3. Within 10 days from the date of this Decision and Determination of Dispute, International Association of Bridge, Structural and Ornamental Iron Workers shall notify the Regional Director for the First Region, in writing, whether or not it will refrain from forcing or requiring Structural Concrete Corporation by means proscribed by Section 8(b)(4)(D) to assign the work in dispute to their members rather than to the employees of the Employer.

American Greetings Corporation *and* International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL–CIO, Petitioner. *Case No. 26–RC–1909. May 6, 1964*

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a stipulation for certification upon consent election, executed on April 3, 1963, an election by secret ballot was conducted on April 25, 1963, under the direction and supervision of the Regional Director for the Twenty-sixth Region among the employees in the stipulated unit. At the conclusion of the balloting, the Regional Director furnished the parties with a tally of ballots which showed that, of approximately 655 eligible voters, 631 cast ballots, of which 86 were for, and 532 were against, the Petitioner, and 13 were challenged. Thereafter, the Petitioner filed timely objections to the election.

The Regional Director investigated the objections and on May 31, 1963, issued his report on objections,[1] in which he found that objection No. 8 raised substantial and material issues affecting the election and recommended that the election be set aside and a new election be held. He recommended that all other objections be overruled. The Employer and the Petitioner filed timely exceptions to the report.

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

1. The Employer is engaged in commerce within the meaning 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 employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. We find, in accord with the stipulation of the parties, that the following unit is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act: All production, maintenance, and warehouse employees at the Employer's plants in

[1] On June 14, 1963, the Regional Director issued an erratum.

Osceola, Evadale, Blytheville, and Wilson, Arkansas, including truck-drivers, head stockmen, head maintenance men, setup men, and plant clerical employees,[2] but excluding general office employees, professional employees, guards, and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report, and the exceptions thereto, and makes the following findings:

Objection No. 8 concerns a series of 14 letters to employees from the Employer's plant manager, all under the heading "Talking It Over," in addition to other campaign material, distributed during the critical period before the election.

In determining whether campaign statements interfere with employee free choice in representation elections, the Board is sometimes presented with difficult issues of fact. Frequently, the conclusion will require the delicate balancing of the rights of the individuals and parties involved to express themselves freely on the economic issues before the voters, against the rights of the latter to be free of coercive influence, however subtle, in the exercise of their franchise. The instant case is of this type.

The first of the Employer's letters, distributed March 19, 1963, well before the parties executed the consent-election agreement, set forth the Employer's opposition to unionization of its plant. It stated, in part,

> Some of you may wonder about our position as to the union organizing campaign which started about one year ago. You and your families have a right to know what our position is on the matter.
>
> American Greetings has always been for the things that are best for American Greetings people. A Union in the plant could not possibly benefit any of us, but instead, we strongly believe it would do serious harm. For this reason, we intend to use every proper means to prevent the union from coming here.
>
> We assure you that as far as American Greetings is concerned, we do not feel that it is necessary for anybody to join a union to work here. Those who might join or belong to a union will never get any advantages, benefits or preferred treatment of any sort over those who do not join or belong to a union. We believe in impartial and fair treatment to all employees, regardless of . . . church, union or other affiliations.

In the next letter, distributed March 22, entitled "Protect Your Freedom," the Employer said, "You have much to lose if the outside Union organizers win," i.e., "your freedom as an American citizen" and "your right to decide for yourself what you want to do." This

[2] Plant clerical employees include all clerical employees working other than in the general offices of the Employer at Osceola.

letter also quoted sections of the Petitioner's constitution to support assertions that employees could be ordered out on strike anytime, assessed for funds to support strikes, required to "obey Union bosses," and expelled without hearing for disloyalty. The Petitioner could, and did, respond to this letter.

In a letter of March 27, the Employer reported on an allegedly false statement made by a discharged female employee that she was given a check, not for vacation pay, but as a bribe to get her out of union activities. On March 29, the Employer announced that a Board hearing would be held April 2 to determine voter eligibility, that those who signed authorization cards were not precluded from voting "no," and that any threats to employees should be reported to the Employer.

The next letter, on April 8, reported the Employer's version of a conversation with David Angle, an employee, in the course of which a variety of subjects were covered. On the subject of a wage increase, the Employer said: "Winning the election would only give the union the right to bargain with the Company for a contract. The union would have the right to present demands to us. We would have the right to reject any union demands which we felt were out of line." Asked whether it would close down if the Petitioner won, the Employer stated: "Our Company will not close down just because the Union gets in the plant."

