

F. W. WOOLWORTH Co. *and* RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL No. 1529, AFL, PETITIONER. *Case No. 32-RC-775. February 23, 1955*

Decision and Certification of Results of Election

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted on August 20, 1954, under the direction and supervision of the Regional Director for the Fifteenth Region, among the employees in the stipulated unit. Thereafter, a tally of ballots was furnished the parties showing that, of approximately 40 eligible voters, 37 cast valid ballots, of which 13 were for and 24 were against the Petitioner. On August 26, 1954, the Petitioner filed objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, the Regional Director conducted an investigation of the matter raised by the Petitioner's objections and, on November 26, 1954, issued and duly served upon the parties his report on objections, in which he found that the objections failed to raise substantial and material issues with respect to conduct affecting the results of the election, and recommended that the Board overrule the objections and that a certification of results of election be issued. Thereafter, on December 6, 1954, the Petitioner filed exceptions to the report on objections.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.
4. As stipulated by the parties, the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining, within the meaning of Section 9 (b) of the Act: All employees of F. W. Woolworth Store Number 620, located at 107 South Main Street, Memphis, Tennessee, including part-time employees, but excluding casual employees, professional employees, technical employees, watchmen, guards, and supervisors as defined in the Act.

Objections to Conduct Affecting Results of Election

In substance, the Petitioner's objections alleged that the Employer: (1) Threatened employees with loss of employment in the event the Petitioner won the election; (2) advised the employees that it would

be useless to select the Petitioner as their bargaining representative as the Employer would not pay wages in excess of 60 cents an hour; (3) advised employees that the Petitioner would be forced to strike to compel the Employer to bargain, and that all strikers would be replaced; and (4) promised benefits to certain employees to vote against the Petitioner.

In his report, the Regional Director found no evidence to support objection No. 4. As no exception was filed to this portion of his report, we adopt the finding and recommendation of the Regional Director, and overrule this objection.

With respect to objections Nos. 1, 2, and 3, it appears that during the week preceding the election an official of the Employer read a prepared speech to two groups of employees, which speech contained the following statements:

Don't you know that the union positively cannot force or compel any company to give fantastic or crazy increases in wages? What they can do is to take the employees out on strike to *attempt* to force the company to give crazy increases. You might as well know it now—we will take a strike before we give any fantastic increases in wages.

We have taken strikes before. In New Albany, Indiana, for several months and in Port Arthur, Texas, since November 14, 1953—and that strike is still on.

Strikes hurt everybody but the union organizers. The company loses sales and the employees lose wages. No striker has ever regained his lost wages through increases gained by striking.

Another thing, a striker might very well lose his job in an economic strike because the company can go right out and permanently hire an outsider and give that person the job of the striker. That is the law.

* * * * *

In Bogalusa, Louisiana, our store signed a contract with the RCIA and the rates in that contract are as follows:

First 3 months_____	.55
3 to 6 months_____	.5750
6 to 12 months_____	.60
12 to 24 months_____	.6250
24 to 36 months_____	.65

Compare that to what you are getting.

In its exceptions Petitioner urges, in substance, that the Employer's remarks effectively indicated to the employees that union organization would avail them nothing; that their wages would suffer as a result; and that they would be discharged if they engaged in a strike. We find no merit in these contentions. We agree with the Regional

Director that the statements quoted above contain no threats of loss of employment in the event the Petitioner won the election; nor any suggestion that it would be necessary to strike to compel the Employer to bargain; nor any suggestion that it would be useless to select a union as bargaining representative. Neither does the statement by the Employer to the effect that economic strikers may be permanently replaced constitute interference with the election, as it is merely an expression of the Employer's legal position and of his rights under the Act. In so holding, we are, in accord with our usual practice, giving effect to the plain meaning of the words used. We must, therefore, reject the Petitioner's contention that the Employer's language is "Aesopian" and that the Board should look behind the remarks made.¹ Accordingly, we find that the aforesaid speech was privileged under Section 8 (c) of the Act, that it did not interfere with the employees' freedom of choice, and that it does not constitute a ground for setting aside the election.

