

In the Matter of NATIONAL CARBON COMPANY, INC. and UNITED GAS,
COKE AND CHEMICAL WORKERS OF AMERICA, C. I. O.

Case No. 6-R-1155

SUPPLEMENTAL DECISION

AND

ORDER

February 6, 1946

Upon objections filed by United Gas, Coke and Chemical Workers of America, C. I. O., herein called the Union, to conduct affecting the results of the election held on May 25, 1945, pursuant to a stipulation for certification upon consent election agreement entered into between National Carbon Company, Inc., herein called the Company, and the Union, a hearing was held before Henry J. Kent, Trial Examiner, at Clarksburg, West Virginia, on September 6, 1945. The Board, the Union, and the Company participated in the hearing by their representatives.

On October 15, 1945, the Trial Examiner issued his Report and Recommendations, a copy of which is attached hereto, in which he found that the Union's first objection,¹ standing alone, provided ample ground for setting aside the election, and he so recommended.² Thereafter, the Company filed a Bill of Exceptions to the Report and Recommendations and Request for Oral Argument, and a Brief in Support of the Exceptions.

The Board has reviewed the Trial Examiner's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Company's request for oral argument is hereby denied.

The Board has considered the Report and Recommendations, the Exceptions, and the entire record in the case, and, except as herein

¹ The Union's objections are in substance that: (1) the Company, by certain of its supervisors, made coercive statements to employees during the election campaign, (2) an announcement made by the Company concerning a savings plan for the employees was timed to influence them to vote against the Union, and (3) statements in a letter sent by the Company a few days before the election to the employees eligible to vote were coercive

² Accordingly, the Trial Examiner made no findings with respect to the second and third objections of the Union

modified, adopts the findings, conclusions, and recommendations of the Trial Examiner.

In substance, the Trial Examiner found that by the statements of Foreman William Golden to employee Ralph Keister a month before the election of May 25, 1945, the Company made anti-union threats and utterances which interfered with a free choice of representatives by its employees at that election. While we agree with this finding of the Trial Examiner, we are also of the opinion, for the reasons set forth below, that the conduct of the Company upon which the Union bases its second objection also prevented an expression in the election of the employees' free choice. We have examined the third objection but find it unnecessary to pass upon its validity, in view of our findings on the first two objections.

With respect to the Union's second objection, the record establishes the following:

Several years ago, there was put into effect at the plants of the Union Carbide and Carbon Corporation and all its subsidiaries in the United States, including the Company, a savings plan. The plan was made available to any employee who had met certain requirements as to tenure of service. Briefly stated, it provided that any eligible employee could have up to 7½ percent of his wages deducted each pay day by the Company and placed in a savings fund, with the Company committed to pay into the fund, depending upon the circumstances, a sum equal to 10, 20, or 30 percent of the employees deduction. Upon termination of the plan, or upon the employee's discharge, disability, or death, the sum of both contributions plus 2 percent per annum compounded interest was to be paid to the employee.

In the late forenoon of May 25, 1945, the day of the election, H. T. Reid, the division works manager of the Company, telephoned C. E. Margeson, the Company's plant superintendent, and informed him that the savings plan which was then in effect, but which was due to expire on June 30, 1945, was going to be renewed. In the early part of the afternoon of the same day, Margeson posted on the bulletin board of the plant a notice under his signature, announcing that effective July 1, 1945, a savings plan would be put in effect with the same provisions as the one expiring on that date. Because the voting hours in the election were from 5:30 a. m. to 8 a. m. and from 1:30 p. m. to 5:00 p. m., only about one-half of the eligible employees had cast their ballots before the notice was posted.