On April 11, the Employer wrote about a 9-month old strike called by another labor organization, the IUE, against Emerson Electric which, like the Employer, had a plant in Arkansas, at Paragould. This letter contained a newsphoto of two female strikers wearing placards and walking the picket line. The caption read: "9 Months Later—The Fun is Gone—So Are Their Jobs!" The Employer compared Emerson Electric's troubles to its own, noted the fact that all strikers at Emerson Electric had been replaced, promised more details on the "Paragould story," and suggested that the employees think for themselves.

The next day the Employer circulated a letter and poster on the strike theme. In the letter the Employer claimed that the Petitioner had called a strike at the plant in Rittman, Ohio, because the "Union Bosses wanted to save face" for having lost a large number of arbitration cases. The poster depicted a strike by the Petitioner against the Employer, with the words "Who Would Buy the Groceries . . . While You Walk the Pulp & Sulphite Picket Line."

On April 12 the Employer distributed packets of play money in different denominations lampooning promises of the Petitioner's organizers. On April 15 the Employer reported on an offer made by

a former employee—who said he was active in the Petitioner's organization drive—to supply the Employer with inside information, for a price, or to work for the Employer as a "union buster." This offer was rejected because, the Employer said, it was "morally and legally wrong." The next day, April 16, the Employer distributed another letter with attached newspaper clippings pointing up stories of violence in the Emerson Electric strike at Paragould and relating such stories to its situation in a series of rhetorical "Would you want . . ." questions, to each of which it responded "If not, vote *NO*."

The next day the Employer circulated a letter and cartoon lampooning "Big Promises" made by the Petitioner's organizers. It also referred to a 6-week strike initiated by the Petitioner, under the leadership of Joseph Bradshaw, at St. Joe Paper Company in Memphis, Tennessee, which resulted in no benefits and which was called off after strikers were replaced. The letter ended with the query, "Do you want to lose your job through being replaced in one of Bradshaw's stupid strikes?" The next day, the Employer followed up with a letter entitled "The Facts About Joseph Bradshaw—A Lost Strike—and Lost Jobs." The Employer asserts in the letter that Bradshaw promised wage increases of 45 to 93 cents per hour to the employees at St. Joe Paper Company, that he has made "Big, Big, Promises" to employees of the Employer, that he would have to strike to make good on these promises, and asks how the employees think they would come out in "a Joe Bradshaw stupid strike" against the Employer. This letter, quoting a Memphis newspaper, goes on to describe incidents of strike violence and coercion in the St. Joe strike and ends with the statements: "It Could Happen Here—Vote Right—Protect Yourself." The Petitioner subsequently responded to this propaganda relating to the St. Joe strike by setting forth its own version of the facts and asking why the Employer doesn't mention what Bradshaw has done for the workers at Kimberly-Clark.

On April 22, the Employer responded to an earlier leaflet distributed by the Petitioner on the subject of the Employer's earnings. On April 23, the Employer responded to assertions on a variety of subjects earlier made by the Petitioner in its counterpropaganda.

As above indicated the Petitioner had opportunity to, and did in part, counter statements made in the Employer's propaganda campaign.[3] Also, on April 12, the International Ladies' Garment Work-

[3] The Petitioner's campaign propaganda included, among other things, a booklet entitled "Look Out Below" which was circulated March 21. It cautioned employees about anticipated propaganda prepared for the Employer by "union busting specialists." It warned that union members might be accused of being "strike happy, irresponsible and violent" individuals. The facts, however, were, it stated, that of 125,000 union contracts, 97 percent were signed after peaceful negotiations. It also forewarned employees of Employer-sponsored rumors concerning known "union sympathizers," plant shutdowns, and harsh union policies.

ers' Union, AFL–CIO, Central States Region, Southern Missouri-Arkansas District Council, distributed a leaflet supporting a vote for the Petitioner. Finally, the day before the election, a handbill by the Osceola Chamber of Commerce and another, without its sponsor identified, both urging a "no" vote, were distributed to employees outside the plant entrance. The Regional Director found nothing coercive in this third party propaganda and no exceptions were taken to his finding.

In his report the Regional Director concluded that the entire thrust of the Employer's preelection material was to impress upon the employees the futility and foreboding consequences of choosing the Petitioner, including the inevitability of strikes, loss of employment, and violence, thereby preventing the exercise of free choice by employees in the selection of a bargaining agent. The Employer contends that this material was within the limits of permissible campaign propaganda. We find merit in this contention.

