

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

All production and maintenance employees at the Charlotte, North Carolina, plant of the Employer, including truckdrivers, shippers, testers, inspectors, and truck tank mounters, but excluding office clerical employees, guards, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

MEMBER RODGERS took no part in the consideration of the above Decision and Direction of Election.

Mid-South Packers, Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America, AFL, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union 591, AFL-CIO, Joint Petitioners. *Case No. 32-RC-763. December 22, 1955*

THIRD SUPPLEMENTAL DECISION AND ORDER

Pursuant to a Supplemental Decision, Order, and Second Direction of Election¹ dated October 28, 1954, an election by secret ballot was conducted in this proceeding on November 23, 1954, under the direction and supervision of the Regional Director for the Fifteenth Region, among employees in the unit found appropriate by the Board. Following the election, a tally of ballots was furnished the parties. The tally shows that of the 145 votes cast in the election, 66 were for, and 64 votes were against, the Joint Petitioners, with 15 votes being challenged.

On November 29, 1954, the Joint Petitioners filed timely objections to conduct affecting the results of the election. The Regional Director thereupon investigated the objections and challenges. On May 27, 1955, the Regional Director issued and duly served upon the parties a report on challenged ballots and objections. The Employer filed timely exceptions to the Regional Director's report. Inasmuch as certain of the Regional Director's recommendations as to the challenged ballots were not excepted to, and the Regional Director had recommended that these challenges be overruled and the votes counted, the Board by a Second Supplemental Decision and Order² ordered the counting of these votes. The latest revised tally of ballots shows that 67 votes were cast for, and 72 votes cast against, the Petitioners and that there

¹ 110 NLRB 628.

² 113 NLRB 910.

114 NLRB No. 230.

remains outstanding 4 unopened challenged ballots. However, the 4 remaining challenged ballots cannot affect the results of the election because the Petitioners have failed, by a total of 6 votes, to obtain a majority of the valid votes cast in the election. The Petitioners' objections to the Employer's preelection conduct, therefore, remain for the Board's consideration.

The Regional Director's report: In his report on the objections, the Regional Director reported, in substance, as follows:

(a) During 1954, the Employer had considered the merits of a wiener peeling machine, but decided not to purchase it; such a machine would presumably replace those employees who presently peel wieners by hand, and the employees openly discussed this possible turn of events prior to the election.

Four employees submitted affidavits wherein they stated that on the day before the election, while they were engaged at work peeling wieners by hand, Foreman Pierce stated to them that "if the Union wins the election the Employer is going to install a wiener peeling machine" and that he (Pierce) might lose his job as a result. The Regional Director further reported that Pierce denied making this statement; Pierce admitted that he had heard talk among the employees indicating concern about the advent of the wiener peeling machine; and that Pierce also admitted he talked against the Union, and told the employees that they might not be able to get loans from the Employer and might work less hours if the Union came in, but that he intended no coercion.

(b) Prior to the election, according to the statement of employee Davis, Foreman Moran questioned Davis as to how he felt about the election, and told Davis that he (Moran) had been asked to make the inquiry. The Regional Director further reported that Moran admitted questioning Davis, but did it "merely out of curiosity," and not intending to put any pressure on Davis.

(c) According to an employee (unnamed), Supervisor Mattox told the employee the day before the election to "stick by me and I will stick by you," and to tell the other "boys" what he had said. The Regional Director also reported that Mattox denied making the statement.

The Regional Director found that the remarks attributed to Moran and Mattox were, in fact, made by them, and that the remarks interfered with the election. With reference to the "wiener peeling machine" incident, the Regional Director credited the statements of the employees, and found that Pierce made the remarks described above, relating to the wiener machine. The Regional Director further found that such remarks were a clear threat of loss of employment. The Regional Director did not discuss the effect of the other remarks made by Pierce. On the basis of these findings, the Regional Director recommended that the election be set aside.

The Employer's exceptions: In its exceptions the Employer denies that any threats were made by its supervisors or that there was any effort to coerce or intimidate the employees, and denies generally that it interfered with the conduct of a free election. The Employer emphasizes that Pierce has denied making the "wiener peeling machine" statement; that Mattox denied making the statement attributed to him; and that the statement of Moran was "completely misconstrued" by the Regional Director. The Employer contends that any statements made by its supervisors were in the form of privileged free speech. The Employer requests a hearing on the substantial and material factual issues it contends have been raised by its exceptions.

The Board has considered the Regional Director's report and the Employer's exceptions thereto, and finds that the exceptions raise substantial and material issues of fact with respect to the Petitioners' objections (a), (b), and (c), noted above, which may be best resolved at a hearing.

[The Board remanded the case to the Regional Director for the purpose of holding a hearing on objections, and ordered that the hearing officer serve upon the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the objections. Within 10 days from the date of the issuance of such report, any party may file with the Board in Washington, D. C., an original and six copies of exceptions. The party filing the same shall serve a copy thereof upon each of the other parties, and the Regional Director. If no exceptions are filed thereto, the Board will adopt the recommendations of the hearing officer.]

MEMBERS MURDOCK and BEAN took no part in the consideration of the above Third Supplemental Decision and Order.

The Babcock and Wilcox Company and United Steelworkers of America, AFL-CIO.¹ Case No. 16-CA-720. December 23, 1955

DECISION AND ORDER

On April 29, 1955, Trial Examiner Reeves R. Hilton issued his Intermediate Report in the above-entitled 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 Inter-

¹ The AFL and CIO having merged we are amending the identification of the Union's affiliation.