

**Clark Control Division of A. O. Smith Corporation
and International Brotherhood of Electrical Workers,
AFL-CIO, CLC. Cases 11-CA-3095 and
11-RM-127**

June 29, 1967

**DECISION, ORDER, AND CERTIFICATION
OF RESULTS OF ELECTION**

**BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND JENKINS**

On February 21, 1967, Trial Examiner Alba B. Martin issued his Decision in the above-entitled proceeding, finding that Respondent had not engaged in unfair labor practices as alleged in the complaint and recommending that the complaint be dismissed and the objections to the election be overruled, as set forth in the attached Trial Examiner's Decision. Thereafter, the Union 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.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and brief, and the entire record in these cases, and hereby adopts the Trial Examiner's findings, conclusions, and recommendations.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, and hereby orders that the complaint herein be, and it hereby is dismissed.

**CERTIFICATION OF RESULTS OF
ELECTION**

It is hereby certified that a majority of the valid votes cast in the election has not been cast for International Brotherhood of Electrical Workers, AFL-CIO, CLC, and that said labor organization is not the exclusive bargaining representative in the unit found appropriate within the meaning of Section 9(a) of the Act, as amended.

TRIAL EXAMINER'S DECISION

STATEMENT OF THE PROCEEDING

ALBA B. MARTIN, Trial Examiner: This consolidated proceeding, with all parties represented, was heard before me in Lancaster, South Carolina, on October 24 and 25, 1966. The proceeding involves alleged violations of Section 8(a)(1) of the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.* (herein called the Act), during April and May 1966, and also objections to alleged conduct affecting the results of a consent election held June 17, 1966. The issues in the CA case and the RM case overlap considerably. After the hearing the Union and the Company filed briefs which have been carefully considered.

Upon the entire record and my observation of the witnesses, I hereby make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF THE RESPONDENT COMPANY

Clark Control Division of A. O. Smith Corporation, herein called Respondent and the Company, is a Wisconsin corporation with a plant located in Lancaster, South Carolina, the only plant involved herein, where it is engaged in the manufacture of electrical controls. During the 12 months prior to the issuance of the complaint in late September 1966, a representative period, Respondent shipped from outside the State of South Carolina directly into its plant at Lancaster, South Carolina, raw materials valued in excess of \$50,000, and during the same period shipped directly from its plant at Lancaster, South Carolina, to points directly outside the State of South Carolina finished products having a value in excess of \$50,000. Respondent is now and has been at all times material herein engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Electrical Workers, AFL-CIO, CLC, is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

**III. THE ALLEGED UNFAIR LABOR PRACTICES AND THE
ALLEGED CONDUCT AFFECTING THE RESULTS OF THE
ELECTION**

A. Background

From the Board's records I take official notice that the petition in Case 11-RM-127 was filed by Respondent on May 17, 1966. On June 3, the Board's Regional Director approved a stipulation for certification upon consent election. At the election, held June 17, of 157 valid and unchallenged votes counted, 70 employees voted for the Union and 87 employees voted against the Union. There were no challenged ballots. To have won the Union needed 79 votes; thus it lost the election by 9 votes.

The alleged acts complained of herein occurred on April 1, May 11, 16, 17, and 19, and on election day, June 17. (All events herein occurred in 1966.)

B. Respondent's Lawful Opposition Toward the Union and Its Assistance to Employees in Revoking Authorization Cards

In a speech to employees on June 1 and in three letters to employees between January 2 and the June 17 election, Respondent, through its plant manager, Richard E. Canter, expressed firm opposition to the Union and urged its employees not to sign union cards and not to vote for the Union at the election. Canter's oral and written expressions contained no threats of reprisal or promises of benefit and were views, arguments, and opinions permitted under Section 8(c) of the Act.

Beginning in March and continuing in May Respondent assisted some eight employees in revoking their union authorization cards: Effie Mahaffey in or about the third week in March, Bonnie Robinson on May 11, Jerry Pressley on May 16, Barbara Faulkenberry and Jerry Huffstickler on May 17, Frances Robinson on May 18, and Jimmie Belk and Ruth Williams on May 19.

Respondent assisted these employees by supplying them with paper and envelopes and addresses, telling them what words to write, telling them to send one revocation letter to the Union and one to the Board's Regional Office, and in some cases supplying the stamps and mailing the letters. The message on all the letters was the same: That the sender wished to revoke his authorization card to the Union which he had earlier signed, and that he did not wish the Union to represent him for anything.