It is clear from the foregoing that the renewal of the savings plan represented an extension by the Company of an employee benefit of considerable monetary value. That the employees had a substantial interest in the renewal of such a plan cannot be gainsaid, as borne out by the fact that for some time prior to the announcement of the renewal many inquiries had been directed by employees to Margeson

and other company supervisors as to whether the savings plan was going to be renewed.³ In view of this substantial interest on the part of the employees, it follows that the promulgation during the very course of the election of a decision by the Company favorable to that interest would tend to place the Union in a less favorable position in the minds of the employees. Accordingly, although it is difficult to determine the full effect of the announcement, we are of the opinion, in the light of the employees' concern as to the future of the plan and the timing of the Company's action, that the announcement influenced the voting of the employees who cast their ballots after it was posted. While the Company's action may, as asserted by it, have been taken in good faith,⁴ the issue here involved is not its *bona fides*, but solely the effect of its conduct. Moreover, the record discloses no reason why, in view of the fact that the existing savings plan was not due to expire for over a month, and in view of the pending election, the Company could not have postponed the announcement until after the election.

Accordingly, we find that both by the above-described statements of Foreman William Golden and by the announcement of the renewal of the savings plan, the Company engaged in action preceding and during the election which prevented an expression in the election of the employees' free and unfettered choice of a bargaining representative. We shall, therefore, set the election aside. We shall direct a new election at such time as the Regional Director advises us that circumstances permitting a free choice among the employees have been restored.

ORDER

IT IS HEREBY ORDERED that the election of May 25, 1945, among the employees of National Carbon Company, Inc., Clarksburg, West Virginia, be, and it hereby is, set aside.

MR. GERARD D. REILLY took no part in the consideration of the above Supplemental Decision and Order.

REPORT AND RECOMMENDATIONS

Mr. W. G. Stuart Sherman, for the Board.

Mr. Clarence L. Sager, of New York, N. Y., for the Company

Messrs. William Ross and Edward Cadle, of Charleston, West Va. for the Union.

STATEMENT OF THE CASE

On May 25, 1945, pursuant to a stipulation for certification upon consent election agreement entered into between National Carbon Company, Inc., herein

³ Margeson himself testified that such inquiries were made.

⁴ The Company alleges that the announcement was posted in the ordinary course of business, and was in no way related to the election.

called the Company, and United Gas, Coke, and Chemical Workers of America, C. I. O., herein called the Union, on April 21, 1945, and approved by the Regional Director for the Sixth Region (Pittsburg, Pennsylvania), on April 23, 1945, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the said Sixth Region. Upon the conclusion of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board.

As to the balloting and its results, the tally showed as follows:

Approximate number of eligible voters.....	574
Valid ballots counted plus challenged ballots.....	526
Votes cast for United Gas, Coke, and Chemical Workers of America, C. I. O.....	252
Votes cast against the above-named participating Union.....	269
Challenged ballots.....	5

On June 1, 1945, the Union filed objections to the election. On July 21, 1945, following an investigation, the Regional Director issued a Report on the objections to the election, in which he found that the Union's objections raise substantial and material issues with respect to the election and recommended that the Board direct a hearing on the objections. Thereafter, on July 25, 1945, the Company filed exceptions to his report. On August 6, 1945, the Board directed the Regional Director to issue an appropriate notice of hearing. Pursuant to the said order of the Board an appropriate hearing was held after due notice before Henry J. Kent, the undersigned Trial Examiner, who had been duly designated by the Chief Trial Examiner. Said hearing was held at Clarksburg, West Virginia, on September 6, 1945. The Company and the Union appeared and participated. The parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the opening of the hearing the Company moved to dismiss the proceeding on the ground that the Union's Objections to the Election had not been timely filed. The motion was denied by the undersigned¹. The parties were afforded an opportunity to file briefs with the Board. A brief has been filed by the Company and considered by the undersigned. On October 3, 1945, the Board ordered the undersigned Trial Examiner to prepare and file a Report and Recommendations.

