

Carter does not specifically deny the Employer's testimony in this regard, he did state that he at no time asked the employees whether they were for or against the Petitioner, or as to how they were going to vote. In the opinion of the hearing officer, the weight of the evidence concerning the contradiction in evidence, if any, compels him to conclude that Wilbur Carter on several occasions asked the employees about what they thought about the Petitioner.

It was admitted by Frederick Carter that he was aware that his brother, Wilbur Carter, was also engaged in conducting personal interviews of employees throughout this period. In addition, it appears that most of the employees who were individually interviewed were interviewed by both Carters.

The undisputed facts show that about 50 percent of the eligible employees were individually interviewed by the Carters. It appears that most of these conversations occurred in the "upstairs room" which ensured privacy to the Employer. Moreover, the evidence establishes that the Carters commenced several of the conversations by asking each employee what he thought or felt about the Petitioner in regard to the pending election.

In light of these foregoing facts concerning the circumstances surrounding the interviews, and in consideration of the activities of Lawrence Baxter,¹⁰ the hearing officer concludes that such conduct interfered with a free election.¹¹

[Recommendations omitted from publication.]

¹⁰ See footnote 8

¹¹ See *Economic Machinery Company*, 111 NLRB 947, *Galloher Drug Company*, 115 NLRB 1879, *Hook Drugs, Inc.*, 117 NLRB 846, *San Diego Glass and Paint Company*, 117 NLRB 59, *Qualton*, 115 NLRB 65, 66. Nor does the Board's holding in *Mall Tool Company*, 112 NLRB 1813, affect the result herein as in that case the employees were interviewed at their place of work. In the instant case, most of the interviews occurred in an enclosed area chosen by the Employer because of its privacy.

Newth-Morris Box Company and International Printing Pressmen and Assistants' Union of North America, Printing Specialties and Paper Products Local No. 600, AFL-CIO, Petitioner

Morris Foster, Inc. and International Printing Pressmen and Assistants' Union of North America, Printing Specialties and Paper Products Local No. 600, AFL-CIO, Petitioner. *Cases Nos 12-RC-150 and 12-RC-162. January 21, 1958*

DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election, an election was conducted on July 26, 1957, under the direction and supervision of the Regional Director for the Twelfth Region, among certain employees of the Employer. The tally of ballots shows that there were approximately 66 voters; and that 33 valid votes were cast for the Petitioner, 29 valid votes were cast against the Petitioner, 4 ballots were challenged, and no ballots were declared void.

The challenges were sufficient in number to affect the results of the election. On August 2, 1957, the Employer timely filed objection to conduct affecting results of election. On September 11, 1957, the Regional Director, after investigation, issued his report on objections and challenges, recommending that the objections be overruled in their entirety, that 1 challenge be sustained and the other 3 challenged ballots remain unopened since no longer determinative as to the

results of the election, and that the Petitioner be certified as the collective-bargaining representative of the employees in the unit. On September 23, 1957, the Employer filed exceptions to that part of the Regional Director's report dealing with the objections.

Upon the entire record in this case, the Board¹ finds:

1. The Employer is engaged in commerce within the meaning of Section 2 (6) of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. 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 Employer's Jacksonville, Florida, plant, including plant clerical employees, but excluding all office clerical employees, and professional employees, guards, and supervisors as defined in the Act.

5. In its objections, the Employer alleges that unidentified pro-union employees made certain threats to employees Chesser and Ammons prior to the election.

With respect to Chesser, there is evidence that on one occasion prior to the election another employee, Moore, threatened Chesser with bodily harm for being against the Petitioner. In the absence of evidence that the Petitioner either authorized or subsequently ratified the actions of Moore, we find that Moore was not an agent of the Petitioner.²

Moreover, the single incident alleged with respect to Chesser admittedly occurred at least 3 weeks prior to the election, held on July 26, 1957, and therefore prior to the date of the approval of the election agreement on July 19, and even prior to the mailing of the election agreement by the Regional Director on July 12, to the parties for signature.³ Thus, it is clear that the alleged threats made to Chesser were made prior to the date of execution of the consent-election agreement, and that, even if proven that Moore was an agent of the Petitioner, such threats cannot be considered as a basis for objections to the election.⁴

¹ Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Leedom and Members Rodgers and Jenkins].

² See *Poinsett Lumber and Manufacturing Company*, 107 NLRB 234.

As found by the Regional Director, the Employer does not contend that Moore was other than an employee.

³ The election agreement was executed by both parties sometime between July 12 and July 17.

⁴ *The Great Atlantic & Pacific Tea Company*, 101 NLRB 1118; *F. W. Woolworth Co.*, 109 NLRB 1446.

The evidence with respect to Ammons also shows that the alleged threats made to her were made by other employees, and there is no evidence that the Petitioner either authorized or subsequently ratified such actions by these other employees.⁵ Moreover, as only these alleged threats to only one employee can be considered as a basis for objections to the election, we find that the election was not held in such a general atmosphere of confusion and fear of reprisal as to interfere with a free and untrammelled election.⁶

6. In the absence of any exception to the Regional Director's recommendations that 1 challenge be sustained and the other 3 challenged ballots remain unopened since no longer determinative as to the results of the election, we adopt these recommendations.

As we have overruled the Employer's objections to the election and the challenged ballots can no longer affect the results of the election, and as the Petitioner has received a majority of the valid votes cast, we shall certify the Petitioner as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified International Printing Pressmen and Assistants' Union of North America, Printing Specialties and Paper Products Local No. 600, AFL-CIO, as the designated collective-bargaining representative of all production and maintenance employees at the Employer's Jacksonville, Florida, plant.]

⁵ See *Poinsett Lumber and Manufacturing Company, supra*.

As found by the Regional Director, the Employer does not contend that these other employees were other than employees.

⁶ See *Poinsett Lumber and Manufacturing Company, supra*. Cf. *Diamond State Poultry Co., Inc.*, 107 NLRB 3; *Poinsett Lumber and Manufacturing Company*, 116 NLRB 1732.

Parkersburg Building & Construction Trades Council, AFL-CIO; International Hod Carriers', Building and Common Laborers' Union of America, Local Union No. 1085, AFL-CIO; United Brotherhood of Carpenters and Joiners of America, Local No. 899, AFL-CIO; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 175, and International Union of Operating Engineers, Local No. 132, AFL-CIO and Howard Price d/b/a Howard Price & Co. Case No. 9-CD-30. January 23, 1958

DECISION AND DETERMINATION OF DISPUTE

STATEMENT OF THE CASE

This proceeding arises under Section 10 (k) of the Act, which provides that, "Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (D) of section 119 NLRB No. 171.