

In the Matter of CONTINENTAL OIL COMPANY and OIL WORKERS INTERNATIONAL UNION-CIO

Case No. 16-R-818

DECISION

AND

ORDER SETTING ASIDE RUN-OFF ELECTION

September 11, 1944

On May 2 and 3, 1944, pursuant to the Decision and Direction of Election issued by the Board herein on April 10, 1944,¹ an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Sixteenth Region (Fort Worth, Texas). Upon the conclusion of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board.

As to the balloting and its results, the tally showed as follows:

Approximate number of eligible voters.....	1121
Valid votes counted.....	883
Votes cast for Oil Workers International Union-CIO.....	423
Votes cast for Independent Oil Workers Union of Ponca City, Oklahoma.....	391
Votes cast for Ponca City Metal Trades Council.....	59
Votes cast for none.....	10

Pursuant to the Rules and Regulations of the Board, a run-off election by secret ballot was conducted on May 9 and 10, 1944, under the direction and supervision of the Regional Director. Upon the conclusion of the run-off election, a Tally of Ballots was again furnished the parties in accordance with the above-mentioned Rules and Regulations.

As to the balloting in the run-off election and its results, the tally showed as follows:

Approximate number of eligible voters.....	1119
Valid votes counted.....	970
Votes cast for Oil Workers International Union-CIO.....	482
Votes cast for Independent Oil Workers Union of Ponca City, Oklahoma.....	488
Challenged ballots.....	2

¹ 55 N. L. R. B. 1157.

58 N. L. R. B., No. 33.

On May 12, 1944, Oil Workers International Union-CIO, herein called the C. I. O., filed Objections to the run-off election. On June 13, 1944, following an investigation, the Regional Director issued a Report on the Objections to the run-off election, in which he found that the Objections raised no substantial and material issues and recommended that they be dismissed. Thereafter, the C. I. O. filed Exceptions to the Report, and Continental Oil Company, herein called the Company, filed a Response to the C. I. O.'s Objections. On July 11, 1944, pursuant to the Board's direction, the Regional Director issued a Supplemental Report on the Objections to the run-off election. None of the parties has taken exception to this report.

Upon the entire record in the case, including the Objections filed by the C. I. O., the Report on Objections, the Exceptions of the C. I. O. thereto, the Company's Response to the Objections, the Supplemental Report on Objections, and the record previously made, the Board makes the following:

FINDINGS OF FACT

The C. I. O.'s Objections to the run-off election alleged in substance (1) that the Company interfered with, restrained, and coerced its employees in the exercise of their free choice to select a collective bargaining representative by directing and encouraging them to vote; conducting them to the polls; posting notices in the plant indicating that the Company favored Independent Oil Workers Union of Ponca City, Oklahoma, herein called the Independent; making disparaging remarks about the C. I. O.; and instructing certain employees to vote on company time while denying this privilege to other employees, and (2) that the Company and the Independent submitted an application for a wage increase to the Regional Office of the National War Labor Board, herein called the W. L. B., about 1 month prior to the election, and that the day before the run-off election, the W. L. B., in contravention of its rules, gave notice that the increase had been approved, which notice was conveyed by the Company and the Independent to all the employees prior to the run-off election.

We need not pass upon the C. I. O.'s first objection to the run-off election, since we are of the opinion that the second objection, standing alone, provides ample ground for setting aside that election. The essential facts forming the basis for the C. I. O.'s second objection are not in dispute.

On March 25, 1944, the Company and the Independent made joint application to the W. L. B. seeking its approval of a wage increase for employees in four departments of the Company's plant. On May 4, 1944, the W. L. B. mailed a letter of ruling to the Company and the Independent, approving the increase. Notice of the ruling was re-

ceived by the Company and the Independent on or before May 8, 1944, the day before the run-off election. A single copy of the ruling was posted by the Independent on May 8, between the hours of 11 a. m. and 12 noon, on a bulletin board inside the main gate of the plant provided for the Independent by the Company.

