

MORGANTON FULL FASHIONED HOSIERY COMPANY,  
HUFFMAN FULL FASHIONED HOSIERY MILLS, INC. *and*  
THOMAS EDWARD PARKS, Petitioner *and* LOCAL UNION  
NO. 161, UNITED TEXTILE WORKERS OF AMERICA,  
AFL. Case No. 11-RD-36. March 11, 1954

SUPPLEMENTAL DECISION  
and  
CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Decision and Direction of Election issued herein on January 12, 1953,<sup>1</sup> an election by secret ballot was conducted on February 5, 1953, under the direction and supervision of the Regional Director for the Eleventh Region, among the employees in the voting group established by the Board. Following the election, a tally of ballots was furnished the parties. The tally shows that of approximately 639 eligible voters, 558 cast valid ballots, of which 234 were for, and 324 were against, the Union. There were 4 challenged ballots.

Thereafter, on February 10, 1953, the Union filed timely objections to conduct affecting the results of the election. The Regional Director investigated the objections, and on May 13, 1953, issued and duly served upon the parties his report on objections, in which he recommended that the objections be sustained, the election be set aside, and a new election be directed.<sup>2</sup> On May 25, 1953, the Petitioner filed exceptions to the Regional Director's report. On June 10, 1953, the Board found that the Petitioner's exceptions raised substantial and material issues of fact, and ordered that a hearing be held to resolve the issues. On August 5, 1953, pursuant to the Board's order, a hearing was held before Harry Goldman, Jr., hearing officer. On November 6, 1953, the hearing officer issued and served on the parties his report on objections. The Petitioner and the Union filed exceptions to that report on November 16 and 17, respectively.

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

In his report, the hearing officer sustained the objections and recommended that the election be set aside. In doing so, he relied on four independent grounds, each of which is separately discussed below.<sup>3</sup>

1. The mailing list

The hearing officer held that the Employer's furnishing of a mailing list to the Petitioner "without offering the list to the

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<sup>1</sup>102 NLRB 134.

<sup>2</sup>Because the challenged ballots could not affect the results of the election, the Regional Director made no report concerning the challenges.

<sup>3</sup>We find no merit in the Union's exceptions to the hearing officer's report.

[Union] . . . or notifying the [Union] that it had given the list to the Petitioner . . . comprised undue assistance to the Petitioner. . . ." We cannot agree.

It was stipulated between the parties that, shortly before the election, the Petitioner's attorney requested and received from the Employer a mailing list of employees. The Union neither requested nor received such a list. The Petitioner utilized the list to circulate antiunion argument through the mails to approximately 635 employees. The Union, on the other hand, had compiled its own mailing list of some 400 to 500 employees, which it used in sending 11 campaign letters to the employees.

Absent either a request by the Union for that list or a showing that such a request would have been futile, it cannot be found that the Employer gave undue or improper assistance to the Petitioner.<sup>4</sup> Neither condition was here satisfied. Nor was the possibility of a union request foreclosed. For we find, contrary to the hearing officer, that the Union knew of the Petitioner's receipt of the mailing list prior to the election and therefore could have requested the identical privilege. In so finding, we rely upon the following facts which appear in the record. The Petitioner sent 3 letters to the employees, the first as early as January 28 with the Petitioner's signature. The Union's officials knew that statements by the Petitioner were being circulated as early as January 28 or 29 and 1 union official admitted that he "might have had the impression" that those statements were being sent through the mail. Indeed, on February 2 the Union wrote to the Employer complaining of allegedly coercive remarks "in writing" made by supporters of the Petitioner. Furthermore, the Union had 1 or 2 international representatives in the town of Morganton in the months prior to the election. Under these circumstances, we believe that the Petitioner's use of the mailing list had come to the Union's attention.

In view of the absence of any request by the Union for a mailing list or any valid excuse for the Union's failure to request such list from the Employer, we find no improper assistance to the Petitioner or interference with the election as the result of the incident hereinabove mentioned.

## 2. Ratification of the Petitioner's statements

The hearing officer found in essence that the Employer ratified various statements of the Petitioner which would have been coercive if made by the Employer, and that the Petitioner's statements must therefore be treated as emanating from the Employer. So viewed, those statements were held by the hearing officer "to render a free choice by the employees impossible." We cannot agree.

