

In the Matter of SENECA KNITTING MILLS, INC. and TEXTILE WORKERS OF UNION OF AMERICA, C. I. O. .

*Case No. 3-R-841*

DECISION  
AND  
ORDER SETTING ASIDE ELECTION

*December 6, 1944*

On October 25, 1944, pursuant to the Decision and Direction of Election issued by the Board herein on October 7, 1944,<sup>1</sup> an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Third Region (Buffalo, New York). 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 the approximately 350 eligible voters, 305 cast valid votes, of which 87 were for the Textile Workers Union of America, C. I. O., herein called the CIO, and 218 for Locals 2585 and 68, United Textile Workers of America, A. F. L., herein called the AFL. The 10 challenged ballots are insufficient to affect the results of the election.

On October 26, 1944, the CIO filed Objections to the conduct of the election requesting that the election be set aside because of the alleged prejudicial conduct of the AFL prior to the election. On November 4, 1944, the Regional Director, following an investigation, issued a Report on Objections in which he recommended that the Objections filed by the CIO be overruled. Thereafter on November 9, 1944, the CIO filed Exceptions to the said Report on Objections.

Upon the entire record in the case, including the Objections filed by the CIO, the Report on Objections, and the Exceptions filed by the CIO, the Board makes the following:

FINDINGS OF FACT

On July 24, 1944, the Company and the AFL, which was then the bargaining representative of the Company's employees, jointly ap-

<sup>1</sup> 58 N. L. R. B. 825.

59 N. L. R. B., No. 152.

plied to the Regional War Labor Board, herein called the RWLB, for the latter's approval of certain job classification wage schedules calculated to bring about wage increases for the employees. On October 14, 1944, the Regional Director mailed a letter to the RWLB notifying the latter that an election in the above-entitled proceeding would be held on October 25, 1944. This letter was received by the RWLB on the afternoon of October 16, 1944, but did not reach the appropriate official until the morning of October 17, 1944. Meanwhile, the RWLB, on October 16, 1944, had mailed to the Company its ruling on the joint Company-AFL application; the Company received it on October 17, 1944. The ruling approved in part and denied in part the proposed job classification wage scales. About 30 percent of the employees in the unit found appropriate by the Board were favorably affected by the RWLB ruling. Although the Company received notice of the RWLB action about a week prior to the election, it refrained from either putting the wage increases into effect or notifying its employees of the receipt of the ruling, pursuant to its policy of remaining strictly neutral as between the contending unions. The first announcement to the employees with respect to the RWLB ruling was made by the AFL in the form of a circular distributed to the employees during the morning and early afternoon of the day before the election.<sup>2</sup> Apprised of the RWLB ruling for the first time by the AFL circular announcement, the CIO immediately communicated with the RWLB which thereupon in telegrams to all parties, received on the afternoon of October 24, 1944, rescinded its previous ruling without prejudice to its reissuance after the election. None of the parties that day either published or otherwise notified the employees of the rescission of the RWLB ruling. However, on the morning of election day, October 25, 1944, starting at 5:30 a. m., the CIO distributed a circular at the gates of the main plant of the Company, answering that of the AFL issued the previous day. The election was held outside company property between 6 a. m. and 8 a. m., and between 4:30 p. m. and 6:30 p. m. It is probable, therefore, as the Regional Director points out, that a number of employees voted prior to reporting for work and therefore did not receive copies of the circular being distributed by the CIO before they cast their votes.

In support of his conclusion that there was no interference of a substantial nature with respect to the election, the Regional Director states: (1) that the effect of the AFL's circular announcement of the RWLB ruling was counteracted in part by the CIO circular issued the following day; and (2) that in view of the large majority by which the AFL won the election, and the original showing of interest by the

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<sup>2</sup> The AFL announcement stated that the RWLB ruling had provided wage increases for all employees.

CIO in the Field Examiner's report, the chances of the CIO winning the election were, at best, but speculative. The Board has no yardstick by which it can determine the precise effect of the AFL announcement of the RWLB ruling or of the counteracting effect, if any, of the CIO circular on the votes cast by the employees. We cannot probe the minds of those who voted and say definitely that the outcome of the election would have been the same if the AFL had not publicized the RWLB ruling on the eve of the election. As we stated in *Matter of Continental Oil Company*,<sup>3</sup> a proceeding in which the identical issue here presented was involved, "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."

We shall, therefore, sustain the CIO's Objections, and set aside the election held on October 25, 1944. 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 October 25, 1944, and the results thereof.

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

<sup>3</sup> 58 N. L. R. B. 169.