Since the Company's three shifts begin at 7 a. m., 3 p. m., and 11 p. m., it is likely that employees on all three shifts learned of the W. L. B.'s approval of the wage increase for employees in the four departments prior to the run-off election. The likelihood that a great number of employees acquired this knowledge prior to the run-off election is indicated by the fact that the Independent caused to be printed in the May 8 edition of a Ponca City daily newspaper, which is circulated after 4 p. m., a notice concerning the W. L. B. action. This notice was not limited in its appeal to employees entitled to the wage increase, but proclaimed that additional applications for wage increases for employees in all other departments of the Company were pending before the W. L. B., and stated "You should vote for the Independent Union in tomorrow's election to insure that you will get these wage increases as the Board acts upon our applications."

On May 8, the W. L. B. sent a telegram to the Company and the Independent which read as follows:

LETTER OF RULING DATED MAY 4, 1944, ON JOINT VOLUNTARY APPLICATION FOR APPROVAL WAGE ADJUSTMENTS FILED BY CONTINENTAL OIL COMPANY and INDEPENDENT OIL WORKERS UNION OF OKLAHOMA, PONCA CITY, OKLAHOMA, CASE NUMBER 8-13,055 RELEASED IN ERROR. THEREFORE RULING IS HEREBY STAYED AND OF NO FORCE OR EFFECT UNTIL FURTHER NOTICE. FINAL RULING WILL BE ISSUED WHEN CERTIFIED COLLECTIVE BARGAINING AGENT TO REPRESENT EMPLOYEES HAS BEEN DETERMINED THROUGH ELECTION.

The telegram was posted on the bulletin board by the Independent between 7:30 and 8:30 p. m. in the evening of May 8, immediately below the copy of the W. L. B. ruling approving the wage increase.

The above posting of the telegram was clearly too late to come to the direct attention of first shift employees prior to the run-off election. The first shift had finished work at 3 p. m., and, inasmuch as balloting was commenced at 6 a. m. the next day at a polling place not on company property, many employees on that shift who were cognizant of the W. L. B. ruling could have voted prior to going to work completely unaware of the contents of the May 8 telegram. Moreover, it is doubtful whether knowledge of the telegram dissi-

pated the effects of the premature release of the W. L. B. ruling, since the telegram may be interpreted as implying that final approval of the wage increase was merely being stayed until the conclusion of the run-off election.

It is virtually impossible to ascertain the full effects upon the employees' free exercise of the right to select a collective bargaining representative of the W. L. B.'s announcement just prior to the run-off election that it had approved the wage increase. In the present period of fixed wage ceilings, with resultant limitations imposed upon one of the most effective appeals which a labor organization can make to employees during an organizing campaign, namely, the promise of better wages, we conclude that the announcement indicating the approval of the joint wage increase application of the Independent and the Company, prevented a free choice by the employees.²

We shall, therefore, sustain the C. I. O.'s Objection as to the premature release and posting of the W. L. B. ruling approving the wage increase, and we shall set aside the run-off election held on May 9 and 10, 1944. When the Regional Director shall advise 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 run-off election held in this proceeding on May 9, and 10, 1944, and the results thereof.

MR. GERARD D. REILLY, concurring specially:

I am inclined to agree that the announcement of a wage increase on almost the eve of the election may very likely have affected the result, and hence the proper remedy is to set it aside. I am, however, somewhat disturbed by the text of the majority opinion, as I believe it may tend to confuse the body of law relating to circumstances under which elections may be invalidated.

It is not a novel thing to set aside elections when employers give wage increases just prior to the polling, since a reasonable inference may be drawn that an increase in compensation under those circumstances is a broad hint to the employees that they can get along as well or better without the petitioning union as their representative.

² We note that the concurring opinion herein construes our decision as establishing "the proposition that unions, whose success in an election is attributable in whole or in part to campaign arguments which this Board deems to run counter to public policy, will henceforth be deprived of the fruits of their misdeeds." We do not so view the decision. Where we are asked to invalidate elections held under the auspices of this Board our only consideration derives from the Act which calls for freedom of choice by employees of their collective bargaining representatives. Elements, regardless of their source or of their truth or falsity, which, in the experienced judgment of the Board, make impossible an impartial test, are grounds for the invalidation of an election.

