

In the Matter of ACME BREWING COMPANY, AZTEC BREWING COMPANY, GRACE BROS. BREWING COMPANY, LTD., LOS ANGELES BREWING COMPANY, MAIER BREWING COMPANY, RAINIER BREWING COMPANY, STEWARD MCKEE & COMPANY, BOHEMIAN DISTRIBUTING COMPANY, EMPLOYERS *and* INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL AND SOFT DRINK WORKERS OF AMERICA, C. I. O., PETITIONER

Cases Nos. 21-R-3564 through 21-R-3570 and 21-R-3697

SUPPLEMENTAL DECISION

AND

ORDER

June 16, 1947

On March 27, 1947, pursuant to a Decision and Direction of Election issued by the Board on February 28, 1947 (72 N. L. R. B. 1005), an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Twenty-first Region (Los Angeles, California), among the employees in the unit found appropriate in said Decision. Upon the conclusion of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board.

The Tally indicates that of the approximately 1375 eligible voters, 1000 cast valid votes, of which 182 were for the Petitioner, 817 were for the Intervenor, and 1 was against the participating labor organization. In addition, 308 ballots were challenged and impounded, and 2 were declared void.

On April 1, 1947, the Petitioner filed Objections to Conduct Affecting the Results of the Election, alleging in substance that between February 28, 1947, and March 25, 1947, the Employers executed a written contract with the Intervenor, to take effect April 1, 1947; that about March 25, 1947, 2 days before the election, printed copies of this contract were circulated in the various plants during working hours by officers and shop stewards of the Intervenor; that the contract conferred valuable benefits to the Intervenor and its members not enjoyed under their prior agreement, which was to expire April 1, 1947. The Petitioner accordingly requested that the election be set aside.

74 N. L. R. B., No. 31.

On April 30, 1947, following an investigation, the Regional Director issued a Report on Objections, in which he found that the Objections raised substantial and material issues with respect to the election. The Regional Director, in his investigation, found that on or about March 22, 1947, the Employers and the Intervenor executed a contract, effective April 1, 1947, to supplant an existing contract between the parties which was not to expire until May 1, 1947, and that the new contract called for a higher wage scale, more liberal vacation allowances, paid holidays, and various improvements in working conditions. The Regional Director also found that on March 25 and 26, 1947, representatives of the Intervenor distributed copies of the new contract to the employees of the various Employers during working hours.

Thereupon, the Intervenor duly filed Exceptions to Report on Objections, in which it alleged that the California brewing industry, prior to April 1, 1947, was covered by two master agreements, one covering the Northern California breweries, and the other covering the Southern California breweries; that in December 1946 the first step was taken toward a single contract by the negotiation of a uniform wage increase in Northern and Southern California, and at the same time it was agreed that, in order to write a single agreement for the entire State, the Northern California agreement be extended 1 month to March 31, 1947, and the Southern California agreement be opened 1 month early, on March 31, 1947. The Exceptions further alleged that the negotiations continued until March 22, 1947, at which time the agreement effective April 1, 1947, was executed, covering the entire State of California, which did not grant a wage increase, inasmuch as the wage rate set in the December 1946 agreement was carried over into the contract of April 1, 1947. The Intervenor contends, in its Exceptions, that the Petitioner knew, in January 1947, of the wage increase, and that the Petitioner knew, prior to the election, of the new contract and the negotiations preceding its execution, but did nothing about it.

The California State Brewers Institute, on its own behalf and on behalf of its member companies, the Employers herein, filed a Statement Concerning Report of Acting Regional Director on Objections to Election, in which it alleges that the contract executed March 22, 1947, supplanted two other contracts, one for Northern California which had already expired, and one for Southern California, which was not to expire until May 1, 1947; and that the new contract was made only after long negotiations and after an agreement between the Employers and the Intervenor to consolidate the two California contracts made long before March 22, 1947. The Statement further contends that the execution of the new contract was in accordance with normal practice, and the Employers did not fail to adhere to a policy of strict neutrality.

