

ting in revised piece rates, and the system of standards and incentives that has been so successful at the Employer's Norwich plant, and expresses his confidence that the Employer will be able, if "given a fair chance to do it, to adopt the entire Norwich set-up"—"including attendance bonus and added incentives."

All of the foregoing, in our opinion, embellishes the central theme of the speech that selection of the Petitioner is likely to result in adverse economic consequences, and that rejection is likely to bring economic rewards. We conclude that the Employer's speech, viewed in context, could reasonably lead the employees to fear that the Employer, in the event of a victory for the Petitioner in the election, would close the Marietta plant or take other action which would adversely affect their economic welfare. The Board has said that such tactics destroy the atmosphere of free choice which it seeks to preserve for its elections.¹ The objections are therefore sustained.

Accordingly, we shall set aside the election and direct that a second election be conducted.

[The Board set aside the election conducted herein on February 18, 1965].

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

¹ See *Oak Manufacturing Company*, 141 NLRB 1323, 1326. As the Board there said: "We do not and cannot, by this or any other decision, restrict the right of any party to inform the employees of 'the advantages and disadvantages of unions and of joining them' But such information must be imparted in a noncoercive manner"

Groendyke Transport, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 961. Case No. 27-CA-1670. September 8, 1965

DECISION AND ORDER

On May 12, 1965, Trial Examiner David F. Doyle issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Jenkins].

The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that the Respondent, Groendyke Transport, Inc., Enid, Oklahoma, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

This proceeding, with the parties represented by counsel, was heard by Trial Examiner David F. Doyle at Denver, Colorado, on December 1, 1964, on complaint of the General Counsel and answer of Groendyke Transport, Inc., herein called the Respondent or the Company. The issue litigated was whether the Respondent had violated Section 8(a)(1) and (5) of the Act by refusing to bargain with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No 961, herein called the Union.¹

At the hearing the parties were afforded full opportunity to present evidence, to examine and cross-examine witnesses, and to present oral arguments and briefs.

Upon the entire record, I hereby make the following.

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE COMPANY

It is undisputed, and I find, upon the entire record herein, that the Respondent is a corporation duly organized under the laws of the State of Oklahoma with its principal office and place of business at Enid, Oklahoma. At all times material herein, it has been engaged in the commercial transportation by truck of petroleum, petroleum products, and other related materials. In the course and conduct of its business operations, it transports petroleum products across State lines in an annual amount exceeding \$50,000.

I find that the Respondent is, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

It is admitted, and I find, that the Union is, and at all times material has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The representation proceeding*

It is undisputed that the present unfair labor practice proceeding grows out of a prior representation proceeding before the Board, entitled "Groendyke Transport, Inc., Employer and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 961, Petitioner, Case No 27-RC-2613." The representation proceeding was initiated by a petition duly filed by the Union.

¹In this Decision, the National Labor Relations Board is referred to as the Board; the General Counsel of the Board and his representative at the hearing, as the General Counsel; and the Labor Management Relations Act, as amended, as the Act.

The original charge in this proceeding was filed on September 14, 1964, by a representative of the Union and the complaint was issued by the Regional Director for Region 27, Denver, Colorado, on October 5, 1964.

Thereafter, a hearing was held and the Board, on June 9, 1964, by Clyde F. Waers, Regional Director for Region 27, issued a Decision and Direction of Election, which found that the following employees of the Respondent constituted a unit appropriate for the purposes of collective bargaining: All truckdrivers employed by the Employer at its Denver, Colorado, terminal, but excluding all other employees, guards, watchmen, and supervisors as defined in the Act. The Decision and Direction of Election noted that at the hearing in the representation case the Company had contended that a *single terminal* unit of its employees was inappropriate and that the only appropriate unit would be a *systemwide* unit of all truckdrivers at the Company's 29 terminals located in the States of Oklahoma, Texas, Colorado, Kansas, and New Mexico. The Decision and Direction of Election also noted other contentions of the Company which were dismissed.

Shortly after issuance of the aforesaid Decision and Direction of Election, the Company requested that the Board review the Decision and Direction of Election. This request was denied by the Board.

It is undisputed that, thereafter, the Regional Director conducted an election by mailed ballot of the employees in the unit described as appropriate. The Regional Director determined that the election would be conducted by mailed ballot because the truckdrivers involved were engaged in round-the-clock operations. On August 3, 1964, the Regional Director issued a tally of ballots which demonstrated that the Union had won the election.

