

As the Petitioner is willing, however, to represent all the employees at the terminal in a single unit, we shall amend the unit description and find that the following employees constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act: <sup>6</sup>

All employees of the Employer at its Doraville, Georgia, bulk fuel terminal, excluding casual employees, guards, superintendent, assistant superintendent, and all other supervisors as defined in the Act.

The case is hereby remanded to the Regional Director for the Tenth Region for the purpose of conducting an election in the above appropriate unit pursuant to his Direction of Election, except that the eligibility period shall be the payroll period immediately preceding June 30, 1964.

---

<sup>6</sup> The unit found appropriate is larger than that sought by the Petitioner and neither the exact size of the unit nor the exact interest of the Petitioner in the unit is clear from the record before us. Accordingly, we instruct the Regional Director not to proceed with the election herein directed until he shall have first determined that the Petitioner has made an adequate showing of interest among the employees in the appropriate unit who are eligible to vote in the election. *Foremost Dairies, Inc.*, 118 NLRB 1424, 1428, at footnote 7.

In the event the Petitioner does not wish to participate in an election in such a unit, we shall permit it to withdraw its petition upon notice to the Regional Director within 5 days from the date of issuance of the Direction and shall thereupon vacate the Direction of Election.

---

**Air Control Products, Inc. and United Steelworkers of America, AFL-CIO, Petitioner. Case No. 12-RC-1630. June 30, 1964**

**DECISION ON REVIEW AND DIRECTION OF NEW  
RUNOFF ELECTION**

On May 2, 1963, the Regional Director for the Twelfth Region issued a Decision and Direction of Election in the above-entitled proceeding. Pursuant thereto, an election was conducted on June 7, 1963, in the unit found appropriate. Because none of the three choices on the ballot received a majority, a runoff election was conducted on June 21, 1963, between the Intervenor, Airco Employees Association, Inc., and the Petitioner. At the conclusion of the runoff election, the parties were furnished a tally of ballots, which showed that of approximately 394 eligible voters, 328 cast valid ballots, of which 125 were for the Petitioner, 194 were for the Intervenor, and 9 cast challenged ballots. The challenged ballots were insufficient in number to affect the election results. Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election.

In accordance with the Board's Rules and Regulations, the Acting Regional Director conducted an investigation and on August 9, 1963, issued and duly served upon the parties a Supplemental Decision,

Order, and Certification of Representative in which he overruled all the objections and certified the Intervenor as the exclusive bargaining representative of the employees in the appropriate unit. The Petitioner, in accordance with Section 102.67 of the Board's Rules and Regulations, Series 8, as amended, filed a timely request for review, on the grounds, *inter alia*, that the Regional Director erred in his disposition of objections 1 and 4.

The Board, by Order dated November 20, 1963, granted the request for review as it related to objections 1 and 4 and ordered a hearing to determine the entire contents and time of distribution of leaflets by the Intervenor, and further ordered that the Hearing Officer designated for the purpose of conducting such hearing should prepare a report containing resolutions of credibility of witnesses and findings of fact, without recommendations. Pursuant thereto, a hearing was held before Hearing Officer Robert G. Romano. All parties appeared and participated at the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. On February 3, 1964, the Hearing Officer issued and served upon the parties his report. The Employer and Intervenor filed timely exceptions to the Hearing Officer's report.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Hearing Officer's report, the Employer's and Intervenor's exceptions thereto and their supporting briefs, and the entire record in this case, and hereby makes the following findings:

Objection 4 states that the Employer promised the Intervenor that if it won the election the Employer would grant retroactive pay increases to the employees averaging about \$50 per person, and that the Intervenor repeated this promise to the employees during the election campaign by leaflets and by oral communications. Evidence submitted at the hearing indicates that in at least five handbills distributed before the first election and in three handbills issued between the first election and the runoff election, the Intervenor claimed that, in prior negotiations with Air Control representatives, the Employer had made the aforementioned retroactive pay promises.<sup>1</sup>

