

SILVER KNIT HOSIERY MILLS, INC., and UNITED TEXTILE WORKERS OF AMERICA, AFL, PETITIONER. *Case No. 34-RC-245. May 29, 1952*

Supplemental Decision and Direction

On April 10, 1951, pursuant to the Decision and Direction of Election¹ issued by the Board, an election by secret ballot was conducted in the above-entitled matter under the direction and supervision of the Regional Director for the Fifth Region among the employees in the unit found to be appropriate. Upon the completion of the election, a tally of ballots was issued and duly served upon the parties. The tally shows that of approximately 650 eligible voters, 525 cast valid ballots, of which 248 were for the Petitioner, 277 were against the Petitioner, and 44 were challenged.²

On April 17, 1951, the Petitioner filed timely objections to the election. Thereupon, in accordance with the Rules and Regulations of the Board, the Regional Director conducted an investigation and issued and duly served a report on objections and challenges.

In his report the Regional Director found that substantial and material issues with respect to the election were raised by the objections, and recommended that in the event a revised tally of ballots shows that the Petitioner did not receive a majority of the ballots cast, that the election be set aside and a new election directed. The Regional Director also made recommendations as to the challenged ballots.

The Petitioner filed timely exceptions to the Regional Director's report, both as to the objections and challenges. The Employer also filed timely exceptions to this report, but only to the objections.

On August 14, 1951, the Board, having considered the Petitioner's and Employer's exceptions, ordered a hearing upon the objections and on five of the challenges.³ Thereafter, a hearing was held on November 6 and 7, 1951, before a hearing officer of the National Labor Relations Board. All parties appeared and participated. In accordance with the Board's order, the hearing officer on February 14, 1952, issued and caused to be served on all parties concerned a report containing his findings and recommendations. The Employer and the Petitioner thereafter filed exceptions to the hearing officer's findings and recommendations.

¹ 93 NLRB 791.

² Although the tally shows 44 challenges, the Regional Director made findings and recommendations regarding only 43, and neither party has excepted thereto. In the absence of any evidence relative to the 44th challenged ballot, we make no finding with regard to it. In the event that this ballot should, after the other challenged ballots are counted, become determinative of the results of the election, the Regional Director is directed to conduct an investigation and report to the Board with respect to such ballot.

³ The challenges to the ballots of *Wood, Freeze, Young, Bullock, and Valentine*.

The Board⁴ has reviewed the rulings of the hearing officer and finds that no prejudicial error was committed. The rulings are hereby affirmed.⁵ The Board having considered the hearing officer's report, the Petitioner's and Employer's Exceptions, and the entire record in the case, makes the following findings:

Objections

The Petitioner excepts to the hearing officer's failure to find that the Employer interfered with the election (1) by posting a sample ballot in the plant, and (2) by appointing Quentin Anderson to act as its observer at the election.

1. The Employer posted on a wall by which all employees had to pass in order to enter the polling place a poster alleged to be similar to the official sample ballot posted in the plant by the Board, but marked with an "X" in the Union "No" box. As this poster, unlike the official sample ballot, did not bear the name and title of the Board's Regional Director, we find, in accordance with established Board precedent, that it could not reasonably have given the impression that the Board was officially taking sides in the election.⁶ Accordingly, we overrule this exception.

2. The Petitioner also contends that employee Anderson became identified with management when he exhibited the sample ballot, referred to above, during antiunion speeches of Plant Manager Myers, and thereby became disqualified to act as the Employer's observer. The record shows, as the hearing officer found, that Anderson is a production clerk who at the time of the election was engaged in training a new shipping clerk to replace him in his former position. He had no authority to hire or discharge, nor any other supervisory powers or duties. On the basis of the record, we find, as did the hearing officer, that Anderson was neither a supervisor nor so identified with management as to disqualify him from acting as the Employer's election observer.⁷ This exception is also overruled.

The Employer excepts to the findings of the hearing officer that (1) the conduct of Plant Manager Willard Myers in reading a speech to the employees, and (2) the conduct of supervisors Dave Carter and Jetty Carmichael,⁸ in interrogating employees, interfered with the employees' free choice in selecting a bargain representative.