In further support of objection No. 1, the Petitioner cites three instances of allegedly coercive statements by representatives of the Employer. On one of these occasions, Supervisor Selph stated to employee Crocker that she would kick her out of the store if she voted for the Petitioner. However, the investigation by the Regional Director reveals that Selph and Crocker are good friends; that the comment was made in a joking fashion; and that both Selph and Crocker clearly indicated to other employees who overheard the remark that the statement was made in jest. Under these circumstances, we find, as did the Regional Director, that this incident does not support objection No. 1.²

The other two instances upon which the Petitioner relies concern alleged statements by Supervisor Selph and the store manager, made about 2 weeks before the election, to the effect that the Employer would close the store before granting an increase in wages. As to Supervisor Selph, the Regional Director's investigation disclosed that the employees would often engage in general conversation concerning the Petitioner during lunch, and that on 1 or 2 occasions Supervisor Selph did state that the store could not afford to increase wages and would close before raising the wages of employees. However, the Regional Director further found that these conversations were not initiated by Selph; that the above statement was merely an expression of Selph's personal opinion in the context of the general discussion;

¹ Cf. *Telechron, Inc.*, 93 NLRB 474, 475, in which a majority of the Board found certain language coercive, saying that it would not require employees to look behind the plain meaning of coercive words to find an unexpressed reason for their utterance.

² The Petitioner contends that this incident occurred on or about August 5, 1954, rather than on or about July 14, 1954, as the Regional Director's report on objections states. In view of our determination that this statement had no coercive effect upon the employees and did not interfere in any way with their freedom of choice in the election, it is unnecessary to fix the exact date.

and that there was no evidence that Selph ever threatened that the Employer would use its economic power to interfere with union organization.

As to the store manager's statement, the Petitioner questions whether it was considered by the Regional Director, as the statement is not referred to in his report on objections. In this connection, the Petitioner states that it is aware of two affidavits obtained by Board agents, one of which deals with the above statement and the other with Supervisor Selph's luncheon remark, which are not referred to in the report on objections.³ However, it would appear that the affidavit relating to Selph is merely cumulative. As to the affidavit concerning the store manager, it allegedly attributes to him a remark similar to the ones considered by the Regional Director in his report with respect to Selph and found not to be coercive. Accordingly, even assuming that the store manager did make the statement attributed to him by the Petitioner, we find, apart from any other considerations, that this remark occurring about 2 weeks before the election provides insufficient basis for setting aside the election.

We therefore find, upon the entire record, that the objections of the Petitioner concerning the Employer's conduct fail to raise substantial and material issues with respect to conduct affecting the results of the election. Accordingly, we adopt the findings and recommendations of the Regional Director and hereby overrule all the Petitioner's objections, and do also hereby deny its request to remand the case for hearing on the objections.

As we find no merit in any of the Petitioner's objections, and as the Petitioner failed to secure 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 Retail Clerks International Association, Local No. 1529, AFL, and that said labor organization is not the exclusive representative of the employees of the Employer in the unit heretofore found appropriate.]

MEMBER MURDOCK, dissenting:

I do not agree with my colleagues' decision to overrule all the Petitioner's objections and deny its request to remand the case for hearing on objections. In its exceptions the Petitioner alleges that the Regional Director has in his possession two affidavits concerning coercive statements attributed to Supervisor Selph and the store manager which the Regional Director does not refer to in his report on objec-

³The statement attributed to Supervisor Selph is, "Well, you know that this store is losing money and Mr Pinson would close the store before he'd pay you higher wages." The statement allegedly made by the store manager is ". . . the store would close before we'll give you any more."

tions. The majority disposes of this allegation by finding that the affidavit relating to Selph is merely cumulative and the one as to the store manager merits no further inquiry because the statement attributed to him is similar to the one made by Selph and found noncoercive. In my opinion, the majority's abrupt treatment of these exceptions is wrong. The basis for finding Selph's luncheon statement noncoercive was that it was merely an expression of personal opinion by a supervisor in the context of a general discussion. There is a complete absence of any evidence as to the circumstances under which the statements attributed to Selph and the store manager in the aforementioned affidavits were made. Nevertheless, the majority finds that those statements, even if made, were noncoercive because they are similar to Selph's luncheon remark. The fallacy in this reasoning is apparent on its face. For these reasons I cannot accept the Regional Director's recommendations and would direct a hearing to resolve the material issues of fact raised by the Petitioner's exceptions relating to the alleged coercive statements made by Supervisor Selph and the store manager.

GRAND RIVER CHEMICAL DIVISION OF DEERE & COMPANY *and* OIL WORKERS INTERNATIONAL UNION, CIO, PETITIONER. *Case No. 16-RC-1525. February 23, 1955*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Marvin L. Smith, Jr., hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.
4. The Employer is a subsidiary of Deere & Company engaged in the manufacture of such products as anhydrous ammonia and urea and various types of fertilizers at Pryor, Oklahoma. It is a new operation which has been in the process of construction for the past year and a half. The Petitioner seeks a unit of all operating and maintenance employees. Approximately 98 employees are in the unit sought by the Petitioner, representing approximately 85 percent of the anticipated full