We find no agency relationship implicit in the Employer's act of giving the mailing list to the Petitioner. The Employer

<sup>4</sup>Toledo Scale Co., 103 NLRB No. 136; Stokely Foods, Inc., 101 NLRB 99.

does not thereby assume a responsibility for subsequent statements made by the Petitioner to the employees through the mails. Indeed, the Petitioner did send 3 letters to the employees, 2 of which contained statements which, if made by the Employer, would have constituted threats of reprisal in the event of a union victory. The Petitioner's letters, however, did not imply authority to speak for the Employer.<sup>5</sup> These letters in effect argued that a union victory would lead to a future loss of work because of the Union's own policies.<sup>6</sup> Reasonably construed, they are nothing more than campaign propaganda. Although the Employer was aware of these written statements by the Union's letter of February 2 calling upon the Employer to disavow them, a request that the Employer disavow statements made by rank-and-file employees will not by itself create a duty to disavow where the Employer would not otherwise be responsible for the conduct of such employees. As bearing on such responsibility, the Supreme Court has held that rank-and-file employees can be found to be the agents of the employer where the other employees have just cause to believe that they are acting for the employer.<sup>7</sup>

In the present instance, it is true that the Petitioner's letter of February 1 was unsigned. We feel, however, notwithstanding the hearing officer's contrary construction, that that letter could not reasonably have confused the employees as to its origin or given them just cause for believing that the Petitioner was acting for the Employer. We base our belief upon the fact that the contents of that letter in no way referred to the Employer or the employment relationship. Indeed, that letter was printed in a style identical with that of the first letter and was thus readily identifiable with the Petitioner. Moreover, there is no evidence in the record to show that the employees at any time identified the Petitioner with the Employer. In the absence of any circumstances which would reasonably identify the Employer with the statements in question, we find that the Employer was under no duty to disavow such statements.<sup>8</sup> Accordingly, we find that the Employer's failure to disavow cannot be regarded as ratification by the Employer and is therefore immaterial.

The further position taken by the hearing officer that the Employer adopted the Petitioner's statements is equally without merit. It is clear, as we hereafter find, that there is no threat implied in the Employer's letter. Accordingly, any fortuitous

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<sup>5</sup> The Petitioner, for example, made such statements as: "A Vote 'No' Will Give Us Steady Jobs, High Wages, . . . and No Layoffs" and "Let's Keep the Mills Running."

<sup>6</sup> The Petitioner's statements included, among others, the following remarks: "Don't Let [The Union] Destroy Our Jobs; The Union Is Responsible For Our Loss Of Work; We Can't Afford To Let The Union Put Us Out Of Work Again."

<sup>7</sup> *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72; *Matthews Lumber Co.*, 96 NLRB 322, 338.

<sup>8</sup> See, e. g., *Northrop Aircraft, Inc.*, 106 NLRB 23.

similarities in the antiunion arguments by the Employer and the Petitioner, respectively, can hardly be the basis for a finding of adoption by the Employer of statements exceeding in scope and effect those made by the Employer itself. Nor is there an adoption effected by the supervisor's statements referred to below.

### 3. The Employer's letter

The hearing officer further found that the Employer's statements in its preelection letter to the employees, independently considered, interfered with the election. We cannot agree.

The language of that letter, referred to by the hearing officer in support of his conclusion, is as follows:

... You have a perfect right to ask yourselves what the Union has cost you ... Let me remind you of just one thing that it did cost you, and that is that it cost many of you almost eight months of employment and resulted in many others of you having only part time employment, instead of full time employment ... Do you have any reason to believe that the Union is going to represent you any better in the future than in the past? ... Remember, the first loss of time of any consequence in twenty years of operation of this mill occurred while the Union was representing you.

It could happen again.

We do not believe that these statements implied a threat of economic reprisal in the event of a union victory.<sup>9</sup> To the contrary, we find them, in the context of that letter, to be permissible preelection opinion as to possible consequences which might result from a vote for the Union. As we recently stated in Chicopee Manufacturing Co.,<sup>10</sup> "a prophecy that unionization might ultimately lead to loss of employment is not coercive where there is no threat that the employer will use its economic power to make its prophecy come true."

