

In the Matter of LOUIS PIZITZ DRY GOODS COMPANY and INTERNATIONAL LADIES' GARMENT WORKERS' UNION, A. F. OF L.

Case No. 10-R-1119

SECOND SUPPLEMENTAL DECISION
AND
CERTIFICATION OF REPRESENTATIVES

December 1, 1944

On August 16, 1944, pursuant to a Supplemental Decision and Direction issued by the Board on August 8, 1944,¹ an agent of the Board issued a Revised Tally of Ballots, copies of which were duly furnished the parties.

The Revised Tally indicated that, of approximately 39 eligibles in the voting group, 36 cast valid votes, of which 20 were cast for International Ladies' Garment Workers' Union, affiliated with the American Federation of Labor, herein called the Union, and 16 were cast against said organization.²

On June 29, 1944, prior to the issuance of the Supplemental Decision, the Union filed Objections to the election, alleging, *inter alia*, that "on Saturday, prior to the election, the owners of [the] Company made speeches in each department, seeking to interfere with and persuade the alteration workers in the various departments from voting for the Union," and that "during the week prior to the . . . election the owners of the store called various employees into the office and tried to have them withdraw from membership in the Union . . ."

On July 6, the Company filed an "Answer to Objection to Election," denying that it made the speech referred to in the Union's Objections "seeking to interfere with or persuade alteration workers in voting in [the] election," but admitting that it addressed its employees as a group prior to the election in the exercise of its rights,

¹ 57 N. L. R. B. 1174.

² During the election, the ballots of eight employees were challenged. However, in its Supplemental Decision, the Board overruled the challenges to the ballots of six employees and sustained the challenges to the ballots of two employees. The Revised Tally designates the latter ballots as "Unopened Challenged Ballots."

59 N. L. R. B., No. 145.

telling its employees that the Company "would make no discrimination should a person desire to join the Union . . ." In addition to specifically denying all other allegations contained in the Objections, it asserted, in effect, that (a) a representative of the Union entered its premises during working hours and threatened employees in attempts to coerce them into joining the Union, (b) employee members of the Union threatened other employees with the loss of their positions if they did not join the Union prior to the election, and (c) the Union engaged in illegal electioneering in contravention of the instructions of the Board agent conducting the election.

On August 17, 1944, subsequent to the furnishing of the Revised Tally of Ballots, the Company filed an "Objection and Protest of Election," alleging therein substantially the same matters it set forth in its Answer, and requesting that the Board vacate the election.

On August 30, 1944, the Regional Director, having investigated the matters contained in the Company's Objections, issued and duly served upon the parties a Report on Objections, finding that (a) the statements made by the union representative to employees on the Company's premises were "persuasive arguments addressed to [their] self-interest," (b) the statements of a supervisory employee to subordinates in an effort to persuade them to join the Union were negated by the Company's admitted statement of policy, (c) there was no evidence which indicated that employees desiring union representation engaged in coercion or threats or other improper action, and (d) the actions of the union representative in conversing with employees going to the polls and in standing in front of the polls were not sufficient to impair the proper conduct of the election. He recommended that the Company's Objections be overruled and the Union certified.

On September 5, 1944, the Company filed Exceptions to the Regional Director's Report on Objections contending, in effect, that, (a) a full investigation of the matters contained in its Objections had not been made, (b) the conclusions of the Regional Director were not substantiated by the facts ascertained by him to be true, and (c) said conclusions are contrary to law.

On September 15, 1944, the Union filed a Reply to the Company's Exceptions contending, in effect, that (a) the Exceptions contained no matters which had not been investigated by the Regional Director, and (b) said Exceptions did not indicate wherein the Regional Director erred either as to the law or the facts. In addition, the Union, in its Reply, renewed "its Exceptions to the ruling heretofore made with respect to the unit . . ." ³

³ See footnote 1, *supra*. The Union filed no exceptions as such to the Regional Director's Report on Objections.

On September 14, 1944, the Board issued an order directing that a hearing be held on the Company's Objections and Exceptions. Thereafter, on October 5, a hearing was held at Birmingham, Alabama, upon due notice before Louis Plost, Trial Examiner. The Board, 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 Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the Objections of the Company, the Regional Director's Report thereon, the Company's Exceptions thereto, and the entire record in the case, the Board makes the following:

SUPPLEMENTAL FINDINGS OF FACT

The Objections and Exceptions of the Company are premised upon the following incidents:

Cemie Russell testified that, about a week before the election, a representative of the Union "called [her] out" from her place of work when she was on her lunch hour, and spoke with her in an areaway. According to Russell's testimony, the union representative, after being informed that Russell was not interested in the Union, told her that "the only way that the working people was going to get any place was by joining the Union" and when Russell repeated that she would not join, the union representative said, "Well, you may be sorry—you will be sorry." Russell further testified that the union representative told her that if the Union "got control of the place" she would lose her job. Mrs. Irwin, the union representative, testified that she had someone call Russell out while Russell was on her lunch hour and asked her to join the Union, but denied making statements to the effect that Russell "would be sorry if she didn't join," and that Russell would lose her job if the Union "got control." Irwin admitted stating to employees that "if they had a union shop in the store they would have to belong to the Union."

