

Paoli Chair Company, Inc. and United Furniture Workers of America, AFL-CIO, Petitioner. Case 25-RC-6123

August 23, 1977

DECISION AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN FANNING AND MEMBERS PENELLO AND WALTHER

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 conducted on December 12, 1975,¹ and a Hearing Officer's report [pertinent portion attached hereto as an appendix] recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs and hereby adopts the Hearing Officer's findings and recommendations to the extent consistent herewith.

On the day before the election, the Employer's president, Wulfman,² delivered a speech to the assembled employees, a transcript of which was submitted by the Employer and Petitioner as part of Joint Exhibit 1 in this proceeding. Wulfman opened his remarks by noting that the Employer was "under a Court Order to tell the truth and not lie or exaggerate . . ." The statement was designed, it appears, to explain why Wulfman would read his remarks from a written document. He, thereupon, told the employees:

You people are spoiled, now, most of you at least. You'd been spoiled for many years and since we bought the plant, I guess, I spoiled you too by giving you everything I could afford even in a very bad year.

Wulfman proceeded, after discussing the state of the industry, and steps management had taken in the employees' interest, to "talk about unions." He told the employees that the Union's statement that the law prohibited an employer from closing or threatening to close the plant was

probably right technically, but again, it's a half-truth, because I think there was a case where somebody had a union voted in and they just shut the plant down and they made them open it back up. But after you have a union, my first job . . . was at a plant . . . that had been shut down for

more than a year with a lot of union trouble and a strike and later on when I was President of the Huntingburg Furniture Company, we had a plant that had so much strife . . . and the production went down and we were losing money and we just had to close the plant and the people lost their jobs. So he's technically right but that just means immediately after the election.

After discussing other "lies or half truths" the Union had put out in the campaign, Wulfman stated:

The union can promise anything but only the Company can deliver. If you vote for a union, and eventually we have to negotiate, I will abide by the law. The law says we have to bargain in good-faith, and we will, but the law says that I do not have to agree to anything that I do not feel is in the best interest of the Company. . . . They're [the union] not going to change one damn thing other than they're going to bargain and I'm going to bargain in good faith and I'm a tough damn bargainer. I would not sit at the bargaining table. We got our professional bargainers to do that. . . .

I'm not saying that a strike is inevitable. But again, I say a strike is the only way a union can try to force me to do something that I don't feel is right for this Company. . . .

Without a union, our policy has been to pay wages as high as we could afford. That's what we've done. With a union we would pay as little as we could bargain for and, I'm telling you again, in bargaining the only club they have is to strike. . . .

Wulfman closed his remarks with the following observation:

If you can't see that you have a lot to lose and nothing to gain by joining the union then you're not as smart as I have been giving you credit for. Thank you. That's it.

In our estimation, Wulfman's remarks exceeded the bounds of permissible electioneering conduct. Mere expressions of the intention to "abide by the law" and "bargain in good faith" do not insulate an employer's campaign statements from further scrutiny.³ Wulfman, by stating the Union's description of the law relative to plant closure was a "half-truth" and applied only in the immediate aftermath of an election, clearly conveyed the message to the employ-

¹ The election was held pursuant to a Stipulation for Certification Upon Consent Election. The tally was 97 for, and 105 against, the Petitioner; there were 3 challenged ballots, an insufficient number to affect the results.

² The name, inadvertently, appears as "Wolfman" in the Hearing Officer's report.

231 NLRB No. 77

³ See, e.g., *Georgia-Pacific Corporation*, 181 NLRB 377 (1970), a case presenting a quite similar campaign statement.

ees that a union victory could result in plant closure at any other time. Moreover, by indicating, on two occasions, that the Company already, as it always had, paid its employees "all it could afford," he not only underscored his own statement of the law pertaining to plant closure or the threat of it, but suggested to the employees that a vote for Petitioner would represent an exercise in futility.

As Wulfman plainly stated, their choice was to vote for the Union and get "a lot to lose and nothing to gain" or to avoid that unappealing reality and continue to enjoy all the company "could afford." It was a choice dictated by the "fact" that the Union was "not going to change one damn thing other than they're going to bargain" and Wulfman was a "tough damn bargainer," a characterization clearly related to his reminder that he was the president of another company that "just had to close . . . and the people lost their jobs," because the Union "had people so shook up and production went down."

"Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow." *N.L.R.B. v. Exchange Parts Co.*, 375 U.S. 405, 409 (1964). The inference to be drawn from Wulfman's remarks about the law on plant closures was no less likely to be missed, especially in light of his remarks on the Employer's continuing policy of giving employees all it could afford.⁴ We find the statements objectionable and shall, accordingly, direct a second election.⁵

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

MEMBER WALTHER, dissenting:

I agree with the Hearing Officer's assessment of Wulfman's speech and, for those relevant reasons noted by the Hearing Officer, which I append to this dissent, I would find that Wulfman's speech constituted permissible campaign propaganda.

⁴ See *Boaz Spinning Company, Inc.*, 177 NLRB 788, 789 (1969). See also *Textron, Inc. (Talon Division)*, 199 NLRB 131, 135, at fn. 14 (1972), and accompanying text; *Georgia-Pacific Corp.*, *supra*.

