

Member Rodgers, dissenting:

I am unable to agree with my colleagues that "the paid holidays were not in fact announced until shortly before the election." The Employer's posted announcement of April 26, after informing the employees that "a general change in the company's vacation plan has been approved," plainly stated that "the company is also considering giving you additional benefits, such as paid holidays" and that "the foregoing will be put into effect just as soon as details have been worked out." (Emphasis supplied.)

The notice of hearing in this case was issued by the Regional Director on April 27. Clearly, then, under the rule in Great Atlantic & Pacific Tea Company, 101 NLRB 1118, the April 26 announcement cannot be considered as a valid election objection. That the Employer's notice of June 4 gave the details of the proposed paid holidays in no way diminishes the fact that the employees had already been made aware -- at a time deemed unobjectionable by the Board -- that such benefits were to be expected.

All that is involved here is a notice which carried out the Employer's express written promise made in an earlier announcement, at an appropriate time. The majority's characterization of the April 26 announcement as "no more than a vague suggestion of a possibility of paid holidays" ignores the obvious import of the statement that "the foregoing will be put into effect just as soon as details have been worked out." Under any reasonable construction of the April 26 announcement, "the foregoing" necessarily included "paid holidays," and not merely "vacation benefits" as the majority would seem to suggest. Under the circumstances, the ground relied on by my colleagues seems entirely too belabored and mechanistic a reason for setting aside this election.

AMERICAN LAUNDRY MACHINERY COMPANY *and* UNITED
STEELWORKERS OF AMERICA, C.I.O., Petitioner. Case
No. 3-RC-1239. December 23, 1953

SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Decision and Direction of Election issued by the Board on July 31, 1953,¹ an election by secret ballot was conducted on August 28, 1953, under the supervision of the Regional Director for the Third Region, among the employees in the appropriate unit at the Employer's plant in Rochester, New York. Upon completion of the election, the parties were furnished with

¹Not reported in printed volumes of Board Decisions.

a tally of ballots which showed that of approximately 522 eligible voters, 417 cast valid ballots, of which 161 were for and 256 against the Petitioner. There were 28 challenged ballots, a number not sufficient to affect the results of the election, and 3 void ballots.

On September 2, 1953, the Petitioner filed timely objections to conduct allegedly affecting the results of the election. In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation and, on October 2, 1953, issued and duly served upon the parties his report on objections. In this report, the Regional Director found that Petitioner's objection 3 raised substantial and material issues, and recommended that this objection be sustained and the election set aside. He also found that the remaining objections were without merit, and recommended that they be overruled. Thereafter, on October 9, 1953, the Employer filed timely exceptions to the Regional Director's report and to his recommendation that the election be set aside, and urged that the Board certify the results of the election. No exceptions to the report on objections were filed by the Petitioner.

The Petitioner alleged in objection 3 that the Employer sent certain antiunion publications and statements to its employees in August 1953 for the purpose of unfairly influencing the outcome of the election. The Regional Director's investigation disclosed that the antiunion communications which were sent to the employees included a letter dated August 21, 1953, 1 week prior to the election, in which the Employer announced:

Furthermore, in keeping with the Company's progressive policy, since January, 1953, management has been working on a formula to make possible the payment of average earnings, rather than base rates for vacations and holidays.

The Regional Director found that the institution of this policy would effect substantial increases in the employees' vacation and holiday payments. He therefore concluded that the Employer's preelection announcement, along with the other antiunion communications, created an atmosphere incompatible with the laboratory conditions prescribed by the Board in General Shoe Corporation,² and therefore impeded the employees' free choice of bargaining representatives.

We do not find that the facts involved herein present a General Shoe situation.³ Nor do we agree that the Employer's announcement contained in its letter of August 21 assumed the proportions of a "promise of benefit" within the meaning of Section 8 (c) of the Act so as to remove it from the area of privileged communications. The Employer at no time stated that it would grant its employees increased vacation and holi-

² 77 NLRB 124.

