

In the Matter of DETROIT CREAMERY COMPANY, ARCTIC ICE CREAM PLANT and UNITED DAIRY WORKERS, LOCAL 83, AFFILIATED WITH THE UNITED RETAIL, WHOLESALE AND DEPARTMENT STORE EMPLOYEES OF AMERICA, C. I. O.

Case No. 7-R-1759.—Decided January 22, 1945

Mr. David Karasick, for the Board.

Butzel, Eaman, Long, Gust and Bills, by *Mr. Rockwell T. Gust*, of Detroit, Mich., for the Company.

Mr. Nicholas J. Rothe, of Detroit, Mich., for the C. I. O.

Padway and Goldberg, by *Mr. I. E. Goldberg*, of Milwaukee, Wis., for the A. F. of L.

Mr. Julius Kirle, of counsel to the Board.

SUPPLEMENTAL DECISION

ORDER

AND

SECOND DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 8, 1944, the National Labor Relations Board, herein called 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 October 3, 1944, under the direction and supervision of the Regional Director for the Seventh Region (Detroit, Michigan). On October 3, 1944, the Regional Director, acting pursuant to Article III, Section 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended, issued and duly served upon the parties a Tally of the Ballots.

¹ 58 N. L. R. B. 125.

60 N. L. R. B., No. 35.

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

Approximate number of eligible voters.....	137
Total ballots cast.....	118
Total void ballots.....	0
Total valid votes counted.....	118
Votes cast for United Dairy Workers, Local 83, affiliated with the United Retail, Wholesale and Department Store Employees of America, C. I. O. (Petitioner).....	90
Votes cast for Milk Drivers and Dairy Employees, Local Union No. 155, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L. (Intervenor).....	27
Votes cast for neither.....	1

Objections to the conduct of the election were thereafter filed by the Milk Drivers and Dairy Employees, Local Union No. 155, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., herein called the A. F. of L., which requested that the election be set aside on the ground that there had been improper electioneering on the part of the United Dairy Workers, Local 83, affiliated with the United Retail, Wholesale and Department Store Employees of America, C. I. O., herein called the C. I. O.

On October 19, 1944, the Regional Director issued a Report on Objections, copies of which were served upon the parties, in which he found that the objections raised no substantial and material issues and recommended that the objections be overruled. Thereafter, the A. F. of L. filed exceptions to the Report on Objections. On October 31, 1944, the Board issued an Order directing that a hearing be held on the objections to the election and referred the case to the Regional Director for issuance of Notice of Hearing. Pursuant to notice, a hearing on the objections was held on December 5, 1944, at Detroit, Michigan, before Walter Wilbur, Trial Examiner. The Company, the A. F. of L., the C. I. O., and the Board appeared and participated. The A. F. of L., thereafter, filed briefs which the Board has considered.

Upon the basis of the entire record in the case, the Board makes the following:

FINDINGS OF FACT

The election directed by the Board was scheduled during the hours from 3 p. m. to 6 p. m. At 3 p. m. on the day of the election, one William H. Gibson, vice president of the C. I. O., was in the Company's plant among the production employees on the first floor. At 3:30 p. m. on the same day, he was among the production employees on the second floor, where he talked to some of them, although the nature and sub-

stance of the conversations are unknown. Although there is no evidence to indicate that Gibson, at any time, was in the room where the balloting was conducted or at any place where he could be visible to an employee from inside the balloting room, he was, nevertheless, stationed at a point on the second floor where employees leaving the production room on the second floor to cast their ballots would have to pass him on the way to the stairs leading to the first floor and the balloting room. Shortly after 3:30 p. m. at the request of the Board's agent as a result of complaints by the A. F. of L., Gibson left the Company's plant. Gibson was not an employee of the Company and had no business with the Company warranting his presence in the plant on the day of the election.

One of the rules promulgated by the Board and plainly stated in the Notice of Election, copies of which were posted in conspicuous places in and about the polls prior to the election, provides that "Voters will be allowed to vote without interference, restraint, or coercion. Electioneering will not be permitted at or near the polling place."

While there is no evidence as to the actual substance of Gibson's conversations with the employees, we reasonably infer that the conversations related to the election since there is no other explanation for Gibson's presence in the Company's plant during the election. We are of the opinion that Gibson's conduct constituted a violation of a material election rule and constituted an interference with the freedom of choice guaranteed by the Act to the employees.

Accordingly, we shall set the election aside and shall direct that a new election be held.²

ORDER

AND

DIRECTION OF ELECTION

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 ORDERED that, the election of October 3, 1944, conducted among the employees of Detroit Creamery Company, Arctic Ice Cream Plant, Detroit, Michigan, be, and it hereby is, set aside; and it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Detroit Creamery Company, Arctic Ice Cream Plant, Detroit, Michigan, an election by secret ballot shall be conducted as early as possible, but not later than

² See *Matter of The Kilgore Manufacturing Company*, 45 N. L. R. B. 468.

thirty (30) days from the date of this Direction of Election, under the direction and supervision of the Regional Director for the Seventh Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among all employees of the Arctic Ice Cream Plant in Detroit, Michigan, including the stockroom clerk, but excluding clerical employees, engineering and maintenance employees, the timekeeper, assistant superintendents, and all or any other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, who were employed during the pay-roll period immediately preceding the date of this Direction, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees of the armed forces of the United States who present themselves in person at the polls, but excluding seasonal employees and those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by United Dairy Workers, Local 83, affiliated with the United Retail, Wholesale and Department Store Employees of America, C. I. O., or by Milk Drivers and Dairy Employees, Local Union No. 155, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., for the purposes of collective bargaining, or by neither.