In the case of seven of these employees, all but Faulkenberry, the employee himself asked Respondent's assistance and Respondent acted pursuant to the employee's request. In the interviews sought by the employees, Respondent explained to the employees that they had a right to vote as they wished in the election and undertook to discover if the employee had been pressured or coerced or was acting of his own free will.¹ During these interviews Respondent put no pressure on the employees to continue in their course of action and the employees were free to change it at any time. On the entire record I conclude that the employees initiated and executed their revocations of their own free will.

In the case of Faulkenberry, on May 16 General Foreman Lanzilotta suggested to her that she could probably revoke her union card if she wished to. He told her this in answer to her statement that she was confused and worried about having signed a union card.² The following day, May 17, she told him she wanted to revoke her card and he assisted her. Respondent did not threaten or coerce her or promise her any benefit, and she acted of her own free will and was free to change her course of action at any time.

The record showed that some of these employees discussed among themselves the idea of revoking and that some of them indicated to Respondent that they wished to revoke rather than have their card counted towards union recognition without an election whereas they had originally signed in order to help get an election. Prior to the first revocation, according to the credited testimony of Plant Manager Canter, a number of employees had told management that they wished to get their union cards back but were unable to. One employee who "knew" she

could not get her card back, and did not want to get "involved," quit. Respondent's attitude was demonstrated by Canter. He learned in March from Mahaffey that another employee, Linda Lucas, wanted to revoke, but no member of management ever attempted to get her to revoke even though Canter had in writing lawfully attempted to persuade her and the other employees not to sign a union card initially. As the record was lacking in convincing proof that any of those who revoked were pressured into doing it by Respondent, as each employee was free to change his course of action toward revoking at any time, and as Respondent was not and had not been engaging in an unlawful antiunion campaign, I hold that Respondent's assistance to the eight employees was not unlawful interference in the rights guaranteed in Section 7 of the Act, and was not a violation of Section 8(a)(1) or an adequate reason to set aside the election. Cf. *Martin Theatres of Georgia, Inc., db/a WTVC*, 126 NLRB 1054, 1058; *Cumberland Shoe Company*, 160 NLRB 1256; *Perkins Machine Company*, 141 NLRB 697; *TMT Trailer Ferry, Inc.*, 152 NLRB 1495; *Quality Markets, Inc.*, 160 NLRB 44.

C. Alleged Promise of a Better Job to Employee Pressley if He Would Revoke His Union Authorization Card

The General Counsel alleged and undertook unsuccessfully to prove that on April 1 Personnel Manager Duane Cassidy promised employee Jerry Pressley consideration for a setup job coming open in the machine shop. Employee Sammie Lee McGriff testified for the General Counsel that on April 1 he overheard Cassidy tell Pressley that he would be considered for one of two setup jobs coming open in the machine shop if Pressley would get his union card back. This would have meant a promotion for Pressley. Cassidy allegedly prefaced this remark with the statement that several persons had come to him and informed him that Pressley's name had been "used in reference to get them to sign union cards." McGriff testified further that as soon as Cassidy left Pressley came over to McGriff, said that he wanted his card back, and that McGriff had been using Pressley's name to get other people to sign union cards. McGriff allegedly replied, among other things, that he could not get Pressley's card back for him.

Cassidy and Pressley both denied this alleged conversation, although admitting that on that day they did have a conversation at Pressley's work station. According to them they talked about the softball league, on which they "played together," and about getting Pressley's wife covered under the Company's group insurance plan.

Pressley testified he decided about the middle of March to try to revoke his card. The fact that after April 1 Pressley several times asked McGriff and Hornback, who were employee promoters of the Union, for his card back, might suggest that he was motivated to do so by Cassidy's alleged offer for consideration for a promotion and that in fact the offer was made. However Pressley did not write his revocation letter until May 16. If in fact Cassidy made the alleged offer on April 1, it seems to me that Pressley would have followed up and contacted Cassidy and revoked prior to May 16. Surely it would have occurred

¹ As they were more credible witnesses than Belk, I credit the testimony of Personnel Manager Cassidy and General Foreman Lanzilotta that they did not, as alleged by Belk, talk to him about the disadvantages of the Union.

² In this conversation Lanzilotta told Faulkenberry that he thought she, or "a number of us," were sick because of what she was doing to herself, nodding to her union badge. This was not a threat and was a view of opinion protected by Section 8(c)

to him to contact Cassidy if in fact Cassidy had offered an inducement for revoking. In fact another employee suggested he contact Cassidy to revoke, and on May 16 he did so. Although this employee, Clark, worked in an office, it was not the same office where Cassidy worked, and there was no proof that Cassidy or any member of management put him up to it. In fact Clark indicated to Pressley that he had learned from two employee friends of Pressley's that Pressley wanted to revoke. Further, if in fact Cassidy had offered the alleged promotion on April 1 and there was such a job to be filled, no reason appears why Cassidy would not have followed up the offer and contacted Pressley again about it prior to May 16, some 6 weeks later. The fact that Cassidy did not follow up and did not contact Pressley further suggests to me that Cassidy did not make the alleged offer in the first place.

