

In the Matter of WILSON & Co., INC., EMPLOYER and UNITED PACKING-
HOUSE WORKERS OF AMERICA, CIO, PETITIONER

Case No. 3-RC-208

SUPPLEMENTAL DECISION

AND

ORDER

January 5, 1950

Pursuant to a Decision and Direction of Election issued by the National Labor Relations Board on March 23, 1949,¹ an election by secret ballot was conducted on April 22, 1949, under the direction and supervision of the Regional Director for the Third Region, among the production and maintenance employees at the Employer's Syracuse, New York, branch house. Thereafter, a Tally of Ballots was furnished the parties. The tally shows that, of the approximately 25 eligible voters in the unit, 21 cast valid ballots, of which 9 were for, and 11 against, the Petitioner, and 1 was challenged.

On April 25, 1949, the Petitioner filed Objections to the Conduct of the Election. Following investigation, the Regional Director, on June 21, 1949, issued a report on the Petitioner's objections. On June 29, 1949, the Employer filed Exceptions to the Regional Director's Report.

Thereafter, on July 14, 1949, upon consideration of the Petitioner's Objections to the Conduct of the Election, the Regional Director's Report, and the Employer's Exceptions to the Regional Director's Report, the Board issued an order in which it (1) remanded this proceeding to the Regional Director, (2) directed that a hearing be held limited to the issue of threats which the Petitioner alleged had been made by Supervisor Ryan, (3) directed that the hearing officer prepare and serve upon the parties a report containing findings of fact and recommendations to the Board as to the disposition of this issue, and (4) granted the parties 5 days after service of the hearing officer's report to file exceptions thereto.

¹ Unreported.

The hearing was held on August 11, 1949, before Shally O. Wise, hearing officer. On October 28, 1949, the hearing officer issued and duly served upon the parties his Report on Objections to Election, a copy of which is attached hereto, recommending that the election be set aside and a new election directed on the ground that the activities of Supervisor Ryan had interfered with, and prevented, the free choice of a bargaining representative by the employees of the Employer. Thereafter, the Employer filed Exceptions and Objections to the hearing officer's Report on Objections to Election, and a brief in support thereof.

The rulings made by the hearing officer at the hearing are free from prejudicial error and are hereby affirmed. At the hearing, the Employer moved to dismiss the Petitioner's Objections to the Conduct of Election on the ground that the filing of the objections was not in conformity with the requirements of Section 203.61 of the Board's Rules and Regulations. The hearing officer referred this motion to the Board.² As it does not appear that the Employer has been prejudiced by the Petitioner's failure to conform strictly to the requirements of the Board's Rules and Regulations, we shall deny the Employer's motion to dismiss on this ground.³

According to the testimony of Peck, who was at the time a truck driver for the Employer, Supervisor Ryan, about a month before the election herein, asked Peck about the progress being made by the Petitioner, and said: "If the boys get the election you're going to be sorry. You're much better off without it." During the same conversation, according to Peck, Ryan stated that if the Petitioner succeeded in organizing the plant, "you'd be walking the streets a helluva lot more than you are now." Peck testified that Ryan made several similar statements thereafter during the period before the election, and that, in one conversation which occurred a day or two before the election, Ryan again asked Peck about the progress being made by the Petitioner, and stated that, "I still tell you, you are going to be sorry if the union comes in," and further stated that the employees would be "better off without it." Although Ryan denied having made any of the statements attributed to him by Peck, the hearing officer credited Peck's testimony. In accordance with precedent, we accept the hearing officer's credibility findings.

Upon consideration of the entire record in this case, we find, as did the hearing officer, that Supervisor Ryan, prior to the election, in-

² The hearing officer also referred to the Board the Employer's motion to dismiss, made at the close of the hearing, on the ground that insufficient evidence had been introduced to sustain the objections. In view of our findings herein, this motion of the Employer is denied.

³ See *North American Aviation, Inc.*, 81 NLRB 1046.

terrogated employee Peck about the Petitioner and threatened economic reprisal if the Petitioner won the election. Accordingly, because the Employer's conduct interfered with the exercise of a free choice of a bargaining representative by its employees, we shall set aside the election of April 22, 1949, and shall direct that a new election be held at such time as the Regional Director advises is appropriate.

ORDER

IT IS HEREBY ORDERED that the election held on April 22, 1949, among the employees of Wilson & Co., Inc., at its Syracuse, New York, branch house, be, and it hereby is, set aside.

MEMBER REYNOLDS took no part in the consideration of the above Supplemental Decision and Order.