Upon the entire record in the case, including the objections filed by the Union, the Report on Objections, the Exceptions of the Company thereto, the record previously made, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

The Union's Objections to the Election are in substance: (1) that the Company, by certain of its supervisors, made coercive statements to employees during the election campaign; (2) that announcements made by the Company concerning a Savings Plan for the employees was timed to influence employees to vote against the Union; and (3) that statements in a letter sent by the Company a few days before the election, to the employees eligible to vote, were coercive.²

¹ A similar motion had been previously made by the Company, in its exceptions to the Report on Objections, and, in effect, overruled by the Board by its Order directing a hearing on the objections.

² In the objections filed the Union also asserted that a different list of names of eligible voters was used at the poles than the list of names previously agreed upon by the parties. During the hearing, the undersigned granted the Union's motion to dismiss this allegation.

As noted above, the stipulation for certification upon consent election agreement was signed by the Union and the Company on April 21, 1945.³ After leaving the plant on the night of April 25, 1945, Employee Ralph Keister called for a consignment of union leaflets left for him at a bus station in Clarksburg. On his way home he visited a beer garden nearby and observed that a number of the Company's employees were present there. He started to distribute the leaflets to them and while he was engaged in this activity Employee Wilson Brent called him over to the bar. Brent was sitting there beside William Golden, the foreman in the graphite machine shop at the plant.

According to Keister's testimony which was substantially corroborated by the testimony of Brent and also by that of Clifford Henderson, the following conversation occurred between Golden and Keister⁴

Q Did you speak to Mr Golden in the beer garden?

A. Yes, sir. Wilson Brent and Mr. Golden was sitting together, which, after I give the leaflets to some of the boys, I walked over—Well, Wilson he called me over where he was sitting with Mr. Golden.

Q. He was sitting with Mr. Golden?

A. Yes, sir.

Q Did you speak to Golden first, or did Golden ask you any questions? Did he ask you what you were doing?

A. Well, he says, "What is the Union paying you for this?"

Q. "What is the Union paying you for this?" What did you say?

A. I replied, "Nothing."

He says, "What is the Union paying Paul Rush?"⁵

Q. What did you say?

A. I replied, "Nothing." I said, "Paul Rush is in there fighting for the Union because he believes in the organization."

Q. Yes. Then, what did he say? What did Golden answer to it?

A. He said, "I can't understand Paul Rush when he is making \$1.60 an hour." I mean, "I can't understand Paul Rush wanting a Union when his average was \$1.60 an hour, and the Union come out and printed a leaflet that the machinist's wages would only be \$1.45 an hour."

Q Did Mr. Golden also say that there was a probability if the Union got into the shop that the plant would move to Morganton?

A. And, then, Mr. Golden replied, he says, "You know something," he said, "if the Union gets in this plant they will shut it down and move it to Morganton, North Carolina."

Q. After Mr. Golden told you that the plant would probably move to Morganton, North Carolina, what else was said in connection—

A. I said, "Mr. Golden," I said, "they can't shut this plant down and move it because they are making money at this plant, and they are not going to shut any plant down that is making money for them."

³ It appears from facts set forth in the said agreement that the Company is engaged in commerce within the meaning of the Act; the Company also admitted that it was engaged in commerce within the meaning of the Act; and, in effect, the unit stipulated to be appropriate was a unit of hourly paid production and maintenance employees, excluding supervisory, watchmen, guards, bricklayers, and clerical employees.

⁴ Henderson was not an employee of the Company. Brent, then an employee, was later discharged in May 1945.

⁵ Rush was chairman of the organizing committee for the Union in the plant; he was employed as a machinist by the Company and worked in Golden's department.

And he say, "Well, by God, they did it to the tin mill, and they will do it to the National Carbon plant."⁶

And then, he asked me, he said, "How many men do you have signed in my department?"

And I said, "Twelve men."

