In the Matter of FICKETT-BROWN MANUFACTURING COMPANY, INC. *and* TEXTILE WORKERS UNION OF AMERICA, AFFILIATED WITH THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

Case No. 10–R–933.—Decided October 27, 1943

Messrs. Ralph Williams and *Ralph H. Pharr*, both of Atlanta, Ga., for the Company.

Mr. R. C. Thomas, of Atlanta, Ga., for the Union.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Textile Workers Union of America, affiliated with the Congress of Industrial Organizations, herein called the Union, duly filed an amended petition alleging that a question affecting commerce had arisen concerning the representation of employees of Fickett-Brown Manufacturing Company, Inc., Atlanta, Georgia, herein called the Company. On August 8, 1943, before a hearing was held, the Company and the Union and the Regional Director for the Tenth Region (Atlanta, Georgia) entered into a "STIPULATION FOR CERTIFICATION UPON CONSENT ELECTION."

Pursuant to the Stipulation, an election by secret ballot was conducted on August 16, 1943, under the direction and supervision of the Regional Director, among all production and maintenance employees at the Company's Mayson and Turner Avenue Plant and De Kalb Avenue Plant, excluding all foremen and supervisory employees, watchmen, clerical and office employees, and weekly and monthly salaried employees, to determine whether or not they desire to be represented by the Union for the purposes of collective bargaining. On August 16, 1943, the Regional Director issued and duly served upon the parties a Report on Election.

As to the balloting and its results, the Regional Director reported as follows:

Total on eligibility list	203
Total ballots cast	182
Total ballots challenged	2
Total blank ballots	2
Total void ballots	0
Total valid votes counted	178
Votes cast for Textile Workers Union of America (CIO)	69
Votes cast against Union	109

On August 17, 1943, the Union filed a protest to the election alleging that the manager of the Company made a speech to the employees on August 16, 1943, immediately prior to the holding of the election, and contending, in effect, that the speech constituted an interference with the exercise of the employees' freedom of choice in the election.

On September 9, 1943, the Regional Director, having conducted an investigation, issued and duly served upon the parties a Report on Objections. The Regional Director reported that the investigation revealed that speeches were delivered to the employees by supervisors of the Company on the date of the election which, in the light of surrounding circumstances, constituted an interference with the election; the Regional Director was of the opinion that the objections raised a substantial and material issue with respect to the conduct of the ballot and recommended that the Board order a hearing with respect thereto.

Pursuant to an order of the Board dated September 15, 1943, and pursuant to notice duly served upon the parties, a hearing was held in Atlanta, Georgia, on October 1, 1943, before Dan M. Byrd, Jr., Trial Examiner. The Company and the Union appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues. The Company filed a "Motion to Quash Notice of Hearing," and at the hearing moved to strike all evidence and testimony submitted by the Union on the ground that the Union did not file objections to the conduct of the election as provided by Article III, Section 10, of National Labor Relations Board Rules and Regulations—Series 2, as amended, and on the additional ground that the "protest" did not relate to the ballot or to the Election Report, but to actions preceding the conduct of the ballot. For reasons hereinafter indicated both motions are denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and hereby are

affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the record so made, the Report on Election, the "protest" of the Union, the Report on Objections, and the record previously made, the Board makes the following:

FINDINGS OF FACT

A question affecting commerce has arisen concerning the representation of employees of Fickett-Brown Manufacturing Company, Inc., Atlanta, Georgia, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

All production and maintenance employees at the Company's Mayson and Turner Avenue Plant and De Kalb Avenue Plant, excluding all foremen and supervisory employees, watchmen, clerical and office employees, and weekly and monthly salaried employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

On August 16, 1943, prior to the holding of the Election that afternoon, three superintendents of the Company, at separate meetings, read a statement to the employees under their respective supervision, stating, in part, as follows:

> The wages which we pay in our Mop Department cannot be compared with, and cannot ever be as high as, the wages paid in cotton mills. The wages now paid in our waste mill department have been established by the War Labor Board, and are as high as wages paid by all of the regular cotton mills in Atlanta. These wages cannot ever be as high as those paid by woolen mills, such as the Atlanta Woolen Mills. It is a different operation, and no cotton mill can pay such wages and stay in business. For the same reason we cannot give our employees vacations with pay, as much as we would like to.
>
> We will bargain with you, or with any representatives selected by you at any time, but we do not want you to be mislead by extravagant promises.
>
> We are sure that you will be influenced by statements which are not true, or accusations which are not justified. You know more about this Company than people who do not work here and will not, we believe, be influenced by rash statements made for selfish purposes.

The Union contends that the reading of the statement constituted interference on the part of the Company with the rights of the employees to determine freely whether or not they wish to be represented for the purposes of collective bargaining. The Company

contends, in effect, that the statement was merely an exercise of its right of free speech, and did not, as such, constitute interference. We are of the opinion that the reading of the statement to the employees, timed as it was, was calculated to influence the employees in their voting. As such, we find that it constituted undue interference with the proper conduct of the election.[1] The Company's contention that these matters occurred prior to the conduct of the ballot and that, having certified that the balloting was fairly conducted, the Union cannot now object, is without merit. Such certification applies only to the balloting. However, the pre-election conduct of the parties is a matter of grave concern to the Board because of its effect upon the requisite freedom of choice, and the Union, although agreeing that the balloting was fairly conducted, did not, by its certification to that fact, preclude itself from objecting to pre-election conduct as constituting an interference with such freedom of choice.

Upon the basis of the entire record we find that the Company through the above-mentioned actions of its superintendents, interfered with the freedom of its employees to vote in the election. Accordingly, we sustain the Union's "protest" to the conduct of the election held on August 16, 1943, and shall set said election aside. When the Regional Director advises us that the time is appropriate, we shall direct that a new election be held among the Company's employees.

ORDER

Upon the basis of the foregoing findings of fact, the National Labor Relations Board hereby vacates and sets aside the election held in this proceeding on August 16, 1943, and the results thereof.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Order.

[1] Cf. *Matter of Martin Food Products, Inc.*, 52 N. L. R B. 1131; *Matter of Locomotive Finished Material Company*, 52 N. L. R. B. 922.