FINDINGS OF FACT¹

A. Chronology of Events

On February 28, 1947, the Board issued a Decision and Direction of Election in this matter, providing that an election be held among the employees of the Employers to determine whether they desired to be represented for the purposes of collective bargaining by the Petitioner, the Intervenor, or neither of these labor organizations. Thereafter, on March 11, 1947, the Regional Director, at a conference held among all parties concerned, set the election for March 27, 1947.

On or about March 22, 1947, the Employers and the Intervenor executed a contract, to take effect April 1, 1947, supplanting a previous contract between the parties which was not to expire until May 1, 1947. The new contract provided for substantial benefits to the employees which were not enjoyed by them under the previous agreement, including more liberal vacation allowances, paid holidays, and various improvements in working conditions.² It was executed after a series of negotiations which commenced in December 1946, and supplanted a contract between the Northern California breweries and the Intervenor which had expired March 1, 1947, as well as the contract between the Employers and the Intervenor. On March 25 and 26, 1947, copies of this new contract were distributed to the employees of the Employers, during working hours, by representatives of the Intervenor. The Petitioner knew of the execution of the new contract, and of the negotiations which preceded its execution, before May 27, 1947, the date of the election.

B. Conclusions

On March 22, 1947, 5 days before an election was to be held pursuant to the Board's Direction of February 28, 1947, the Employers and the Intervenor executed a new contract, accelerating their old contract by a month. In addition, on March 25 and 26, 1947, 2 and 1 days, respectively, before the election, copies of this new contract, which contained many benefits for the employees not embodied in the previous contract between the parties, were distributed by representatives of the Intervenor, during working hours, to the employees of the various Employers.

¹ The findings made herein are based on the Regional Director's Report, the Intervenor's Exceptions, and the Employers' Statement. For the purposes of this proceeding only, we are assuming the truth of all allegations in the Intervenor's Exceptions and the Employers' Statement, obviating, in this manner, the need for a hearing to resolve any issues of fact, and placing the Intervenor and the Employers in their best possible position.

² Although the Regional Director found, in his investigation, that the new contract also contained a wage increase, we shall, as previously noted, accept the Employers' and Intervenor's allegation that the increase had been negotiated and put into effect in December 1946, and was restated in the new contract.

In our opinion, these events on the eve of an election were calculated to influence the employees' actions with respect to the choice of their bargaining agent.³ Whether or not the Employers permitted the distribution of the contract during working hours, and just prior to the election date, is immaterial here, for the Regional Director's Report on Objections finds, and neither the Intervenor nor the Employers deny, that the distribution occurred. Nor are we concerned by the Petitioner's knowledge, prior to the election, of the execution of the new contract, for the distribution of the contract 1 and 2 days prior to the election in itself influenced the free choice of the employees, and made known to the employees various benefits which were to begin on April 1, 1947. At that late date the Petitioner had no choice but to let events run their course and file timely objections after the election.

Under all the circumstances, we find that the election results may well not have truly represented the employees' free choice and not have reflected their untrammelled wishes as to collective bargaining representation. We, therefore, sustain the Petitioner's Objections to Conduct Affecting the Results of the Election and shall set aside the election held on March 27, 1947. When the Regional Director shall advise us that the time is appropriate, we shall direct that a new election be held among the Employers' employees.

ORDER

Upon the basis of the foregoing findings of fact, the National Labor Relations Board hereby vacates and sets aside the election held in this proceeding on March 27, 1947, and the result thereof.

³ See *Matter of Roots-Connersville Blower Corp.*, 64 N. L. R. B. 855; *Matter of S. Frieder & Sons*, 62 N. L. R. B. 880; *Matter of Wire Rope Corporation of America, Inc.*, 62 N. L. R. B. 380; *Matter of Owens-Illinois Glass Company*, 60 N. L. R. B. 1015. In these cases, the Board held that announcement of wage or other benefits just before an election constitutes a sufficient interference to require the setting aside of an election. See also *Medo Photo Supply Corporation v. N. L. R. B.*, 321 U. S. 678, where the Supreme Court stated: "The action of employees with respect to the choice of their bargaining agents may be induced by favors bestowed by the employer as well as by his threats or domination."