And he says, "Well," he says, "I am going to show the Union what seniority is. They have been putting leaflets out that the Company hadn't been applying seniority." He said, "I am going to take Paul Rush from his machine, and I have a couple of older men than he, than Paul Rush, with seniority, and I am going to take him from the machine and bump him from the machine."⁷

He says, "How many men do you have signed in my department?"

I says, "Twelve."

And he says, "I'll take six of them away from the Union."

I said, "How will you do it, Mr. Golden?"

He said, "That's easy. I will give them better jobs."

And he pulled \$80 out of his pocket and wanted to bet \$80 that he would take six of these men away from the Union.

I said, "Mr. Golden, if I had \$80 I would take that bet."

So, he got pretty hot and he said, "As far as Paul Rush is concerned," he said, "by God," he wasn't afraid of him, and he thought he was a better man than him, and he could take him out and whip him anytime.

Golden was called by the Company to give testimony in respect to the above conversation with Keister. He admitted that a conversation between them had been held at about the time and place fixed by Keister, Brent, and Henderson, but despite the fact that the incident happened within about 5 months previous to his testifying, Golden's testimony respecting the details was vague and inconclusive: Although Golden admitted that he had talked to Keister or Brent about the union activities of Rush, he said he thought any such conversations were held after April 25, and that Rush's name was not mentioned during the conversation in the beer garden. He also admitted that there had been some talk concerning betting by Keister on the night of April 25, but he claimed that it was Keister who offered to bet him that the Union would win the election and denied that he offered to bet Keister that he, Golden, could induce six union adherents in his department to withdraw from membership in the Union.

Basing his opinion upon his observation of the witnesses, the undersigned concludes that Keister's version of the conversation with Golden on the night of April 25, which was substantially corroborated by the testimony of Brent and Henderson, is the more credible. Accordingly, he finds that Golden made the anti-union threats and utterances attributed to him on that occasion by Keister.

There can be no doubt that the respondent is responsible for anti-union conduct or utterances by Golden. Admittedly, according to the testimony of C. E. Margeison, the general superintendent of the plant, Golden was foreman of the graphite machining department at the plant and as such had authority to make effective recommendations in respect to the hiring, discharging or disciplining of employees in that department.

⁶ According to later testimony given by Henderson, Golden, in his conversation with Keister, identified the tin mill as a plant which had previously been operated in Clarksburg by the Weirton Steel Company.

⁷ The record fails to show any change in Rush's work assignment.

The Company, however, contends that all supervisory employees of the plant were instructed by management to maintain a neutral attitude in respect to union activities among its employees and it urges that even if it should be found that Golden's activities were in violation of the Act, they constituted but an isolated incident and the Company should not be held responsible for his conduct.⁸

This contention of the Company lacks merit. On the facts above, it is virtually impossible to ascertain the full effects upon the employees' free exercise of the right to select a collective bargaining representative of Golden's anti-union threats and utterances made during the election campaign in the plant. In a proceeding such as this, it is indeed unnecessary to find that the conduct complained of its sufficient to warrant a finding that the Company thereby engaged in an unfair labor practice.

On all the above the undersigned concludes and finds that the Union's first objection to the election, especially in view of the closeness of the election, standing alone, provides ample ground for setting aside the election. Under the circumstances, he deems it unnecessary to pass upon the second and third objections of the Union set forth above.

RECOMMENDATIONS

Upon the basis of the above findings of fact, and upon the entire record in the case, the undersigned recommends that the National Labor Relations Board vacate and set aside the election held in this proceeding on May 25, 1945, and the results thereof.

Any party may, within 15 days from the date of this Report and Recommendations, file with the Board, Rochambeau Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Report and Recommendations or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon, together with the original and four copies of a brief in support thereof. Immediately upon the filing of the statement of exceptions and brief, the party filing the same shall serve a copy thereof upon each of the other parties and shall file a copy with the Regional Director.

HENRY J. KENT,
Trial Examiner.

Dated October 15, 1945.

⁸ The record indicates that such instructions were given to its supervisors, including Golden.