

Aeronca Manufacturing Corporation and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-AFL-CIO), Petitioner. Case No. 9-RC-2586. September 4, 1958

SECOND SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Supplemental Decision, Order, and Direction of Second Election,¹ issued on July 3, 1957, an election by secret ballot was conducted on August 2, 1957, under the direction and supervision of the Regional Director for the Ninth Region, among the employees in the unit found appropriate by the Board. Following the election, the parties were furnished a tally of ballots. The tally shows that, of approximately 1,255 eligible voters, 1,179 ballots were cast, of which 545 were for the Petitioner, 622 were against the Petitioner, and 12 were challenged. The challenged ballots were insufficient in number to affect the results of the election.

On August 9, 1957, the Petitioner filed timely objections to election. After investigation, the Regional Director, on May 2, 1958, issued and duly served upon the parties his report on election, objections to election, and recommendations to the Board, in which he found that the Petitioner's objections did not raise substantial or material issues with respect to the election, and, accordingly, recommended that the objections be overruled.² Thereafter, the Petitioner filed exceptions to the Regional Director's report and a supporting brief, and the Employer filed a brief in support of the report and in opposition to the Petitioner's exceptions.

The Board has considered the Regional Director's report, the exceptions and briefs, and the entire record in this case,³ and finds:

¹ 118 NLRB 461.

² During the Regional Director's investigation, the Petitioner's witnesses raised several matters which were not explicitly covered by the objections. The Regional Director was of the opinion that these matters were not timely raised. Nevertheless, he investigated and discussed them in his report, and, having found them without merit, he recommended that they be overruled even if considered timely. As the jurisdiction of a Regional Director in making postelection investigations encompasses subject matters uncovered in the course of his investigation, we shall consider these additional issues as well as those raised by the Petitioner's objections. *Carter-Lee Lumber Company*, 119 NLRB 1374, and cases cited therein.

³ As the report and the exceptions and briefs, in our opinion, adequately present the issues and the positions of the parties, the Petitioner's request for oral argument is hereby denied. Also, in view of our disposition *infra* of the Petitioner's objections, we find no merit in its contention that another hearing should be directed in this case.

1. In its objections, the Petitioner alleged that Aeronca Employees Committee, organized during the period between the first and second elections,⁴ had been financed and assisted by the Employer, and had been the instrument through which the Employer engaged in anti-Petitioner conduct. The Regional Director found, however, and we agree, that the evidence presented by the Petitioner did not support these allegations.

2. The Petitioner also alleged in its objections that the Employer had submitted a voting eligibility list containing the names of several hundred ineligible persons, and arranged to have them vote in the election, without the Petitioner's knowledge of their ineligibility. The Regional Director, after checking the lists of 194 names submitted by the Petitioner against the voting list, found that only 19 of the persons named cast unchallenged ballots, that 2 did not vote, and that the remaining 173 either were not on the voting list or voted challenged ballots. The 19 ballots, even if they were not properly cast, would not have been sufficient to affect the results of the election. Moreover, the Regional Director's analysis of the Employer's payrolls shows that the number on the voting eligibility list tallied with the number of eligible employees, and that the voting list, therefore, could not have been padded, as alleged by the Petitioner. Accordingly, we adopt the Regional Director's finding that this objection is not supported by the evidence.

3. The Petitioner asserted in its objections that the Employer made statements indicating that selection of the Petitioner would result in loss of employment. In support of this allegation, the Petitioner presented one witness who stated that he overheard Fitzpatrick, an assistant foreman,⁵ tell an employee that if the Petitioner won, there would be a strike, and the Employer would lose its Boeing contract. A second witness stated that he overheard part of a conversation between Fitzpatrick and two employees in which Fitzpatrick urged them to vote against the Petitioner because he had "heard the rumor that they are going to move these contracts to Seattle, Washington." The witness did not know what was said before or after these remarks. Fitzpatrick recalled a conversation with the 2 employees named, denied the statements attributed to him, and was corroborated by 1 of the 2 employees involved; the other was unavailable. The Petitioner presented no witness to whom such remarks were directly addressed. The Regional Director found there was no substantial evidence that the remarks allegedly overheard were actually made. We agree.

⁴ Aeronca Independent Union, which had represented the Employer's employees for about 10 years and had participated in the first election herein, was not placed on the ballot in the second election because of a lapse in its compliance with the filing requirements of the Act. Aeronca Employees Committee was organized by employees under the guidance of Alton Combs, an attorney.

⁵ Assistant foremen at the plants here involved are supervisors within the meaning of the Act.

