

The Employer in its brief contends that the matters which the Regional Director found objectionable were mentioned and discussed by it in a letter to employees 3-weeks before the election, so that the reliance upon the impact of a last minute appeal which could not be answered or evaluated was unwarranted.² Moreover, the Employer contends that the above statements, when considered in conjunction with the complete letter of which it was an integral part and the related 4-week preelection campaign, could be recognized by the employees as propaganda. We agree with the Employer.

In our opinion the above statements relied upon by the Regional Director contained neither an implied nor expressed threat of reprisal or promise of benefit, especially when considered in the context of the complete letter and the total election campaign. In such statements the Employer was merely answering prior propaganda of the Petitioner as to the benefits to be gained from unionization and pointing out certain disadvantages which could result. This an employer has a right to do where, as here, it is done in a noncoercive manner.³ Under the circumstances, therefore, we do not believe that the freedom of choice of the employees was sufficiently impaired to warrant setting aside the election. Accordingly, we shall overrule the findings of the Regional Director and certify the results of the election.

[The Board certified a majority of the valid votes was not cast for the International Chemical Workers Union, AFL-CIO, and that this labor organization is not the exclusive representative of the employees in the unit found appropriate.]

MEMBER BROWN took no part in the consideration of the above Decision on Review and Certification of Results of Election.

² The factual contentions raised in the Employer's brief are uncontroverted

³ See *Thomas v. Collins*, 323 U.S. 516, 532 (1944).

Arch Beverage Corporation and Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case No. 25-RC-2240. February 21, 1963

DECISION ON REVIEW AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Decision and Direction of Election issued by the Regional Director for the Twenty-fifth Region, an election was held on August 30, 1962, under the direction and the supervision of the

Regional Director. Upon the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately 8 eligible voters, 4 ballots were cast against, and 3 ballots were cast for, the Petitioner, and 1 ballot was challenged. The Petitioner filed timely objections to conduct affecting the results of the election. The Regional Director investigated the objections and thereafter, on October 18, 1962, issued and served upon the parties his Supplemental Decision and Direction of Second Election in which he found merit in the Petitioner's objections. The Employer thereafter filed a timely request for review.

On November 11, 1962, the Board, by telegraphic order, granted the Employer's request. Subsequently, a brief in support of such request was filed by the Employer. No brief was filed by the Petitioner.

The Petitioner's objections relate to a letter mailed to eligibles by the Employer prior to the election. The Regional Director's investigation revealed that on August 28, 1962, approximately 2 days before the election, the Employer sent a four-page letter to all employees in which it discussed *inter alia*: (1) The forthcoming election and the possible effects of union victory upon the relationships employees now enjoy with the Employer, and the necessity for employees to vote so that their true wishes be expressed; (2) the Petitioner's propaganda as to the wage increases and other benefits if the Union is voted in and the Employer's inability to meet such demand; and (3) the responsibilities and the possible loss of individual freedoms which can result from unionization.

The Regional Director found that the following sentence which appeared as a separate paragraph on the top of page 3 of the above letter coercive and a basis for setting aside the election:

The Teamsters have no power, legal or otherwise to force the Company to operate this warehouse for a day, a week, a month or any longer time.

The Regional Director concluded that this sentence stood by itself "unrelated to what preceded it or succeeded it" and leads to the inference that the Employer "might cease operating its warehouse if the employees designated the Union as their representative."

In its brief the Employer contends that the above paragraph was considered out of context from the complete letter and without regard to propaganda distributed a few days before in which the Petitioner claimed that certain wage increases and other benefits would automatically prevail if the Petitioner were successful in receiving a majority of the votes cast. Furthermore, the Employer points out that on the day the letter was distributed a group meeting was held with the employees in which the benefits which the Petitioner publi-

cized would be forthcoming were frankly discussed in terms of the financial position of the Company and the Employer stressed, as it did in the letter, that the Petitioner could not force it to pay an uneconomic wage increase. The Employer's basic position is that the single sentence relied upon by the Regional Director cannot be considered in the abstract, but should be viewed in the total context of the letter, the group meeting, and the Petitioner's propaganda which the Employer was seeking to answer.¹ We agree with the Employer.

As we read the Employer's letter, the one-sentence paragraph in question is directly related to preceding statements which stress that the Employer must operate profitably to stay in business and that on the basis of the Employer's financial position it would lose money if the Petitioner's demands were to be met. In the paragraph immediately preceding the sentence found objectionable by the Regional Director, the Employer in a temperate, business-like manner presented a detailed statement of its profit-and-loss position for the years 1959 to 1962 with the caveat that "any radical wage increase that the Union may have promised you would more than likely place Arch Beverage in bankruptcy inside of six months." In our opinion the intended and natural implication of the one-sentence paragraph in question was a continuation of the Employer's contentions that it has the responsibility for operating a profitable business and that the Petitioner regardless of its claims cannot force the Employer to sign a contract or to operate on a basis which is not in the good interest of the business. We find the one-sentence paragraph in question, under all the circumstances, was an attempt to answer the Petitioner's propaganda rather than a threat to close the warehouse if the employees voted for the Petitioner, and we believe that the paragraph would be so reasonably construed by the employees.² Accordingly, we shall overrule the findings of the Regional Director and certify the results of the election.

[The Board certified a majority of the valid votes was not cast for Local 135, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and that this labor organization is not the exclusive representative of the employees in the unit found appropriate.]

MEMBER BROWN took no part in the consideration of the above Decision on Review and Certification of Results of Election.

¹ The factual contentions of the Employer as to the Petitioner's propaganda regarding benefits it would demand and the nature of the group meeting on the day the Employer's letter was distributed are uncontroverted.

² See, e.g., *Motec Industries, Inc.*, 136 NLRB 711; *Allen-Morrison Sign Co., Inc.*, 138 NLRB 73; cf. *Lake Catherine Footwear, Inc.*, 133 NLRB 443, 444.