In the first handbill, distributed about 3½ weeks before the first election, the Intervenor stated: "In other letters we will explain all the statements here and tell you what the Company promised to the

---

<sup>1</sup> A 2-year collective-bargaining agreement between the Employer and the Intervenor expired on April 14, 1963. On October 30, 1962, the Board issued a Decision and Order in *Air Control Products, Inc.*, 139 NLRB 607, finding that the Employer had unlawfully assisted in the formation and organization of the Intervenor in violation of Section 8(a)(1) and (2) of the Act, and ordering the Employer to cease such activities and to withdraw and withhold recognition from the Intervenor unless and until it shall have been certified by the Board. The Steelworkers filed the instant petition on January 16, 1963.

employees here in their past negotiations, and show you why it will mean money out of your pocket if Airco is not re-elected." Later handbills were more specific. Thus, in a leaflet announcing a meeting of the Intervenor to be held about 2 weeks before the first election the Intervenor advised employees that it would discuss "our promised retroactive pay," and in a handbill issued a few days later the Intervenor urged employees not to "gamble with . . . your retroactive pay of \$50.00 . . ." In a leaflet issued about 10 days before the first election, the Intervenor stated its pay claims with certainty, leaving no doubt about the benefits the employees would receive if it won. It urged employees to "do a little work for your increase in pay that you definitely are going to get when AIRCO gets in and for the **RETROACTIVE PAY OF ABOUT \$50.00 PER PERSON** that you are going to get when AIRCO is reelected." According to another Intervenor handbill issued about a week before the first election, the \$50 of retroactive pay was for "all employees who have worked since April 14, the day the contract expired (which the Steelworkers can *NEVER* get)."

After the first election an Intervenor handbill<sup>2</sup> announced a revised retroactive pay estimate because, "It will take at least an extra month to work out a contract with the Company if AIRCO wins. This makes the retroactive pay we were promised, that much greater; instead of \$50.00, it is now about \$70.00, so it becomes more important to get AIRCO in." Only 1 or 2 days before the runoff election, an Intervenor handbill warned the employees not to "gamble with your retroactive pay of approximately \$70.00. Don't gamble with your promised increase. **VOTE AIRCO!!!!**"

The Employer's only response to this campaign literature was a "NOTICE TO ALL EMPLOYEES" posted on the Employer's bulletin boards about a week before the first election, which notice remained posted until after the runoff election. The notice stated that:

This is to notify all employees that the Company has not authorized or approved and takes no responsibility for any statements made by either union during the election campaign currently going on.

AIR CONTROL PRODUCTS, INC.,

By (S) L. P. RANDALL.

In a handbill issued shortly after the notice was posted, the Petitioner reprinted the text of the notice with the following comment: "It looks like the company union and its phony representative has gone far afield in stating what they can get in a new contract. The

<sup>2</sup> It is the reiteration of the Intervenor's statements, during the period between the first and runoff elections, that is the basis for our discussion herein, and the preceding events are recited and considered only for the light they shed on the subsequent incidents.

above notice posted by the Company speaks for itself” The Intervenor replied in a handbill distributed shortly before the first election that, “if you read the notice put on the Bulletin Board by the Company, and duplicated in the Steelworkers’ circular, you will see that the Company did not state that it had not promised us retroactive pay” Responding to a question at the hearing, L P Randall, the Employer’s vice president and general manager, testified that the Employer had at no time promised to give the employees a wage increase or retroactive pay if the Intervenor won the election

In their exceptions the Employer and the Intervenor argue that the Petitioner had the opportunity to, and did, respond to the Intervenor’s campaign leaflets, and that the Employer’s notice adequately disavowed the claim that it promised a wage increase to the Intervenor and demonstrated to the employees the Employer’s neutrality

