

employees, guards, and all supervisors as defined in the Act, constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

4. The Union was on July 19, 1960, and, at all times thereafter, has been and is the exclusive representative of all the employees in the aforesaid unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on April 3, 1961, and at all times thereafter, to bargain collectively with the Union as the exclusive representative of all its employees in the aforesaid appropriate unit, the Employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act, as amended.

6. By the aforesaid refusal to bargain, the Employer has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act and has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act, as amended.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

[Recommendations omitted from publication.]

Claussen Baking Company, Petitioner *and* Local 15-A, Retail, Wholesale and Tobacco Workers, affiliated with Retail, Wholesale and Department Store Union, AFL-CIO. Case No. 11-RM-71. November 9, 1961

SECOND SUPPLEMENTAL DECISION, ORDER, AND DIRECTION OF THIRD ELECTION

Pursuant to a Supplemental Decision, Order, and Direction of Second Election¹ issued by the Board on May 4, 1961, a second election by secret ballot was conducted on May 26, 1961, under the direction and supervision of the Regional Director for the Eleventh Region, among the employees in the unit found appropriate. After the election, the parties were furnished a tally of ballots which showed that of approximately 61 eligible voters, 61 valid ballots were cast, of which 30 were for and 31 against the Union. On June 1, 1961, the Union filed timely objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, Series 8, the Regional Director conducted an investigation of the objections and thereafter issued and duly served upon the parties his report on objections, in which he recommended that the objections be overruled and that the results of the election be certified.

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 McCulloch and Members Leedom and Brown].

The Board has considered the Union's objections, the Regional Director's report, the Union's exceptions, and the entire record in this case, and concludes, for reasons indicated below, that objection No. 1 raises material and substantial issues affecting the election results.

¹ Not published in NLRB volumes

The Petitioner excepted, *inter alia*, to the Regional Director's recommendation that its objection No. 1 be overruled. In that objection the Petitioner alleged that the election was interfered with by the conduct of A. R. Rakoske, Jr., a sanitation department leadman, who stood near the polls and urged employees to vote against the Petitioner while J. K. Brandenburg, plant operation manager, and L. R. Welcker, sales supervisor, stood nearby.

It is uncontroverted that Rakoske talked with several newly hired employees as they were on their way to the polls and that he urged them to vote against the Petitioner. This conduct occurred within 15 feet of the entrance to the polling place and it continued for about 15 minutes. About midway through the 1-hour polling period the Board agent learned of this conduct and asked Rakoske to discontinue it. At the same time, the Board agent observed Plant Manager Brandenburg and Sales Supervisor Welcker conversing some farther distance away from the polling place and requested them to leave. The Board agent's requests were complied with.

The Regional Director concluded that although Rakoske was engaged in electioneering, it could not be attributed to the Employer, and that such conduct did not interfere with the conduct of the election. We disagree. It is the province of the Board to safeguard its elections from conduct which inhibits the free choice of the voters, and the Board is especially zealous in preventing intrusions upon the actual conduct of its elections. In furtherance of this responsibility the Board prohibits electioneering at or near the polls.²

Here, the electioneering occurred within approximately 15 feet of the polls and the Board agent requested its discontinuance. We are satisfied that it occurred at or near the polls in violation of the Board's rules.³ Furthermore, we note that the electioneering occurred for a substantial part of the 1-hour polling period, involved several voters, and could have affected the election results if it swayed but one voter. In the circumstances, without assessing culpability therefor, we are of the opinion that the electioneering here engaged in by Rakoske was of such a nature that it inhibited the exercise of free choice and therefore constitutes a basis for setting aside the election. Accordingly, we shall set aside the election and order that a new one be conducted.⁴

[The Board set aside the election.]

[Text of Direction of Third Election omitted from publication.]

² The Board's election notices specifically enjoin such conduct

³ Clearly, the fact that the electioneering was engaged in by a nonsupervisory leadman, who was one of the eligible voters, does not render it any less a violation of the rule.

⁴ In view of our action herein, we find it unnecessary to pass on the Petitioner's other exceptions