HEARING OFFICER'S REPORT ON OBJECTIONS TO ELECTION

Mr. John L. Cockrill, of Chicago, Ill., and *Mr. J. E. Sullivan*, of Syracuse, N. Y., for the Company.

Mr. Lemuel Ward, of New York, N. Y., for the Union.

Upon a petition duly filed by United Packinghouse Workers of America, CIO (hereinafter called the Petitioner), the National Labor Relations Board (hereinafter called the Board) on March 23, 1949, issued its Decision and Direction of Election in which it directed that an election be conducted among certain employees of Wilson & Co., Inc. (hereinafter called the Company) at its Syracuse, New York, branch house. On April 22, 1949, pursuant to the direction of the Board, an election was conducted under the direction and supervision of the Regional Director for the Third Region (Buffalo, New York). On the same day a Tally of Ballots was furnished the parties by the Regional Director which showed that, of approximately 25 eligible voters, 21 cast ballots, of which 9 were in favor of the Union, 11 were against the Union, and 1 was challenged.

On April 25, 1949, the Petitioner filed with the Regional Director Objections to the Conduct of the Election and to conduct affecting the results of the election.¹

On June 21, 1949, the Regional Director, following investigation, issued a report on the Petitioner's Objections. The Regional Director's report on Objections finds that substantial and material issues with respect to the election are raised upon the specific Objection that "Supervisor Ryan, Shipping Department Head, informed certain employees that if the Union got in, they would be walking the streets," and recommended that the Board sustain the Objections and set the election aside. On June 30, 1949, the Company filed Exceptions to the report of the Regional Director.

¹This was in the form of a letter addressed to Mr. Hyman Dishner, field examiner National Labor Relations Board, at the offices of the Third Region in Buffalo, New York. The letter does not specify the particular conduct to which the Objections are directed, but merely states "that the Company has used various forms of intimidation and other ways of coercion on the day of the election." The record indicates that specific Objections were orally summarized by the Petitioner to an agent of the Board assigned by the Regional Director to investigate the Objections.

On July 14, 1949, it appearing to the Board that the Petitioner's Objections raised a substantial and material issue relating to the conduct of the election, the Board ordered that a hearing be held on such Objections before a hearing officer, limited to the issue of the alleged threats made by Supervisor Ryan. Pursuant to notice, a hearing was held on August 11, 1949, at Syracuse, New York, before Shally O. Wise, Hearing Officer duly designated for that purpose, at which the Company and the Petitioner appeared and participated, were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues.²

At the opening of the hearing the Company moved to dismiss the Objections to the Conduct of the Election filed by the Petitioner on the ground that the filing was not in compliance with the requirements of Section 203.61 of the Board's Rules and Regulations. Ruling on the said motion was reserved to the Board for appropriate disposition, but for the purposes of this report the undersigned recommends that the motion be denied.³ At the conclusion of the hearing the Company renewed its motion to dismiss upon the aforesaid ground and upon the further ground that there was no evidence and insufficient evidence to sustain the Objections and to warrant the setting aside of the election. This motion was reserved to the Board for appropriate disposition. None of the parties filed briefs with the Hearing Officer.

Upon the entire record in the case and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

Background

Excluding office workers, managerial employees, and salesmen, the Company employed approximately 25 production and maintenance workers and truck drivers⁴ at its branch in Syracuse, New York. It was among these employees that the Petitioner's organizing campaign took place, beginning in the latter part of 1948 and continuing to the date of the election. Of these employees, the Company's shipping clerk, Francis Stephen Ryan, was in charge of 9, consisting of 6 truck drivers, an assistant shipper, and 2 billers. The parties stipulated at the hearing that Ryan, during all times material to the issues, was a supervisor within the meaning of the National Labor Relations Act (hereinafter called the Act). He had authority to recommend the hire and discharge of employees and directed the activities of the employees in his department. He had been the Company's Shipping Clerk for approximately 2½ years, and prior to that time had been employed by the Company as a truck

² The Order of the Board directed the Hearing Officer to prepare and serve upon the parties a report containing findings of fact and recommendations to the Board as to the disposition of the Objections.

³ The Company contends that it was not served with a copy of the Objections, that the Petitioner did not file an original and three copies thereof, and that the Objections as filed by the Petitioner did not contain a short statement of the reasons therefor. The Petitioner did notify the Company by telegram on April 29, 1949, that it was appealing the results of the election and the Company was duly served with a copy of the Regional Director's Report on Objections. While the procedure followed by the Petitioner in filing the Objections is apparently not in strict conformance with the Board's Rules and Regulations, it does not appear that the Company has been prejudiced thereby. *Northwest Engineering Corporation*, 63 NLRB 1219; *Minnesota Mining & Manufacturing Company*, 81 NLRB 557; *The Univis Lens Company*, 82 NLRB 1390.