Although campaign propaganda bearing on strikes and their consequences does not contain any express or implied threats of retaliatory action by the employer, it nevertheless becomes improper when it produces an atmosphere of unreasoned fear that the employer will take such action if the employees select a labor organization to represent them. In cases of this nature, therefore, the problem is one of determining whether the campaign propaganda has exceeded the bounds of fair comment, taking into account the entire context in which the material was presented, as well as whether there was opportunity for reply by the participating labor organizations or for independent evaluation by the employees.

As indicated by the above summary, the Employer waged an aggressive campaign against selection by its employees of the Petitioner as their bargaining representative, in the course of which it made references to two strikes in which the Petitioner was involved and to one strike involving the IUE at the Arkansas plant of another employer. We note that the Employer's statements concerning these three strikes were temperate and factual in character and were relevant to the election issues before the employees. To the extent that they arguably were half-truths or created a distorted picture, the Petitioner had full opportunity to, and did, circulate counter-propaganda. Many of the statements and cartoons distributed by the Employer concerned the qualifications of the Petitioner to represent the interests of the employees and could readily be evaluated by employees as typical campaign propaganda. Contrary to the Regional Director, we do not believe that the election atmosphere was such that the employees were precluded from exercising a rational choice on the

question of whether or not they wished to be represented by the Petitioner.[4] Objection No. 8 is therefore overruled.[5]

Accordingly, as we have overruled the objections and as the tally of ballots shows that Petitioner has not received a majority of the valid votes cast, we shall certify the results of the election.

[The Board certified that a majority of the valid votes has not been cast for the International Brotherhood of Pulp, Sulphite, and Paper Mill Workers, AFL–CIO, and that the said labor organization is not the exclusive representative of the employees in the unit found appropriate.]

MEMBER BROWN, dissenting:

This case appears to conflict with the Board's holding in *Storkline Corporation*.[6] There, we set aside an election where the Employer's campaign "was keyed to the idea of instilling fear in the minds of employees who might be disposed to vote for the Union—fear of physical violence, fear of strikes, and fear of loss of employment." There, as here, the Employer appealed "to the employees' fears of economic and physical harm."[7] We stated in *Storkline* that:

[4] We also disagree with the Regional Director's conclusion that the propaganda had the impact of creating in the minds of the employees the futility of selecting a bargaining representative. In cases in which the Board had set aside an election for that reason, the employer had stated, either expressly or by clear implication, that it would not bargain in good faith with a union even if it were selected by the employees. See *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782; *Oak Manufacturing Company*, 141 NLRB 1323; *The Lord Baltimore Press*, 142 NLRB 328. Member Leedom did not participate in the two last cited cases.

Our dissenting colleague believes that the decision is in conflict with *Storkline Corporation*, 142 NLRB 875. (Panel decision by Chairman McCulloch and Member Brown, with former Member Rodgers dissenting.) In our opinion, the facts of that case are clearly distinguishable. There, the majority found that the employer raised the strike issue as a "straw man" with which to frighten employees. Here, the Employer related the strike and violence issues to the Petitioner's own strike record. That record was relevant to the election issues before the employees. Moreover, the Petitioner could have, and in fact did, answer this Employer contention with its own version of its record. In these circumstances, neither the fact that the Employer also discussed a strike in a nearby plant in which Petitioner was not involved, nor the fact that the Employer's development of the strike theme pointed up to employees that in light of Petitioner's own strike record, their selection of Petitioner might lead to their involvement in strikes, violence, and loss of jobs to replacements, is a sufficient basis for finding that the Employer's conduct exceeded the bounds of permissible electioneering.

[5] In the absence of exceptions thereto, we adopt *pro forma* the Regional Director's recommendations concerning objections Nos. 2 to 7 and 9 to 11. In our opinion, Petitioner's exceptions raised no substantial issues which would warrant reversal of the Regional Director's recommendation to overrule objection No. 1.

[6] 142 NLRB 875.

[7] In the instant case, 14 letters and enclosures were sent to the employees between March 19 and April 23. In *Storkline*, the employer's campaign consisted of eight letters, three speeches, the showing of two movies, and six other documents, also disseminated over a period of about a month before the election. In one speech in *Storkline*, the employer told employees that if the union won "you have a lot to lose." In the same speech he stated that the union "can throw you into *violence* . . . and it can cause you to *lose your job!*" There as here the Board noted that the petitioning union provided no justification for the tenor of the employer's comments. We stated that "the Employer's campaign was waged on an issue of its own making. It created a 'straw man' and then proceeded to frighten the employees into the belief that their physical safety and jobs were at stake in the election."