### 4. Coercive statements of supervisors

Lastly, the hearing officer found that, prior to the election, 2 supervisors made coercive statements, each to 1 employee, to the effect that the plant could close down in the event of a union victory in the election, and that those statements interfered with the holding of a free election. We do not disagree with the facts found by the hearing officer, as distinguished from his conclusion of interference. We believe,

<sup>9</sup>Sylvania Electric Products, Inc., 106 NLRB 1210; cf. Moksnes Manufacturing Co., 106 NLRB 1230.

<sup>10</sup>107 NLRB 106.

however, that these 2 coercive remarks are too isolated in nature to constitute substantial interference and thus warrant setting aside an election involving some 639 employees.<sup>11</sup> While the Board has frequently referred to its elections as conducted in a "laboratory atmosphere,"<sup>12</sup> the adoption of a laboratory standard should not be construed to mean that the Board will ignore the realities of industrial life. In this respect, we are not unmindful of the fact that the "laboratory" for election purposes is usually an industrial plant where vigorous campaigning and discussion normally take place, and where isolated deviations from the above-mentioned standard will sometimes arise, notwithstanding the best directed efforts to prevent their occurrence. In view thereof, we are of the opinion that an employee mandate cannot lightly be set aside merely because the normal and expected plant discussion happens to include a few isolated threats by overzealous minor supervisory personnel.

Upon the basis of the foregoing, we find that the facts raised by the objections do not establish substantial interference with the elections and we hereby overrule the objections. As the Union did not receive a majority of the valid ballots cast in the election, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for Local Union No. 161, United Textile Workers of America, AFL, and that this labor organization is not the exclusive representative of the employees of the Employer in the unit heretofore found appropriate.]

Member Murdock, dissenting:

I would not in this case certify the results of the election as a valid test of the employees' free choice. Without passing upon the other specific objections to conduct interfering with the election, I believe the election should be voided on the strength of the admittedly coercive statements of two supervisors, particularly as these statements are considered in the circumstances and atmosphere existing immediately before the election.

The evidence is undisputed. The Petitioner, an individual, seeking in this proceeding to unseat the Union, having first received from the Employer a complete mailing list of the employees, sent the employees shortly before the scheduled election three separate letters containing clearly coercive remarks. One of these letters carried no identification of its

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<sup>11</sup> Cf. *New Mexico Transportation Co., Inc.*, 107 NLRB 47; *Braswell Motor Freight Lines*, 107 NLRB 676.

<sup>12</sup> See, e. g., *General Shoe Corp.*, 77 NLRB 124.

source. Among other things, the letters contained variously worded and repeated threats to the effect that "there would be no loss of work if the Union were defeated but, if the Union won, the victory would cause the employees to lose work."<sup>13</sup> The Union called upon the Employer, without success, to disavow the threats in the Petitioner's letters to the employees. But 3 days before the election, the Employer, for its part, also sent the employees a letter stating, inter alia:

Let me remind you of just one thing that [the Union] did cost you, and that is that it cost many of you 8 months of employment and resulted in many of you having only part-time employment, instead of full-time employment . . . it could happen again.

Whether the Employer's letter was in itself coercive, I need not decide; it was at least ambiguous and could reasonably be construed as a threat of loss of employment should the Union succeed. I have no doubt that it added substantially to the atmosphere of fear of reprisal already created by the Petitioner's letters. Following these developments and against this background came the clear and unequivocal statements of the Employer's two "fixers or foremen" that the mill would shut down if the Union won in the election.

Especially in a situation of this kind, I would think the effect of the interference upon the ability of the eligible employees to vote freely should not be measured, as a comparative problem, simply by relating the number of coercive acts committed before the election to the size of the employee voting group. The language of the Board in an earlier case is applicable here, a fortiori:

. . . where, as in one instance here, the threat is one close the plant which is almost certain to become known to other employees, the Board's determination to set the election aside cannot rest solely upon the number of instances of such interference or the number of employees directly involved.<sup>14</sup>

I am satisfied that sufficient doubt has been cast on the election results as truly reflecting the employees' uncoerced desires in the matter of bargaining representation. I would therefore set the election aside.

Member Beeson took no part in the consideration of the above Supplemental Decision and Certification of Results of Election.

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<sup>13</sup>Quoted from hearing officer's report on objections.

<sup>14</sup>General Shoe Corporation, 97 NLRB 499.