Among the matters raised by the Petitioner during the investigation were allegations that an employee was told by Lawler, president of the Employer, during a discussion about a pay raise, that the employee would be given the top rate in his classification, without a grievance, if the Petitioner did not win the election; and that the same employee was advised by his foreman that, if the Petitioner lost the election on Friday, he should not put himself to the trouble of coming in on Monday. Lawler and the foreman denied making these statements. The Regional Director found that there was insufficient evidence to support these allegations, and that they did not raise substantial or material issues with respect to the conduct of the election. We agree with these findings. In an election involving more than 1,250 employees, and in a plant with about 90 supervisors, the alleged remarks, if made, would have been too isolated and insubstantial to warrant either setting aside the election or directing a hearing thereon.⁶ The Petitioner argues in its brief that these alleged acts of interference should be considered as a continuation of the conduct found to have interfered with the first election. We find no merit in this argument in view of the lapse of more than 1½ years between the two elections, and the insufficiency of the evidence regarding the remarks here in question.

4. The Petitioner has objected to statements which the Employer made to employees to the effect that the Board's supplemental decision directing the second election was wrong; that, if the Petitioner won the election, the Employer could seek a court determination of the issues; and that employee representation would thereby be delayed for about 2 years. As these statements contained no "threats or other elements of intimidation,"⁷ we find, as the Regional Director did, that they constituted a permissible expression of the Employer's legal position.⁸

One of the issues raised during the Regional Director's investigation concerns the Petitioner's claim that President Lawler stated, in a speech to the employees, that he would recognize the Aeronca Employees Committee after the election if the Petitioner were defeated. Lawler denied that he made such a commitment, and stated that he told the employees he could take no action with respect to recognition of the Committee because of the pending election. Combs, attorney for the Committee, in a letter to Lawler dated July 30, 1957, had stated that he intended to request recognition and would be ready to meet with Lawler "immediately after the election Friday, August 2,

⁶ *Mead-Atlanta Paper Company*, 120 NLRB 832.

⁷ *American Radiator & Standard Sanitary Corporation, Pacific Order Handling Division*, 120 NLRB 1347.

⁸ *National Furniture Manufacturing Company, Inc.*, 106 NLRB 1300; *Esquire, Inc.*, 107 NLRB 1238; *Westinghouse Electric Corporation*, 110 NLRB 332; *Schick, Incorporated*, 118 NLRB 1160, 1162-63; *Sylvania Electric Products, Inc.*, 120 NLRB 1795; *The Guiberson Corporation*, 121 NLRB 260.

1957." As the Regional Director pointed out in his report, the Petitioner's witnesses differed substantially in their versions of what Lawler said about recognizing the Committee.⁹ Under all the circumstances, we find, as the Regional Director did, that the evidence submitted by the Petitioner does not support this objection.

We also agree with the Regional Director that the other alleged instances of misconduct do not constitute grounds for setting aside the election or for holding a hearing as they were not supported by evidence or were not sufficient in law to constitute interference with the election. Accordingly, we find that the Petitioner's objections do not raise substantial or material issues with respect to the conduct of the election, and we hereby overrule them.

As the Petitioner failed to secure a majority of the valid ballots cast, we shall certify only the results of the election.

[The Board certified that a majority of the valid ballots was not cast for International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-AFL-CIO), and that the Union is not the exclusive representative of the employees in the unit heretofore found by the Board to be appropriate.]

CHAIRMAN LEEDOM and MEMBER JENKINS took no part in the consideration of the above-Second Supplemental Decision and Certification of Results of Election.

⁹ When the Petitioner filed its brief, it also submitted to the Board copies of affidavits which, the Petitioner stated, it understood had been submitted to the Regional Director. One of these affidavits states in relevant part as follows:

Mr. Lawler also said they could organize another union within a week and left the impression this new organization could bargain with Aeronca Corp. In this sense Mr. Lawler referred to Alton Combs letter to him (Mr. Lawler) requesting bargaining rights in the name of The Aeronca Employees Committee Inc. [Sic.]

A second affidavit states that:

In a speech by Mr. Lawler called during working time he said "even though the UAW says you can't have an N. L. R. B. certified union I am going to recognize the Aeronca Employees Committee to represent you. I (Mr. Lawler) pledge this to you if the UAW is defeated."

The other affidavits submitted by the Petitioner do not touch on this matter.

Kenyon-Peck, Inc. and Automotive, Petroleum, Cylinder and Bottled Gas, Chemical Drivers, Helpers and Allied Workers, Local No. 922, I. B. T., Petitioner. Case No. 5-RC-2459. September 4, 1958

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

On April 17, 1958, pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted under the 121 NLRB No. 98.