³ The Univis Lens Company, 82 NLRB 1390.

day payments, or that the award of these payments would be conditioned upon a vote against the Petitioner. In our opinion, the announcement at most conveyed a vague suggestion of the possibility that at some indeterminate date the Employer might evolve a formula whereby these benefits could be increased. This, we believe, falls short of the type of promise contemplated by the Act.⁴ We do not, as our dissenting colleague states, find this announcement constitutes an "expression of opinion." We simply find that it falls short of being either a threat or promise of benefit. Accordingly, we do not adopt the Regional Director's recommendations that Petitioner's objection 3 be sustained and the election set aside. The objection is therefore overruled.

As the Petitioner failed to receive a majority of the valid ballots cast, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for the Petitioner, United Steelworkers of America, C.I.O., and that the Petitioner is not the exclusive representative of the employees at the Rochester, New York, plant of American Laundry Machinery Company, in the unit heretofore found by the Board to be appropriate.]

Member Murdock, dissenting:

I cannot concur in my colleagues' finding that the Employer's announcement contained in its August 21 letter to its employees was a privileged expression of opinion.

The Regional Director's investigation revealed that in May 1953 the Petitioner raised the issue of increased vacation and holiday benefits in its organizational campaign. As the Regional Director found, the Employer countered with a series of communications which were antiunion both in tone and purpose. One week before the election, the Employer announced to its employees for the first time that increased benefits were being considered.

My colleagues are apparently persuaded by the Employer's argument that the plan to increase benefits had been under consideration since January 1953, and would have been put into effect prior to the filing of the instant petition but for the necessity of obtaining approbation of the plan from the Employer's home office. Even if these self-serving declarations be accepted, there is nothing in the record in this proceeding to indicate that the Employer was under any obligation to disclose the pending enlargement of vacation and holiday benefits on the eve of the election.⁵ Nor was the announcement prompted by any need to combat false propaganda disseminated by the Petitioner concerning these benefits.⁶ That the Employer had the constitutional right to campaign against the Petitioner by expressions

⁴ See Knickerbocker Manufacturing Company, Inc., 107 NLRB 507.

⁵ See Lake Superior District Power Company, 88 NLRB 1496.

⁶ Schwarzenbach Huber Company, 85 NLRB 1490

of views and opinions, free from restraint or coercion, cannot be gainsaid. However, the significant timing of the August 21 announcement, together with the antiunion context in which the announcement was made, furnished the employees with a reasonable basis for believing that the benefits suggested by the Employer would be forthcoming without the aid of union representation, and clearly implied a promise of economic benefit which interfered with their free exercise of the right to choose a bargaining representative.⁷

In my opinion, the majority decision herein departs from well-established Board precedent,⁸ approved by the courts,⁹ delineating the area in which employers' preelection statements exceed the bounds of allowable free speech. The instant decision, by sanctioning a clearly implied promise of gain by the Employer who possessed the power to convert prophecy into reality, makes serious inroads upon the employees' statutory freedom of selection.

I would sustain the Petitioner's objection and adopt the Regional Director's recommendation that the election be set aside.

⁷Maine Fisheries Corporation, 99 NLRB 604.

⁸Maine Fisheries Corporation, *supra*; Majestic Metal Specialties, Inc., 92 NLRB 1854; Lake Superior District Power Company, *supra*; Schwarzenbach Huber Company, *supra*; The National Plastic Products Company, 78 NLRB 699.

⁹See *N. L. R. B. v. Nabors*, 196 F. 2d 272, 276 (C. A. 5); *N. L. R. B. v. Bailey Co.*, 180 F. 2d 278 (C. A. 6); *N. L. R. B. v. La Salle Steel Co.*, 178 F. 2d 829 (C. A. 7)

BLUE BELL, INC. *and* AMALGAMATED CLOTHING WORKERS OF AMERICA, CIO. Cases Nos. 15-CA-355 *and* 15-RC-513. December 24, 1953

DECISION AND ORDER

On June 18, 1953, Trial Examiner Eugene E. Dixon issued his Intermediate Report in this consolidated proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner further found that the Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, the Respondent filed exceptions to the Intermediate Report.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the Respondent's exceptions, and the entire record in these cases, and hereby adopts