Thereafter, on August 6, 1964, the Company filed timely objections to conduct affecting the results of the election and, pursuant to the Board's Rules and Regulations, Series 8, as amended, the Regional Director investigated the objections. On September 2, 1964, the Regional Director issued a supplemental decision on objections and certification of representatives. In this decision, he reviewed the various objections and found them to be without merit and issued a certification of representatives to the Union covering the employees in the unit of employees previously set forth.

It is undisputed that, thereafter, the Company refused to bargain with the Union on the ground that the unit found to be appropriate in the Decision and Direction of Election dated June 9, 1964, was not in fact an appropriate unit and on the ground that the election conducted in the unit by *mailed* ballot was not a secret election in conformity with the Board's Rules and Regulations. In the instant unfair labor practice proceeding, counsel for the Company seeks a review by the Board of his various contentions on those points.

B. *The instant proceeding*

At the hearing herein, counsel for the General Counsel and counsel for the Company outlined their respective positions in regard to the issues herein. Briefly, the General Counsel took the position that all action taken in the representation proceeding had been in accordance with the Board's Rules and was in conformity with law. Counsel for the Company stated that he contended that the unit deemed appropriate was not in fact appropriate and that the mailed ballot was not a *secret* ballot and was therefore not in accordance with the Board's Rules.

The General Counsel then introduced into evidence the transcript of testimony in the representation case, together with pertinent exhibits, the Decision and Direction of Election previously mentioned, and the objections and the Regional Director's supplemental decision on objections, and other pertinent documents. The General Counsel then rested his case with the statement that the contentions proposed in the instant hearing by the Company had been fully litigated in the representation proceeding and, having been once heard and decided by the Board, they could not be litigated a second time in this unfair labor practice proceeding. I then suggested to all counsel that counsel for the Company proceed to offer in evidence such proof as he desired, and that upon appropriate objection I would rule as to the admissibility of the evidence; in the event my ruling was adverse to counsel for the Respondent, that I would permit an offer of proof which would explicate the nature of the testimony sought to be introduced into evidence, so that the Board might see the nature of the testimony deemed inadmissible. This procedure was acceptable to counsel and thereafter was followed.

Counsel for the Company made the following offers of proof pursuant to this arrangement:

(1) Counsel for the Company offered to prove, by a witness named Billy Gene Sutton, Aurora, Colorado, that he received his ballot by mail, that Sutton and his wife found the ballot in their mailbox; and that they opened it together and that both

read the ballot. Sutton then marked his ballot in the presence of his wife and his wife saw how he voted. One of them then sealed the ballot and mailed it to the Regional Director.

Counsel for the General Counsel objected to the reception of this testimony on the ground that Respondent's contention that the ballot was not secret had been considered as an objection to the conduct of election and had been dismissed. I sustained the objection.

(2) Counsel for the Company then offered into evidence the certification on conduct of mail election issued by the Regional Director for Region 27, and the notice of election in the representation proceeding. He also introduced into evidence a copy of instructions to election observers issued by the Board. These documents were received in evidence over objection of the General Counsel.

(3) Counsel for the Company then sought to introduce into evidence the transcript of testimony in Case No. 16-RC-597, entitled, "In the Matter of Groendyke Transport, Inc. and General Drivers, Chauffeurs and Helpers Local Union 886, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL." The hearing in this case was held at Oklahoma City, Oklahoma, on November 14, 1950. Counsel for the Company contended that in the 1950 case, the Board had passed on the same unit question as was involved in the later representation proceeding and that the transcript in the 1950 case and the Board's Decision on the evidence therein supported the position of the Company in this proceeding.

The General Counsel objected to the admission of this evidence on the grounds of relevancy and materiality. I sustained the objection and pointed out that the transcript in the 1950 proceeding and the Board's Decision thereon were extremely remote as to the issue herein.