We disagree In view of the Intervenor’s bargaining relationship with the Employer, the employees reasonably could construe the Intervenor’s handbill statement to mean that the Employer had promised the Intervenor that it would grant a retroactive wage increase if the Intervenor won the election Such a promise of benefit, publicized by the Intervenor, interfered with the employees’ free choice in the election The Petitioner’s opportunity to respond is immaterial, for a promise of this sort could not be counteracted by an outsider’s statements Furthermore it was incumbent on the Employer to neutralize the effects of the Intervenor’s statements by taking affirmative steps to deny that it had promised a retroactive wage increase if the Intervenor won the election This it did not do In our opinion, the Employer’s notice posted before the first election was insufficient for the purpose<sup>3</sup> We conclude that the Intervenor’s statements, in the circumstances, interfered with the employees’ freedom of choice in the runoff election<sup>4</sup>

Accordingly, we hereby sustain objection 4, and we shall set aside the election and direct the Regional Director to conduct a new runoff election<sup>5</sup>

<sup>3</sup> See *Farido Turkeys, Inc*, 140 NLRB 1397, 1399-1400 Cf *Fleetwood Trailer Co Inc*, 118 NLRB 1355 1356

We note notwithstanding the denial of L P Randall, above referred to that the Employer made any promises to the Intervenor, that the Hearing Officer credited testimony of the Intervenor’s shop steward Ethel Sickler that 3 or 4 days after the first election she asked Foreman Hugh Mabe about raises for certain employees in her department and Mabe replied that “we had to wait and see what happened with the union and that if Aircro Association got in we would get raises but if the Steelworkers got in, we wouldn’t get them”

<sup>4</sup> Chairman McCulloch would set aside the runoff election on the further ground that the Intervenor’s statements constituted substantial misrepresentations In his view the content of the alleged negotiations between the Intervenor and the Employer being within the exclusive knowledge of the participants thereto rendered impossible any effective rebuttal by the Petitioner See *Hollywood Ceramics Company Inc* 140 NLRB 221, *Radio Corporation of America (RCA Victor Division)*, 102 NLRB 124

<sup>5</sup> We need not, and do not, reach the issues raised by objection No 1

[The Board set aside the election.]

[Text of Direction of New Runoff Election omitted from publication.]

MEMBER LEEDOM took no part in the consideration of the above Decision and Direction of New Runoff Election.

**The Goodyear Tire & Rubber Company (Apple Grove, West Virginia Plant)<sup>1</sup> and United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO and its Local Union No. 644.<sup>2</sup> Cases Nos. 9-RC-4345 and 9-RD-295. June 30, 1964**

### DECISION AND ORDER DENYING MOTION TO CLARIFY BARGAINING UNIT

On January 18, 1961, the Union was certified as the bargaining representative of the Employer's employees in the following unit:

All production employees, including warehouse and laboratory employees, of the Employer at its Apple Grove, West Virginia, plant, but excluding office clerical employees, and all professional employees, guards, and supervisors as defined in the Act.

Since then the parties have executed successive collective-bargaining agreements covering the employees in the unit, the most recent of which is currently in effect.

On May 5, 1964, the Employer filed the instant motion seeking to have the Board clarify the above-described bargaining unit at its Apple Grove, West Virginia, plant by excluding therefrom employees in a newly established "pilot plant." The Union filed a motion in opposition to the Employer's motion, alleging that an arbitrator's award had issued involving the exact issue and contending that the Board should, therefore, decline to act.

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 [Members Leedom, Fanning, and Brown].

The Board has considered the above motion and opposition thereto, and there appears to be no dispute as to the relevant and material facts. Accordingly, as further corroboration through testimony of the agreed-on facts would be superfluous, and as the positions of the parties have been fully stated, the Board has decided to rule on the questions presented, on the basis of the documents before it.

<sup>1</sup> The plant is referred to in some of the pleadings as the Point Pleasant, West Virginia, plant.

<sup>2</sup> Referred to hereinafter as the Union.