⁴ 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 Styles and Peterson].

⁵ The Employer in its exceptions objects to the manner in which the hearing on objections and challenges was conducted, and particularly to the hearing officer's use of pre-hearing affidavits of witnesses to impeach their testimony. In view of our disposition of the objections to the election, we find it unnecessary to rule on this exception.

⁶ *Gate City Table Company*, 87 NLRB 1120.

⁷ Cf. *International Stamping Co., Inc.*, 97 NLRB 921; *Peabody Engineering Company*, 95 NLRB 952; *Ann Arbor Press*, 88 NLRB 391.

⁸ The parties stipulated that Carter and Carmichael are supervisors.

1. Plant Manager Willard Myers read to the employees on company time and property the day preceding the election a speech⁹ to the effect that the Union might resort to a strike in order to force the Employer to capitulate to its demands; that the "Company has no intention of yielding to any such pressure," that everybody "knows that strikes mean trouble, misery, lost work and lost pay"; that the Company "is not required to grant [the Union's] requests but is only required by law to bargain in good faith"; that if everybody's wages were raised "with the result that the cost of producing hose would be so high that we could not obtain any orders," the "mill would then be forced to close"; and that "I am not saying that if the Union came in here that this thing would necessarily happen. I certainly hope it wouldn't."

We find, in sustaining the Employer's exception to the hearing officer's finding of interference, that Willard Myers' speech constitutes privileged electioneering, which at the most was in the nature of a prophesy that labor trouble might bring financial difficulties which would in turn prevent the Employer from continuing to operate.¹⁰ This is particularly true in this case where the Employer in the same speech made it apparent that it would bargain in good faith with the Union if the Union won the election.

2. The Petitioner contends, however, that regardless of the contents of the speech, the principle of the *Bonwit-Teller* case¹¹ should be applied to set the election aside. There was testimony at the hearing that Petitioner's attorney during the course of the payroll check on the Friday preceding the Tuesday election, while conversing with Plant Manager Myers "about many things," made an off-hand remark to the effect that the Employer ought to have a Union representative present when the Company made a speech to the employees. We do not find in this casual remark, buried in a discussion "about many things," such a clear and unmistakable request for an opportunity to reply to an antiunion speech of the Employer so as to warrant the application of the principle enunciated in the *Bonwit-Teller* case.¹²

3. We also find merit in the Employer's exception to the hearing officer's finding that supervisor Dave Carter, by interrogating employees, engaged in conduct reasonably calculated to interfere with the employees' free choice. The record, in our opinion, is insufficient to establish that Carter's conduct interfered with the free exercise by the employees of their right to vote for a collective bargaining agent.

⁹ Myers made the speech six times to six different groups. He also gave copies of the speech to the employees.

¹⁰ See *Beaver Machine & Tool Co., Inc.*, 97 NLRB 33.

¹¹ *Bonwit-Teller, Inc.*, 96 NLRB 608.

¹² There was also some testimony about the distribution of circulars which, among other things, contained references to the right of the Union to address the employees. However, the record does not disclose that any of these circulars were sent to the Employer or that the Employer had any knowledge of them or of what they contained.

The evidence shows that Carter had encouraged the employees to vote in the election, and had told Walsh, "You know how to vote." Standing alone, we see nothing objectionable in these statements.¹³ As for the statements allegedly attributed to Carter by employee Arnette, they were not, in our opinion, sufficiently established by the evidence¹⁴ to justify setting aside the election.¹⁵

4. Although we agree with the hearing officer that supervisor Carmichael's questioning of employee Gipsy Lowe as to the attitude of herself and of other employees toward the Union was improper interrogation, we are of the opinion that this single instance of interrogation, standing alone, was insufficient to prevent the employees from exercising a free choice at the polls.¹⁶

Having sustained the Employer's exceptions to the findings of the hearing officer upon which he based his recommendation that the election be set aside, we find that the Petitioner's objections do not raise substantial and material issues with respect to the conduct of the election. Accordingly, the objections are hereby overruled.

Challenged Ballots

In its order directing a hearing, the Board also directed a hearing as to the challenges to the ballots of Wood, Freeze, Young, Bullock, and Valentine.

