

In the Matter of CHARLES H. BACON COMPANY *and* AMERICAN FEDERATION OF HOSIERY WORKERS, BRANCH #89

Case No. 10-R-1060

SUPPLEMENTAL DECISION

AND

ORDER

April 11, 1944

On January 20, 1944, the Board issued a Decision and Direction of Election in the above-entitled proceeding.¹ Pursuant to the Direction of Election, an election by secret ballot was conducted on February 17, 1944, under the direction and supervision of the Regional Director for the Tenth Region (Atlanta, Georgia). Upon the conclusion of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board.

The Tally shows that of approximately 687 eligible voters, 609 cast valid votes of which 246 were for the American Federation of Hosiery Workers, Branch #89, herein called the Union, and 363 against.

Thereafter, the Union filed a motion to declare void and set aside the election by reason of the following objections: (1) that on the day before the election the vice president and general manager of the Company made a speech which was afterward circulated among the employees and resulted in a majority of the employees voting against the Union at the election and (2) that various supervisors had made coercive statements to individual employees regarding the way they should vote at the election. In his Report on Objections, the Regional Director found that during the week immediately preceding the election, the Company performed acts which were substantial and material interferences with the election and recommended that the Board direct a hearing on the objections. Following the Regional Director's Report on Objections, the Company filed exceptions to the findings and recommendations therein contained.

With respect to the objection based on the statements of supervisory employees to individual employees, we are of the opinion, contrary to the finding of the Regional Director in his Report on Objections, that

¹ 54 N. L. R. B. 703

55 N. L. R. B. No. 213.

the record fails to disclose substantial and material interferences on the part of the Company with the election. In similar situations, we have frequently held that the possibility of the denial of freedom to choose a collective bargaining agency in an election had, should appear reasonably certain before a hearing upon objections to an election be directed.² Under the circumstances herein, we are not convinced that the objection in question makes reasonably certain the possibility that the employees concerned have been denied the freedom to which they are entitled. We find accordingly, that this objection raises no substantial or material issues with respect to the conduct of the election.

There remains for consideration the objection of the Union based on the fact that an officer of the Company made and circulated a speech among the employees immediately prior to the election. We have examined in detail the text of such speech as set forth in the copies thereof included in the present record. From the examination thus made, we are unable to find that the speech in question is coercive in character or that it exceeds the bounds of legitimate opinion privileged under the constitutional guarantee of freedom of speech.³ While the right to freedom of speech is not absolute, and expressions of an employer which, standing alone may not be coercive, may, nevertheless, be violative of the Act when considered in connection with other activities,⁴ we are of the opinion that, in the absence of convincing evidence that the Company has otherwise engaged in coercive activities which can be regarded as relevant to the instant proceeding,⁵ there is no basis for voiding the election hereinabove referred to.

Accordingly, we shall overrule the objections to the conduct of the election and reject the recommendation of the Regional Director in his Report on Objections, upon the ground that the said objections raise no substantial and material issues with respect to the election.

The results of the election show that no collective bargaining representative has been selected by a majority of the employees in the unit heretofore found herein to be appropriate. The petition for investigation and certification of representatives will, therefore, be dismissed.

ORDER

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations

² See *Matter of Farnsworth Television & Radio Corporation*, 26 N. L. R. B. 85; *Matter of Quaker Oats Company*, 27 N. L. R. B. 944

³ See *N. L. R. B. v. Virginia Electric & Power Company*, 314 U. S. 469

⁴ See *Matter of Peter J. Schweitzer, Inc.*, 54 N. L. R. B. 813

⁵ The delay if any on the part of the Company in posting compliance notices in accordance with the stipulation in a prior unfair labor practice proceeding (10-C-1465) may not be considered in connection with the present objections, since the Union has waived its right to object to the election upon the basis of any of the charges set forth in the unfair labor practice proceeding

Act, and pursuant to Article III, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3,

IT IS HEREBY ORDERED that the petition for investigation and certification of representatives of employees of Charles H. Bacon Company, Lenoir City, Tennessee, filed by American Federation of Hosiery Workers, Branch #89, be, and it hereby is, dismissed.

CHAIRMAN MILLIS took no part in the consideration of the above Supplemental Decision and Order.