> An employer may point out in noncoercive terms for his employees' consideration the possible results of unionization. But this campaign far exceeded any such mere appeal to reason. Rather it was clearly calculated to evoke an unreasoning fear of the consequences resulting from union organization of the plant. The Employer . . . created such an atmosphere of fear and confusion as to make impossible the holding of a free election.

Here heavily interspered in the Employer's 14 letters were the themes of strikes, violence, and job loss. The letters of April 16 and April 11 are vivid illustrations. The April 16 communication was headed, "Vote Against Strike Violence—Vote NO." It related to a strike at Emerson Electric, also located in Arkansas, but the Petitioner herein was not involved in any way in the controversy. In the letter, the Employer asked whether the employees wanted their "home shot up," whether they wanted "chunks of concrete thrown through the windows" of their homes, or whether they wished their "automobile[s] shot up." It questioned whether each employee wanted "to lose months and months of wages while . . . walk[ing] a picket line," or "to lose [his] job by being replaced with a new employee while . . . ordered out on strike." The letter then concluded with the statement that:

> All these things happened to the people who were hoodwinked by professional union organizers into voting for the Union at Emerson Electric. Read the newspaper clippings. They prove it. You have no proof that the outside union organizers who are trying to hoodwink you into voting for them would treat you any better.

Attached to this 1-page letter were three illustrated pages of a newspaper account of the violence which occurred during that strike. On the third page the pointed message of the Employer herein was unequivocably reemphasized: "This Could Happen to You Here at OSCEOLA—If the UNION WINS the Labor Board Secret Election—Vote Right—Avoid Strikes."

The letter of April 11 also had discussed the controversy at Emerson Electric. It prominently reprinted a picture of two strikers walking the picket line at Emerson. The letter stated, "9 Months Later—the Fun is Gone—SO ARE THEIR JOBS!" That letter continued to state that the Emerson Electric business situation allegedly paralleled that of the Employer, and then repeated that at Emerson a strike and job loss occurred. The Employer again ended its letter by urging the employees to "Vote Right—Avoid Strikes." Cartoons

and other statements in many of the remaining letters continued to bear down on strikes and tenuous job security in repetition of the tone already set forth above.

My colleagues' description of these statements as "temperate and factual in character" cannot be supported by any reasonable reading of the letters' message. Although they concede that these and other remarks may have been "half-truths or created a distorted picture," they imply that the Petitioner's "counterpropaganda" would dissipate the effect of the Employer's relentless emphasis on economic strife. However, I believe that this ignores the obvious coercive impact of the Employer's preelection comment.

Furthermore, their attempt to distinguish this case from *Storkline* [8] misconceives the thrust of that holding and, in my opinion, departs from accepted principles of this Board. The employer's campaign in *Storkline* was unlawful because the employer, by stressing the harm which would allegedly occur if the employees voted for the union, made it appear that strikes, violence, and job loss were the inevitable results of collective bargaining. We noted that as a result of such repetition fear and confusion dominated the election atmosphere. In much the same way the Employer herein, by repeatedly emphasizing threats of strikes, conveyed the clear message that inevitable adversities would occur once the union was certified.

A campaign blatantly geared to inflaming fears of job loss, physical harm, and inevitable strike activity denies the registering of any meaningful employee choice. It contributes to the industrial instability which the Act seeks to prevent. Sanctioning the Employer's conduct clearly and effectively undercuts a free and informed vote. Accordingly, I would direct another election.

MEMBER JENKINS took no part in the consideration of the above Decision and Certification of Results of Election.

[8] My colleagues receive no support from their attempted factual distinctions between *Storkline* and this case, for, in *Storkline* we noted that the employer acted unlawfully because there was "not the slightest hint that the Petitioner engaged in any violence or that it was threatening strikes or other oppressive action *against the Employer*." [Emphasis supplied.] This is equally true here. Also, in *Storkline*, the union, as here, attempted to answer the employer's arguments but we found that this did not dilute the employer's campaign of fear. My colleagues state that in *Storkline* the employer raised the strike theme as a "straw man," but that here, since the Petitioner was involved at one time in other strikes, the Employer was justified in recounting the details of strikes conducted by other unions against other employers. Under this approach, an employer's emphasis upon any aspect of a strike or its effects conducted by any other union would be "relevant" as long as the employer could show that the petitioning union had at any time in its history also engaged in strike activity.