(4) Counsel for the Company then sought to call as a witness F. P. Frisbey, supervising examiner for the Board. A *subpoena duces tecum* had been directed to Frisbey directing him to produce certain registered mail receipts showing the signature of persons receiving the mailed ballots, which counsel claimed would show that in many instances, wives or other members of the family had signed receipts for ballots directed to the employees. The General Counsel thereupon requested that I revoke the subpoena issued to Frisbey on the ground that the Company had not complied with Section 102 118, Board's Rules and Regulations. This section prohibits any employee of the Board from producing any files, records, etc., or from testifying in regard to them, except with permission of the General Counsel, which had not been requested by the Company or obtained. The General Counsel also pointed out that the procedure used in connection with the election had been fully litigated in the representation proceeding. I thereupon ruled that, pursuant to the Board's Rules, the subpoena was revoked. Thereupon the Respondent rested its case.

Concluding Findings

Upon a consideration of the entire record herein, it is found that there is, in this proceeding, no new evidence which would require a redefinition of the appropriate unit herein or a setting aside of the election conducted by mailed ballot by the Regional Director. Inasmuch as the Company concedes that it has refused to bargain with the Union on the basis of its legal contentions, I have no recourse but to find that the Company has refused to bargain with the Union in violation of Section 8(a)(1) and (5) of the Act as alleged in the complaint.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Company set forth in section III, above, occurring in connection with the operations of the Company described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that the Company has engaged in certain unfair labor practices, it will be recommended that the Company cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Also having found that the Union represented, and now represents, a majority of the employees in the appropriate unit, and that the Company has refused to bargain collectively with it, I will recommend that the Company, upon request, bargain collectively with the Union.

Upon the basis of the above findings of fact, and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 961, is a labor organization within the meaning of Section 2(5) of the Act.

2. Groendyke Transport, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. All truckdrivers of the Company employed at its Denver, Colorado, terminal, but excluding all other employees, guards, watchmen, and supervisors as defined in the Act, constitute an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. The Union was on August 3, 1964, and at all times thereafter has been and is, the exclusive representative of all the employees in the aforesaid appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about September 2, 1964, 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 Company 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 Company 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.

RECOMMENDED ORDER

Upon the basis of the above findings of fact and conclusions of law and the entire record in the case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I recommend that the Respondent, Groendyke Transport, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with the Union as the exclusive representative of all its employees in the appropriate unit found above.

(b) In any other manner interfering with the efforts of the Union to bargain collectively with it in behalf of the employees in the aforesaid appropriate unit.

2. Take the following affirmative action which I find will effectuate the policies of the Act:

(a) Upon request, bargain collectively with the Union as the exclusive bargaining representative of all the employees in the aforesaid appropriate unit with respect to wages, rates of pay, hours of employment, or other conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its business place at Denver, Colorado, copies of the attached notice marked "Appendix."² Copies of said notice, to be furnished by the Regional Director for Region 27, shall, after being duly signed by the Company's representative, be posted by the Company immediately upon receipt thereof, and be maintained by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 27, in writing, within 20 days from the date of receipt of this Decision, what steps the Respondent has taken to comply herewith.³

² In the event that this Recommended Order be adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals, Enforcing an Order" shall be substituted for the words "a Decision and Order".

³ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify the said Regional Director, in writing, within 10 days from the date of this Order, what steps the Respondent has taken to comply herewith."

It is further recommended that, unless on or before 20 days from the date of receipt of this Decision the Respondent notifies the said Regional Director in writing that it will comply with the foregoing Recommended Order, the National Labor Relations Board issue an order requiring the Respondent to take the action aforesaid.

APPENDIX

NOTICE TO ALL EMPLOYEES

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

WE WILL bargain collectively upon request with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 961, as the exclusive representative of all employees in the bargaining unit described herein, with respect to wages, rates of pay, hours of employment, or other terms or conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All truckdrivers employed by us at our Denver, Colorado, terminal, but excluding all other employees, guards, watchmen, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7 of the Act.

GROENDYKE TRANSPORT, INC.,
Employer.

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 609 Railway Exchange Building, 17th and Champa Streets, Denver, Colorado, Telephone No. 297-3551).

**Universal Textile Mills, Inc. and United Steelworkers of America,
AFL-CIO.** Case No. 24-CA-1989. September 8, 1965

DECISION AND ORDER

On June 21, 1965, Trial Examiner Lloyd Buchanan issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices, and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found that Respondent had not engaged in other unfair labor practices alleged in the complaint and recommended dismissal of those allegations. Thereafter, Respondent filed exceptions to the Decision with a supporting brief. The General Counsel filed a brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel [Members Fanning, Brown, and Zagoria].