⁴ Production, maintenance workers, and chauffeurs, excluding office workers, managerial employees and salesmen, was the unit petitioned for by the Petitioner.

driver. Among the employees under Ryan's supervision was one Alvin Peck, who was first employed by the Company in September 1948, worked in the "ham cellar" until November 1948, and thereafter worked as a truck driver until he was discharged approximately 1 week after the Board-ordered election on April 22, 1949.⁵

The Preelection Activities of Supervisor Ryan

The record indicates, and the undersigned finds, that it was customary for Ryan, in connection with his duties as shipping clerk, to ride with the truck drivers under his supervision from time to time as they would make deliveries. This was done periodically, but at no set or predetermined intervals, in order that Ryan might observe the operations of the truck drivers and the condition of the trucks. Peck testified that about a month before the election on April 22, 1949, when Ryan rode with him on a trip to Westvale, New York, to make a delivery, Ryan entered into a discussion with him about the Union's efforts to organize at the Company's plant. According to Peck, during the trip to Westvale, Ryan asked him how the fellows were making out with the Union and said "if the boys get the election you're going to be sorry"; that Ryan stated further that if the Union got in "you'd be walking the street a helluva lot more than you are now." Peck testified that Ryan made similar statements to him several times thereafter, the last time being just 1 or 2 days before the date of the election, when Ryan came to him (Peck) at the loading dock, wanted to know how they were coming with the Union, and said "and I still tell you, you are going to be sorry if the union comes in." Ryan denied that he had ever made such statements to Peck, or that he had ever discussed the Union with any employee of the Company other than the manager of the Syracuse Branch.⁶ He insisted that he had no prejudices against unions; that he had been a member himself and held a withdrawal card from the Steel Workers Union. He admitted that he had ridden on the truck with Peck on one or two trips to Westvale, New York, and on other occasions.

The undersigned is persuaded from the record as a whole, and from observation of Peck and Ryan as witnesses, that Ryan did make the statements attributed to him by Peck during the course of the trip to Westvale, New York, approximately 1 month prior to the election, and at the Company's loading dock 1 or 2 days prior to the election. There is some corroboration of Peck's testimony in the testimony of Howard Edward Loriman, a fellow truck driver

⁵ The record indicates that Peck's discharge was made the basis of a charge filed with the Board by the Petitioner, alleging that his discharge was discriminatory in violation of Section 8 (a) (3) of the Act and that the Company, while denying that Peck was discriminatorily discharged, entered into an informal settlement agreement by virtue of which it agreed to and did post a notice to employees stating in effect that the employees' rights to organize and to join labor organizations guaranteed under Section 7 of the Act would not be interfered with, and that the Company would not discriminate in reference to hire or tenure of employment because of membership in labor organizations; no further action was required of the Company under this settlement. Peck's discharge, the subsequent charge filed by the Petitioner, and the resulting settlement, were not considered by the undersigned in connection with, and have no bearing upon, the undersigned's findings and recommendations hereinafter made.

⁶ The Company's branch manager, George M. Lutz, testified that he instructed all supervisors to remain strictly neutral as to the Union and not to express an opinion one way or the other. Ryan testified that he was given such instructions by Mr. Lutz two or three times and was cautioned to say nothing to encourage or discourage a union. It was Ryan's testimony that the first of such instructions was given to him by Mr. Lutz about 3 or 4 weeks before the election and that this was the first actual knowledge on his part that the employees were endeavoring to organize in the Union.

called as a witness by the Company, who stated that about a month prior to the election Peck had recounted to him and to another truck driver⁷ the statements made by Ryan while riding with Peck.⁸ Furthermore, Ryan's protestations of strict neutrality as to the organizing campaign are questionable in the light of an incident which occurred about a month prior to the election. George Bouchard, receiving clerk for the Armour & Co. branch at Syracuse, testified that about the middle of March 1949, Ryan came with his truck driver to pick up pork loins at the Armour & Co. dock; an argument arose as to the loading of the truck,⁹ in the course of which he (Bouchard) stated to Ryan, "you may have a union in your own plant one of these days"; and that Ryan replied, "not if I know it, not if I can help it. Anybody pays dues in a union is just paying it to a bunch of racketeers." Recalled by the undersigned for further questioning in connection with Bouchard's testimony, Ryan was uncertain and evasive as to the incident. The undersigned accordingly credits Bouchard's testimony as to the occurrence and the statements made by Ryan.¹⁰

The undersigned accordingly finds that approximately a month before the election on April 22, 1949, Supervisor Ryan questioned employee Peck as to how the Union was making out and stated to him that if the Union got in they would be sorry and would be walking the streets a lot more than they were at that time; and that a day or two prior to the election Supervisor Ryan again interrogated Peck as to how the Union was getting along and stated to him that they would be sorry if the Union came in.

