

In the Matter of SMITH RICE MILL, INC., AND DEWITT BONDED WAREHOUSE COMPANY, EMPLOYERS and FEDERAL LABOR UNION, No. 23415, AFL, PETITIONER

*Case No. 32-RC-106*

SUPPLEMENTAL DECISION

AND

ORDER

*March 8, 1950*

Pursuant to a Decision and Direction of Election issued by the National Labor Relations Board on May 5, 1949,<sup>1</sup> an election by secret ballot was conducted on October 13, 1949, under the direction and supervision of the Regional Director for the Fifteenth Region among the employees in the unit found appropriate in said Decision. At the close of the election the parties were furnished a Tally of Ballots. The tally reveals that of approximately 94 eligible voters, 68 ballots were cast, of which 31 were for the Petitioner, 36 against the Petitioner, and 1 was challenged.

On October 20, 1949, the Petitioner filed objections to conduct of the Employers affecting the results of the election. Thereafter, on January 18, 1950, following an investigation, the Regional Director issued and duly served upon the parties his Report on Objections. The Regional Director, upon the facts recited in his Report, found merit in part of the Petitioner's objections and recommended that the election be set aside and a new election be conducted. The Employers duly filed exceptions to the Regional Director's Report on Objections. The essential facts are not in dispute, and no hearing is required.<sup>2</sup>

The Petitioner in its objections alleges that the Employers: (1) After the Board had issued its Decision, increased the number of their employees by adding an additional shift and terminated such shift immediately prior to the election, retaining thereafter certain of the employees of the new shift; and (2) distributed to their employees

<sup>1</sup> 83 NLRB 380.

<sup>2</sup> Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Murdock].

88 NLRB No. 184.

a letter and a circular containing threats and misstatements designed to coerce their employees, thereby preventing the employees from exercising a free choice in the selection of a bargaining representative.

The Regional Director, in his Report, found no merit in the first objection and recommended that the Board overrule this objection. As no exceptions were filed to this finding, we adopt the recommendation of the Regional Director and hereby overrule the Petitioner's first objection.

As to the Petitioner's second objection, the Report of the Regional Director shows that on October 13, 1949, just before the election, an undated circular from the Employers was personally handed to the employees. The Regional Director found that statements contained in the circular interfered with the employees' free selection of a bargaining representative. In support of this conclusion, the Regional Director, relying upon the language of the last paragraph of the circular,<sup>3</sup> avers that the circular carried the connotation that an employee to be considered loyal should vote "No" in the election and, conversely, that if an employee voted for the Union, he would be considered as not possessing the requisites for his job, i. e., liking the job and loyalty to the boss. Thus, the implication which may reasonably be drawn from this circular was that an employee who voted for the Petitioner would not be continued in his job.

The Regional Director recommended that the election be set aside. We agree. The afore-mentioned circular, distributed to the employees shortly before the election, was coercive in character and so closely related in time to the election as to have had a probable effect upon the action of the employees at the polls. It therefore constituted interference with the employees' free choice in the selection of a bargaining representative.<sup>4</sup> We therefore sustain the Petitioner's second objection and shall set aside the election of October 13, 1949. We shall direct a new election at such time as the Regional Director advises us that circumstances permit a free choice in the selection of bargaining representative by the employees concerned herein.

<sup>3</sup> The last paragraph of the circular reads as follows:

If you do not like your boss, you should be working somewhere else. If you like your job, you should be loyal to the boss. A vote of "No" in the coming election will be a vote of confidence in your boss and will mark you as a loyal employee of the Smith Rice Mill, Inc.

<sup>4</sup> We find no merit in the Employers' contention that the objectionable statements are protected under Section 8 (c) of the Act and under the First Amendment to the Constitution of the United States, as they are not limited to the expression of views, argument, or opinion but are coercive in character.

## ORDER

It is ordered that the election held on October 13, 1949, among the employees of Smith Rice Mill, Inc., and DeWitt Bonded Warehouse Company, of DeWitt, Arkansas, be, and it hereby is, set aside.

MEMBER REYNOLDS, dissenting:

I do not agree with my colleagues that the language of the circular objected to may be construed to contain a threat that employees who vote for the Union will lose their jobs. Accordingly, I would overrule the Petitioner's second objection and dismiss the petition herein on the ground that the Petitioner failed to secure a majority of the valid votes cast in the election.