1. The hearing officer found that *Wood*, *Freeze*, and *Young* were not regularly employed and recommended that the challenges to their ballots be sustained. As no exceptions were filed to these recommendations, we shall sustain the challenges to their ballots.

2. The Petitioner excepts to the hearing officer's finding that *Paul Bullock* and *Gertrude Valentine* are not supervisors. The hearing officer found that Bullock is a dye man whose duties are manual and consist of measuring out dye stuffs and chemicals and pouring them into tubs. The record shows that Bullock substitutes for the dye house foreman occasionally when he is sick, but that on such occasions the foreman leaves instructions with Bullock who passes such

¹³ See *Charroin Manufacturing Co.*, 88 NLRB 38; *L. L. Majure Transport Company*, 95 NLRB 311; *United States Gypsum Company*, 92 NLRB 1661.

¹⁴ Arnette declared in a prehearing statement that Carter had said in the presence of several employees that "he did not know who was for the Union, but they would know, if the Union won, who voted for it." At the hearing, Arnette stated that her affidavit was correct. However, she testified before and after reading it that Carter had never said anything about knowing who voted.

¹⁵ We agree with the hearing officer that the appearance of supervisor Butler at a window of the voting room for about 5 minutes, and that the conduct of supervisor Sumner (referred to in the record also as "Sumney") in entering the voting room once to find out whether an employee who had to leave the plant early because of sickness could vote and once a short time later to accompany this employee to the door of the voting room, did not constitute interference with the election. *Dumont Electric Corp.*, 97 NLRB 94.

¹⁶ See *Fulton Bag and Cotton Mills*, 89 NLRB 943.

instructions on to the men. Bullock exercises no independent judgment so far as the men are concerned, nor does he possess any supervisory authority. As to Valentine, the record shows that she is a sample girl who coordinates instruction forms with the orders, and passes instructions on to other sample girls whom she sometimes instructs in their work. She exercises no supervisory authority. Accordingly, we find, as did the hearing officer, that neither Bullock nor Valentine are supervisors as defined in the Act, and overrule the challenges to their ballots.

In addition to the five challenged ballots discussed above as to which the Board directed a hearing, the Petitioner originally filed exceptions to the Regional Director's disposition of the following challenged ballots:

1. The Petitioner challenged the ballots of 21 employees on the ground that they were part-time employees. The Regional Director's investigation disclosed that all of them work in the Employer's looping department on the second shift, and also are regular, full-time workers in other hosiery mills in the vicinity. All are paid at the same scale and are subject to the same working conditions as regular, full-time employees of the Employer. During the nine payroll periods January 5, 1951, to April 27, 1951, they worked the following average number of hours a week; Etta Canterbury, 10 hours; Goldie Duncan, 7 hours; Sara Dyer, 10 hours; Nona Eddins, 15 hours; Exie Ennis, 12½ hours; Carrie Fagg, 14 hours; Lillian Frank, 11½ hours; Essie Julledge, 6 hours; Grace Hackler, 6 hours; Lettie Hawks, 7 hours; Hazel Hicks, 10½ hours; Mattie Lewallen, 6½ hours; Minnie Koonce, 13 hours; Hazel Messinger, 19 hours; Rosa Potts, 8 hours; Cletus Southern, 16 hours; Hazel Staton, 12 hours; Mary Tucker, 10½ hours; Katherine Vickers, 9½ hours; Mary Wilson, 11 hours; Mildred Barrow, 8 hours. In these circumstances, we adopt the Regional Director's finding that the 21 employees in question were regularly and continuously employed for a substantial number of hours each week, performing the same duties and at the same rates of pay as full-time employees in their department, and were therefore eligible to vote in the election. The challenges as to them are accordingly overruled.

2. The Petitioner also challenged Bessie Meyers, Mary J. Smith and Maxine Turner as part-time employees. The Regional Director reported that Meyers and Smith work full time as electric clippers, and Turner works full time in the finishing room. All three worked on the eligibility date. Accordingly, we adopt the Regional Director's recommendation that the challenges as to them be overruled.

