

threaten, coerce, or restrain the above named employers or any other person engaged in commerce or an industry affecting commerce where, in either case, an object thereof is to force or require the above-named employers or any such other person to cease doing business with Ralph H McClam, Weldon B Royse Masonry and Waterproofing Co, Inc, or any other person

CARPENTERS DISTRICT COUNCIL OF KANSAS CITY
AND VICINITY, AFL-CIO,

Labor Organization

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

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Coors Porcelain Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No 452, Petitioner *Case No 27-RC-2911 May 25, 1966*

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted on January 26, 1966, under the direction and supervision of the Regional Director for Region 27 among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished with a tally of ballots showing that of approximately 736 eligible voters, 687 cast valid ballots, of which 177 were for, and 501 were against, the Petitioner, and 9 were challenged. The challenged ballots were insufficient in number to affect the results of the election. Thereafter, the Petitioner filed timely objections to the conduct of the election.

In accordance with the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation, and on March 10, 1966, issued and duly served on the parties his report on objections in which he recommended sustaining the objections pertaining to the Employer's campaign literature distributed to employees during the critical period. Accordingly, the Regional Director further recommended that the election be set aside and that a second election be directed. Thereafter, the Employer filed timely exceptions to the Regional Director's report.

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 Brown, Fanning, and Zagoria]

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

1. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The Petitioner is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Sections 9(c) (1) and 2(6) and (7) of the Act.

4. The parties stipulated, and we find, that the following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All employees in Employer's ceramic and metal products plant, including production planning department employees, plant clerical employees, process and quality control department employees, research department employees, and manufacturing engineering development employees, but excluding draftsmen, office clerical employees, aluminum office employees, sales department employees, design engineering department employees (except tool crib attendants), industrial engineering department employees, estimating department employees, guards, professional employees, 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 with respect to the Petitioner's objections. These concern a series of bulletins that were mailed or distributed to the employees by the Employer during the critical period before the election.

In the instant case the Regional Director explicitly found that the Employer's bulletins did not contain any threats or unlawful inducements. Nevertheless, he found that the employees who read the Employer's propaganda "could only conclude that the unions have had, and will continue to have, difficulties, including strikes, with the Employer because of his 'unwillingness to accord the Union a legitimate role in representing employees.'" The Employer contends that its circulars were within the limits of permissible campaign propaganda. We find merit in this contention.

In determining whether campaign statements interfered 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 individuals and the 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.

In this case, both the Employer and Union have engaged in distribution of campaign literature. The Employer's initial bulletins on January 5 and 12 stressed the importance of voting in the election and then reminded its employees of the plant's previous bargaining history between 1955 and 1960. The Employer referred to prior "trouble and suffering" and pointed out that while the Company did negotiate and sign several contracts in that period, two strikes occurred in which many of the striking employees had lost their jobs as a result of having been permanently replaced.

By some of its communications the Employer responded to the Union's assertions. Thus, some union literature claimed that a union contract brings greater job security and assures to employees continuity of existing wages and other conditions of employment. The Employer in its own bulletins of January 18 and 19 replied that the "only one who can give you job security is the one who signs your pay checks," pointing out that the selection of a union did not save jobs when a number of local employers who had been unionized in the past had shut down their plants. It further noted that employees who engage in an economic strike can be and have been permanently replaced, as shown by the 1963 strike at the nearby plant of one of its suppliers in which 24 of 46 employees had lost their jobs as a result of such action. In a subsequent bulletin entitled "THE UNION AS A CURE ALL," the Employer stated that there is a wide gap between union promises and accomplishments, and illustrated this point by comparing past promises of unions with related provisions in their collective-bargaining agreements concerning such matters as vacations, shift or job preference, promotions, distribution of overtime, and the requirement of employees to do various work assignments. One union bulletin declared that there had not been a strike in 18 years by the Teamsters in the Denver area, and the Company countered with its own bulletin entitled "THE TEAMSTERS' RECORD IN DENVER" in which it labeled this representation as a "Half Truth" and pointed out four relatively recent instances where the Teamsters had conducted strikes in the area. In other releases the Employer also made numerous references to other previous strikes, many of which did not involve the Petitioner herein.

As is apparent from the above summary, the Employer waged an aggressive campaign against selection by its employees of the Petitioner as their bargaining representative. But its statements were factual in character and were relevant to the election issues before the employees. Further, while many of the Employer's assertions were strongly antiunion in character and were not limited to merely answering pronoun propaganda, we believe that the employees could evaluate them as partisan electioneering.

After reading the Employer's propaganda in its entirety, we, unlike the Regional Director, do not find that the employees could reasonably conclude that the selection of a union was necessarily an act of futility. Contrary to the Regional Director, we find no indication of unwillingness by the Employer to accord unions a legitimate role in representing employees. Rather, the Employer in one bulletin stated unequivocally that if the Union won it would bargain with it in good faith, and in another, that between 1955 and 1960 it had negotiated and signed several collective-bargaining agreements. Considering all the facts, we are not persuaded that the Employer's remarks exceeded the bounds of fair comment or that they otherwise impaired the employees' free exercise of choice in the election.¹ We therefore dismiss the Petitioner's objections.

As the tally of ballots shows that the Petitioner has not received a majority of the valid votes cast in the election, and as the challenged ballots are insufficient in number to affect the results of the election, we shall certify the results of the election.