Matilda James testified that, on the Saturday preceding the election, an unidentified person⁴ approached her while she was entering the workroom on the Company's premises, and, after a short conversation, said to her, "I know you are going to vote for the Union and not against the Union."

We find that the above instances of solicitation do not constitute such interference as would warrant invalidation of the election. Even

⁴ The Regional Director found, without exception being taken, that this person was Mrs. Irwin

if it be assumed that the statements were made to Russell by Irwin, as Russell testified, the coercive effect of "threats"⁵ of this character must have been dispelled by the subsequent assurances to the employees made by the management which are hereinafter discussed.

James, Ollie Spencer, Eloise Bailey Mitchell, and Otis Brown testified that, on the day of the election, while they were standing across the street from the hotel in which the election was being held, an unidentified woman crossed the street and said to them, "I know you are going to vote for the Union, I know you are not going to let us down." The four witnesses differed somewhat as to the exact language used by this person but all testified either that she did not identify herself as being connected with the Union, or that they could not identify her as being so connected. Three of these witnesses, James, Mitchell, and Brown, testified that, after they had gone to the polling place, but before they had voted, another person spoke to James in a similar vein. Apart from the question of identification, we are of the opinion that the nature of the conversations clearly indicates that there was no impediment to a fair election.

Mrs. B. B. Toney testified that about a day or two before the election, Alma Parrish, found by the Board to be a supervisory employee,⁶ spoke to her on the sidewalk; that Parrish asked her to join the Union; and, upon her refusal, said to her, "Well, you'll be sorry." She further testified that no one else spoke to her about the Union at any time. Parrish denied stating to Toney, "you will be sorry."

Spencer, in addition to testifying with respect to the election day occurrence, also testified that "quite a while" before the election, while she was going to lunch, Parrish, her superior, and another lady, who she believed was the union representative, approached her in the workroom and asked her to join the Union. She further testified that, upon her refusal to do so, they did not insist, and that, thereafter, no one spoke to her about the Union.

Russell also testified that, shortly before the election, a managing official of the Company⁷ summoned the employees of the Fur Storage Department to his office and told them ". . . he was not opposed to the Union. If we wanted to join, that was all right with him. . . . It was up to us." She further testified that he spoke from a typewritten document, and that this was the first time employees were called to the office "in that fashion." Parrish confirmed Russell's testimony, identifying the official as Isadore Pizitz. Spencer testified that "Mr. Pizitz" read a letter to the employees in the Alteration Department a short time prior to the election, but could not recall what he said. We believe it evident from the entire record that

⁵ Cf. *N. L. R. B. v. Dadourian Export Co.*, 138 F. (2d) 891 (C. C. A. 2, 1943).

⁶ See footnote 1, *supra*.

⁷ Russell could not remember whether it was Louis or Isadore Pizitz.

the Company did, in fact, communicate with its employees prior to the election, and clearly indicated that the employees could vote as they wished without fear of any discrimination.⁸

Assuming Toney's version of her conversation with Parrish to be true, we find that the statements and actions of Parrish were nullified by the Company's declaration of policy.⁹

Kenneth Perrine, attorney for the Company, and other witnesses, testified that, during the balloting, Irwin stood on the sidewalk outside the hotel in which the election was being held and talked to a group of women. He further testified that this conduct was contrary to the instructions given Irwin and himself by the Board agent in charge of the election. He admitted that he did not tell Irwin to remove herself, and that he himself was in the hotel for at least 6 minutes after the balloting had commenced. We conclude, under all the circumstances, that Irwin's conduct on this occasion is insufficient reason to set aside the election.¹⁰

We hereby overrule the Company's Objections and Exceptions, and we shall certify the Union.

CERTIFICATION OF REPRESENTATIVES

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended

IT IS HEREBY CERTIFIED that International Ladies' Garment Workers' Union, affiliated with the American Federation of Labor, has been designated and selected by a majority of all employees of Louis Pizitz Dry Goods Company, Birmingham, Alabama, engaged as sewers, fitters, cutters, pressers, and alteration employees in all the sewing and alteration rooms attached to the merchandising departments in the Company's department store, excluding all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, the aforesaid organization is the exclusive representative of all such employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment.

⁸ In addition, we note that, in its Answer, the Company admitted that it had spoken to its employees as a group prior to the election, and had informed them "that [it] would make no discrimination should a person desire to join the Union, and that it was the privilege of each person to do as he sees fit."

⁹ Cf. *Matter of Houston Shipbuilding Corporation*, 56 N. L. R. B. 302.

¹⁰ See *Matter of The National Sugar Refining Company of New Jersey*, 4 N. L. R. B. 276.