The granting of a wage increase at such a time has been deemed to be the kind of interference with self-organization which is prohibited by Section 8 (1) of the Act,¹ and, consequently, such interference is a ground for setting aside an election.

In the instant case, however, no contention is made by any of the parties with regard to the propriety of a tentative wage increase granted by the Company in March which was subsequently the subject of a joint application for approval by the Company and the Independent. In other words, so far as this record shows, the Company here did nothing in derogation of the National Labor Relations Act; it was the mere accident of a delay incidental to National War Labor Board proceedings which caused the news of approval of the wage increase to be known at a time when it might have affected the result of the election. It would appear, therefore, that the rationale of the majority opinion is that any administrative action taken by the National War Labor Board which tends to defeat the policies of the National Labor Relations Act should not be given effect.

I have no objection to this Board embarking on such a course, but it would seem to be incumbent upon us then to vindicate the Act from even more serious impairment by the line of authority which the National War Labor Board developed in the *Chicago Transformer* case under which the whole principle of majority rule embodied in the National Labor Relations Act has been jeopardized by allowing unions which fail to retain majorities at the end of collective bargaining contracts to retain their status as exclusive bargaining agents.²

I find some difficulty, however, in believing that this is the theory upon which the majority decision rests. It will be noted that the announcement of the wage increase which was presumed to have influenced the result of the election was made to the employees, not by the National War Labor Board nor by the employer, but by the competing union. If we are to set aside this election because the statement made by the competing union, though true, was sharp practice, inasmuch as it was circulated to discredit the opposing union, it would seem, *a fortiori*, that the election should have been set aside if the announcement were false. To view the case otherwise would mean that we are penalizing unions whose campaign literature, though contrary to our views of public policy, is, nevertheless, true, and yet ignoring campaign literature which does violence not only to public policy but the truth. Since I cannot impute such an untenable doctrine to the reasoning of the majority of the Board, I must therefore con-

¹ See, e g, *Matter of Bear Brand Hosiery Co.*, 40 N L R B 323, 334, enf'd, 131 F. (2d) 731 (C C A. 7); *Matter of American Oil Co.*, 41 N L R B 1105

² See *Matter of Chicago Transformer Corp.*, 14 War Labor Rep. 666, and 15 L R R. (dissent of W. L. B. Industry Members); *Matter of J. S. Bache Co.*, 15 War Labor Rep. 581; *Matter of Pitometer Log Corp.*, 16 War Labor Rep. 137.

clude that this case stands for the proposition that unions, whose success in an election is attributable in whole or in part to campaign arguments which this Board deems to run counter to public policy, will henceforth be deprived of the fruits of their misdeeds. If this is indeed the case, then I think the majority opinion in *Curtiss-Wright Corporation*³ should be overruled.

In that case, the successful union in its publications appealed for votes on ground which would have frustrated the orders, rules and policies established by the President of the United States in the furtherance of the prosecution of the war. While the Board deplored such conduct, a majority of the membership nevertheless refused to set aside the election, stating:

“ . . . The difficulty we perceive in refusing to declare by certificate the results of the uncoerced balloting in these proceedings is that the employees who have freely selected a representative would be disfranchised under the guise of penalizing the officials of a labor organization for their own reprehensible conduct.”

Clearly, the instant case represents a radical departure from that theory and would seem to be in line with the view expressed in the dissenting opinion that this Board possesses a power during the pendency of a representation case to prevent the parties thereto from creating an atmosphere which tends to bring the proceedings into contempt and ridicule, even though no unfair labor practice has been committed.

³ *Matter of Curtiss-Wright Corporation, et al.*, 43 N. L. R. B. 795.

[See *infra*, 58 N. L. R. B. 333 for Supplemental Decision and Direction of Second Run-Off Election.]