether certain conduct warrants setting aside an election does not turn on the election results, but rather on its likelihood to coerce prospective voters to cast their ballots in a particular manner,² it appears that the statements attributed to Davila herein fall squarely within the proscription. The coerciveness of a blacklist derives from the possible foreclosure of the opportunity to earn a living, and

² *The Great Atlantic and Pacific Tea Company, Inc.*, 177 NLRB 942 (1969).

the cited threats directly tie this consequence to Persico's vote. Further, these threats cannot be characterized as unobjectionable simply because they were directed at only one employee. We have long held that statements made during an election campaign can reasonably be expected to have been discussed, repeated, and disseminated among the employees, and, therefore, the impact of such statements will carry beyond the person to whom they are directed.³ In this case, where only six employees comprised the bargaining unit, this presumption is particularly apt.

For these reasons we find, contrary to the Hearing Officer, that these threats clearly warrant the setting aside of the election and the directing of a second election.

ORDER

It is hereby ordered that the election conducted herein on April 27, 1979, among the employees of United Broadcasting Company of New York, Inc., at its Carlstadt, New Jersey, location be, and it hereby is, set aside.

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

³ *Standard Knitting Mills, Inc.*, 172 NLRB 1122 (1968).