Conclusions

The statements by Supervisor Ryan are attributable to the Company.¹¹ Ryan's interrogation of Peck as to how the Union was making out was an interference with rights guaranteed under Section 7 of the Act.¹² Furthermore, Ryan's statement that if the Union got in they (the employees) would be sorry, coupled with the statement that they would be walking the streets a lot more, bears the implication that the employees would be working shorter hours, or perhaps would not be working at all, if the Union won the election.¹³ The Board has held "that interrogation of employees and threats of economic reprisal should a union win an election, . . . reasonably related in time to the election, constitute

⁷ Floyd Austin, who did not testify.

⁸ This would have been at approximately the time of the trip to Westvale, New York, testified to by Peck. Peck testified that he also repeated Ryan's statements to other truck drivers. The record reveals that Peck was very active in behalf of the Union. There appears to be no conceivable reason for Peck to pass on to fellow-employees a concocted story of statements made to him by Ryan; nor did he impress the undersigned as having the ingenuity to invent such a story for preconceived purposes.

⁹ Bouchard testified that he told Ryan "there is a union here, this is a union plant and we put them as far as the tail-gate—period."

¹⁰ The Company moved to strike the testimony of the witness Bouchard as immaterial. The record (page 126) contains the following as the statement of the undersigned in response to this motion: "Well, I am going to receive it for whatever it is worth, consider it in connection with the entire record, if it has any materiality. It will not be considered by me in making my recommendation. I don't know whether it is going to be material or not." The record is in error in this respect. The statement by the undersigned was as follows: "Well, I am going to receive it for whatever it is worth, consider it in connection with the entire record. If it has no materiality, it will not be considered by me in making my recommendation. I don't know whether it is going to be material or not." The record is corrected accordingly.

¹¹ *Goodall Company*, 68 NLRB 252.

¹² *Standard-Coosa-Thatcher Company*, 85 NLRB 1358.

¹³ *Merchants Motor Freight, Inc.*, 57 NLRB 1340.

such interference with the employees' free choice of representatives as to warrant the setting aside of the election."¹⁴ It has further held that an election fails of its purpose unless it afford to *all* employees an opportunity to register their free and uncoerced choice of a bargaining representative.¹⁵ The undersigned concludes that the activities of Supervisor Ryan hereinbefore noted interfered with and prevented the exercise of a free choice of a bargaining representative by the employees of the Company. The number of the Company's employees involved was small (approximately 25) and of that number 9 were directly under the supervision of Ryan, so that Ryan's activities were calculated to come to the attention of other employees than Peck. However, the fact that the employees may or may not have been influenced by such statements would not be determinative.¹⁶ The Company contends that, in a speech to the employees the day of the election, Manager Lutz advised the employees of the Company's neutral policy and that such advice served to neutralize the effect of Ryan's statements, if made. A copy of this speech as read to the employees verbatim was introduced in evidence. There is nothing in the speech, nor any evidence of other communication to the employees, disavowing antiunion activities by the Company's supervisors, or otherwise notifying employees that supervisors are required to remain neutral and that their expressions and activities are in no wise representative of the Company's attitude.¹⁷ The undersigned concludes, therefore, that this contention of the Company is without merit.

RECOMMENDATIONS

Upon all of the foregoing, it is the recommendation of the undersigned that the results of the election of April 22, 1949, be set aside and a new election ordered by the Board.

As provided in the Order of the Board directing the Hearing on Objections, any party may, within five (5) days of receipt of this Report, file with the Board in Washington, D. C., an original and six copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director, Third Region, National Labor Relations Board, Buffalo, New York.

Dated at Atlanta, Georgia, this 28th day of October 1949.

SHALLY O. WISE,
Hearing Officer.

¹⁴ *U. S. Rubber Company*, 86 NLRB 3; *Maywood Hosiery Mills*, 64 NLRB 146.

¹⁵ *G. H. Hess, Inc.*, 82 NLRB 463, where the Board set aside an election on the basis of interference with a single employee.

¹⁶ *The Pure Oil Co.*, 73 NLRB 1.

¹⁷ *Southshore Packing Corporation*, 73 NLRB 1116.