⁵ Member Penello agrees that the election should be set aside but does so primarily because the Employer's speech conveyed the message to the employees that a union victory could result in plant closure at any time other than immediately after the election.

APPENDIX

Objections I. C; I. D; I. E; and I. J

In these objections the Petitioner alleges that Employer threatened to cause a strike, and threatened to close the plant if the Union were voted in, and that the Employer detracted from the campaign issues by undue emphasis on strikes and plant shutdowns. Additionally it is alleged that the Employer conveyed the impression that it would be futile to elect the Petitioner as bargaining representative.

The Petitioner during the campaign apparently mailed a letter to each of the employees. Wolfman directed a large portion of his speech to answer a number of specific issues or facts apparently set forth by the Petitioner in this letter.

Another significant issue raised by the letter was plant closure. Apparently the letter stated that it is illegal for the Employer to close the plant because the employees voted for the Union. Wolfman, in elaborating on this issue stated, that this was a half truth and technically "probably right" and that he heard of a case where the Employer shut down the facility after a Union was voted in, but then was forced to open it again. He talked about his experience as president of Huntington Furniture Company where "the union had the people so shook-up and the production went down and we were losing money and just had to close the plant and all the people lost their jobs." He also mentioned his first job in the furniture industry which involved the reopening of a plant "that had been shut down for more than a year with a lot of union trouble and a strike." Wolfman's statements contained no threats. They related to personal experiences Wolfman had and were clearly in answer to issues raised by the Petitioner in its letter. While these statements may direct the mind of the listener to the possibility of a plant shutdown, they also point out that, if an illegal shutdown should occur, the Employer will be forced to resume operations. Bearing in mind that the issue was raised by the Petitioner, I consider Wolfman's statements as nothing more than a reasonable description of incidents that have occurred and, for that reason, could occur again.

Wolfman also told the employees that "the Union can promise anything but only the Company can deliver, and if the Union is voted in, the Employer will have to negotiate with it." He emphasized that the Employer will abide by the law and negotiate in good faith. He pointed out that this does not mean that the Employer has to agree to anything that is not in its best interest. He also told the employees that, while he would bargain in good faith he would, nevertheless, be a tough bargainer, and that the only weapon the Petitioner has to enforce its demands would be to strike. He emphasized that all the promises made by the Petitioner are nothing but idle promises and that "they can't deliver anything except maybe some funds if you are on strike." He talked about Employers in the Paoli area that had been involved in strikes. Referring to Curry Veneer Company he stated that they had a ten week strike and that, after being out for that time, the employees went back to work, accepting the offer Curry Veneer had made before the strike and that a year later, a few weeks before the hearing in the instant case, they voted the union out. Again he stated that the only way for a Union to enforce its demands would be to strike. He cautioned the employees that with this "[he was] not saying that a strike is inevitable." Relating to his experience with a plant in Texas where the Employer and the union could not reach an agreement and the Union took the employees out on strike, he stated that the Employer hired replacements and the plant was back in full production within six months. When the strike ended, after several months, the replacements did not lose their jobs.

Wolfman pointed out that it has been the Employer's policy, without a union, to pay wages as high as the Employer could afford it, but with a union the Employer would pay as little as it could bargain for, and that "the only club" the union has is to strike. In this context he also mentioned that usually a union will ask for the same benefits and wages as it has in its organized plants in the area and that it would be interesting to see where they would start to bargain, since the Employer already is paying higher wages and benefits as the employees in the organized plants receive.

Wolfman then told the employees what could happen to them if they went on strike: "No pay; union bosses pay goes right on, not yours; no unemployment pay; picket line duty; no insurance; all insurance is cancelled the minute the strike happens; possible fines; possible violence; economic strikers can be permanently replaced; savings are used up, even if a strike results in a little higher wage, it may take many years to get back what's lost during the strike."

Evaluating the Employer's statement concerning the possibility of a strike or of a plant closure, I find that they do not go beyond remarks as to what has happened at other facilities or plain statements of legal facts and obligations. No prediction was made as to the effects which a vote for the Union will have on the Employer's business, nor did these remarks contain any threats of reprisals or

force or a promise of benefits. See *N.L.R.B. v. Gissel Packing Co.*, 395 U.S. 575, 618, 619. There is no legal requirement that the Employer has to grant all union requests nor does the law demand that all current benefits have to be retained. See *Oxford Pickles, Division of John E. Cain Co.*, 190 NLRB 109. In no way did Wolfman's remarks convey the impression that a strike was inevitable in order to gain concessions from the Employer. *Amerace Corporation, ESNA Division*, 217 NLRB 850; nor do the references to the possibility of a strike or to "tough" bargaining amount to a rejection of the collective bargaining concept. See *Jerry T. Driskill, Sr.*, 222 NLRB 522.

Wolfman's remarks and statements by themselves, and more so, if they are considered in the context of the other two speeches, in no way create an impression that it would be futile to elect the Union. It should be noted that he repeatedly made the promise that the Employer will abide by the law and bargain in good faith, and that his references to the fact that the Union cannot obtain anything without the Employer's assent or the force of a strike were not connected with any promises or the threat of possible economic retributions, but were only qualified by the statement that the Employer will not grant anything that is not in its best interest. See *Oxford Pickles, supra*. I therefore recommend that the Petitioner's Objection 1. C; 1. D; 1. E; and 1. J be dismissed.