[The Board certified that a majority of the valid votes was not cast for International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local No. 452, and that said labor organization is not the exclusive representative of the employees in the appropriate unit.]

MEMBER BROWN, dissenting:

I would adopt the Regional Director's finding that the Employer's preelection propaganda instilled in the employees the fear of inevitable strikes, unemployment, and other trouble at the plant and that the Employer thereby interfered with the employees' free choice in the election.

I fully agree with my colleagues that the Employer has a right to inform its employees of the advantages and disadvantages of unions and of joining them. Although acknowledging that such information must be imparted in a noncoercive manner, my colleagues characterize the Employer's repeated efforts to link unionism with strikes and loss of employment as merely "partisan electioneering." But such characterization ignores the obvious coercive impact inherent in the campaign propaganda. Thus, the Employer's initial bulletins on January 5 and 12 stressed "the trouble and suffering" that had occurred at the plant between 1955 and 1960, when the employees had been represented by two unions (neither of which is involved herein). The Employer appealed to the employees' fears of economic harm,

¹ See *Universal Electric Company*, 156 NLRB 1101; *American Greeting Corporation*, 146 NLRB 1440.

and vividly reminded them of two strikes that had occurred at the plant during that prior period of union recognition, emphasizing repeatedly economic strikes both here and at other plants could and did result in the loss of jobs and that many employees who were without pay during those strikes at Coors lost their automobiles, televisions, refrigerators, and other articles purchased on credit. By its assertion that the settlements reached at the end of these strikes were based on the company offers that had been made prior to their inception, the Employer indicated that employee efforts in both Coors' strikes were complete failures. In a subsequent bulletin, the Employer also argued that the current situation was no different than it had been, as shown by the fact that only 2 years previously a strike had occurred at a nearby plant of one of its customers. Although the Petitioner herein was not involved in that strike, the Employer nonetheless stressed the fact that at the strike's termination, 24 out of 46 striking employees were without jobs as a result of having been replaced.

In other campaign literature entitled "JOB SECURITY," the Employer indicated that "[j]ob security means a steady job with as few layoffs as possible," and again attempted to capitalize on incidents in which the Petitioner was not involved. Thus, it implied that union organization and plant closure were closely related by stating:

Ask the employees who used to work at Heckethorne Manufacturing Co. in Littleton, what job security the Automobile Workers Union gave them when Heckethorne Manufacturing Co. closed its Littleton plant in 1957.

Ask the more than 5,000 employees who were laid off at Martin Company near Littleton, what job security the Automobile Workers Union gave them.

Ask the employees who used to work for U.S. Foundries in Denver, what job security the Molders Union gave them when U.S. Foundries closed its plant about a year ago and went into bankruptcy.

Ask the 30,000 employees at Convair in San Diego who had been represented by the Machinists Union for many, many years, what job security the Machinists Union gave them when Convair closed its plant in San Diego last year. Ask the 6,000 employees at Studebaker what job security the Automobile Workers Union gave them when Studebaker closed its plant in South Bend about a year ago.

This equating of union representation with job insecurity was further underscored by the Employer's final distributions, in which it

asked the employees to look at their jobs and their present favorable working conditions and then stated “[b]y voting ‘NO’, you will be choosing the path of continued labor peace” and “If you don’t want **CONSTANT UNCERTAINTY — VOTE ‘NO’.**”

Evaluating the Employer’s campaign propaganda in its entirety, I am compelled to conclude that the employees could only construe these communications as a means of letting them know that harmful consequences would necessarily follow with the advent of the Union. Clearly, the central theme of the Employer’s propaganda was that selection of a union could only bring the employees strikes, loss of jobs, troubles, and uncertainty. While some of the Employer’s comments were purportedly made in response to prior union propaganda, even these were found in bulletins where the Employer’s central theme of resultant harm was so predominant that it could only serve to intensify and heighten employees’ fears of dire consequences. By repeatedly emphasizing this theme, the Employer did more than simply answer prior propaganda.² Rather, it had undertaken a campaign geared to inflaming fears of strike activity and job loss, and thereby created an atmosphere in which an uncoerced vote could not be cast.³ Sanctioning the Employer’s conduct herein can only have the effect of undercutting and precluding a free and informed vote. Accordingly, I would direct the Regional Director to hold another election.

² Accord, *Storkline Corporation*, 142 NLRB 875.

³ See my dissenting opinions in *Universal Electric Company*, *supra*, and in *American Greeting Corporation*, *supra* at 1445.

Marcellus S. Merrill and Geraldine R. Merrill, co-partners, d/b/a Merrill Axle and Wheel Service; and Marcellus S. Merrill and Geraldine R. Merrill, co-partners, d/b/a Merrill Engineering Laboratories and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 775. Case No. 27-CA-1834. May 26, 1966

DECISION AND ORDER

On February 10, 1966, Trial Examiner Martin S. Bennett issued his Decision in the above-entitled proceeding, finding that the Respondent, Marcellus S. Merrill and Geraldine R. Merrill, co-partners, d/b/a Merrill Axle and Wheel Service had engaged in and was engaging in certain unfair labor practices within the meaning of the National Labor Relations Act, as amended, and recommending that it cease and desist therefrom and take certain affirmative action, as