3. The Regional Director found that James Eller, challenged by the Petitioner as not in the unit, has been employed by the Employer since November 17, 1950, as maintenance man and carpenter. He

worked a total of 123 hours during seven of the nine payroll periods in the first 4 months of 1951. As maintenance employees were included in the unit by the Board, we adopt the Regional Director's recommendation that the challenge as to him be overruled.

4. We agree with the Regional Director that Quentin Anderson, discussed above, who was challenged by the Petitioner, is not a supervisor, and accordingly overrule the challenge to his ballot.

5. The Regional Director's investigation disclosed the following with respect to a group of employees whose ballots were challenged on the ground that they were not on the eligibility list:

Aileen Hines was hired on March 19, 1951, and Myrtice Emerson was hired on March 21, 1951. The eligibility date was March 9, 1951. Accordingly, we find that these two employees were not eligible to vote in the election, and sustain the challenges to their ballots.

Fadeen Bullin, Frances Grubb, and Golda Powell had taken maternity leave without written leave of absence. The Employer has no rule requiring written leaves of absence. Each had received oral leave from her department head, and is still carried on the records of the Employer. Annie Briggs by a clerical error was listed on the voting list as Annie Bryson. No one named Annie Bryson is employed by the Employer, while Annie Briggs on the eligibility date was a full-time employee in the finishing department. Shula Fritts, employed by the Employer for 7 years, went on sick leave February 13, 1951, as the result of a heart attack, but is still carried as an employee on the records of the Employer. *William T. Ward*, *W. S. Cox*, and *B. C. Howlett* were laid off for lack of work in February 1951. Howlett has been recalled. Neither Ward nor Cox has been terminated and will be recalled when work is available. On these facts, we adopt the Regional Director's recommendations that the challenges to the ballots of these eight employees be overruled.

6. Barbara Freeman and Roy Anderson were challenged by the Employer as discharged for cause. The Regional Director found that Freeman was discharged for "bad work" on March 22, 1951, and Anderson was discharged for disobeying orders on March 29, 1951, and recommended that these challenges be sustained. Accordingly, we adopt the Regional Director's findings and recommendations with respect to these two employees, and sustain the challenges of their ballots.

Inasmuch as we have overruled the challenges to 36 ballots, we direct that these ballots be opened and counted. In the event that a sufficient number of these ballots were cast for the Petitioner to give the Petitioner a majority of all the valid votes cast in the election, we shall certify the Petitioner as the bargaining representative of the employees in the unit. In the event, however, that the number of these ballots cast for the Petitioner is not sufficient to give the Petitioner a

majority of all the votes cast in the election, we shall dismiss the petition.

Direction

IT IS HEREBY DIRECTED that as part of the investigation to ascertain representatives for purposes of collective bargaining with the Employer, the Regional Director for the Fifth Region shall, pursuant to the Rules and Regulations of the Board, within 10 days from the date of this Direction, open and count the ballots of the voters listed in Appendix A attached hereto, and thereafter prepare and serve upon the parties a supplemental tally of ballots, including therein the count of said challenged ballots.

Appendix A

Fadeen Bullin
 Frances Grubb
 Golda Powell
 Annie Briggs
 Shula Fritts
 William T. Ward
 W. S. Cox
 B. C. Howlett
 Etta Canterbury
 Goldie Duncan
 Sara Dyer
 Nona Eddins
 Exie Ennis
 Carrie Fagg
 Lillian Frank
 Essie Julledge
 Grace Hackler
 Lettie Hawks

Hazel Hicks
 Mattie Lewallen
 Minnie Koonce
 Hazel Messinger
 Rosa Potts
 Cletus Southern
 Hazel Staton
 Mary Tucker
 Katherine Vickers
 Mary Wilson
 Mildred Barrow
 Bessie Myers
 Mary J. Smith
 Maxine Turner
 James Eller
 Quentin Anderson
 Paul Bullock
 Gertrude Valentine

BURNHAM CORPORATION *and* LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL, PETITIONER. *Case No. 2-RC-4080. May 29, 1952*

Supplemental Decision and Direction

Pursuant to a Decision and Direction of Election issued by the National Labor Relations Board on February 8, 1952,¹ an election by secret ballot was conducted on March 5, 1952, under the direction of

¹ Not reported in printed volumes of Board decisions.