In fact there were no setup jobs open or coming open in the machine shop on April 1. In March the Company had eliminated a setup job in the machine shop and assigned the incumbent to a lesser paying job. Under company practice, as set forth in a handbook, the latter had rights to that job or any other setup job in the machine shop ahead of anybody else. The fact that there were no setup jobs coming open is weighty proof that Cassidy did not make the alleged offer to Pressley.

After revoking on May 16, Pressley was not promoted to the setup job and there was no proof that he ever followed up and undertook to get the allegedly offered promotion. These facts weigh against the General Counsel's view of the facts.

Shortly before April 1, in about the third week in March, when employee Effie Mahaffey contacted management and asked assistance to withdraw from the Union, Cassidy telephoned Respondent's attorney and was instructed that the Company could assist those to withdraw who sought assistance from it, who had not been pressured by anybody from the Company, and who were acting of their own free will. He was instructed also that management was to tell any such employees their rights under the Act and let them know they could change their minds at any moment before mailing the revocation. The entire record shows that the Respondent undertook to abide by these instructions from its attorney. With these instructions so fresh in his ears it seems unlikely to me that a few days later Cassidy would have made the alleged offer to Pressley.

In view of the above facts and considerations, and as by their demeanor Cassidy impressed me as a more credible witness than McGriff, I credit Cassidy's testimony and find that he did not make the alleged offer to Pressley, that Respondent did not thereby violate the Act, and that the election should not be set aside for this alleged reason.

D. *Alleged Interrogation of an Employee*

The General Counsel alleged and undertook unsuccessfully to prove that Respondent's manager of manufacturing at the Lancaster plant, Thomas Gouger, interrogated employee Jimmy Belk concerning his union activities. Gouger knew Belk not only as an employee but also as a fellow member of the Lancaster Jaycees. On May 11, as Gouger was passing Belk's work area he noticed Belk wearing a union badge. Gouger testified he believed it was a committeeman's or member-of-the-organizing-committee badge. Gouger told Belk he was sur-

prised and a little shocked, referring to the badge, and that sometime when they had time he would like to talk to Belk about his thinking. No member of management, including Gouger, had any further conversation with Belk concerning his badge or his thinking.

Gouger's remark was an expression of his own reaction at seeing the badge on Belk, plus the expression of a hope that they could have a further conversation concerning Belk's thinking about the Union. It was not coercive, contained no threat or promise, and was not an effort to pry into Belk's union activities. It was not a question but was the expression of a hope that sometime later they could discuss what thinking led Belk up to the apparent point of assisting the Union. This was not interrogation within meaning of the Act. This was a "view" protected under Section 8(c) of the Act.

In its brief the Union sought to make more of Gouger's May 11 remark than it added up to because on May 15 or 16 Belk talked with Ray Plyler and on May 21 Belk took the initiative and revoked his union affiliation. Plyler was a college boy working for Respondent in the office during the summer. He testified that "my job went . . . from the labeling department to the cafeteria area, I was in the maintenance department and my job covered all of that area, entire area." I conclude on the entire record that he was an office boy. Certainly he was not and was not claimed to be a supervisor. The record does not contain the substance of the conversation between Plyler and Belk. Pursuant to a leading question Belk testified "yes," that as a result of this conversation with Plyler he took the initiative and revoked his union affiliation on May 21. On this state of the record, the fact that Plyler worked in the office is not conclusive proof that Respondent put him up to seeking Belk's revocation or that Gouger had anything to do with it; and it does not change any of my findings and holdings herein.

E. *Alleged Creating Impression of Surveillance*

The General Counsel alleged and with the Union undertook unsuccessfully to prove that Respondent created the impression of surveillance through the activity of Personnel Assistant Kennington with a clipboard. Kennington was a supervisor within the meaning of the Act. In the course of his duties, at irregular intervals at random he went into the different departments of the plant observing the safety practices of employees and recording on a chart, which was on a clipboard, the number of safety mistakes and the number of safe acts he observed department by department. This was under a safety sampling procedure developed by Respondent's corporate director of safety which had been in effect at the Lancaster plant since January 1966. The record contains all of the safety sampling records kept by Kennington during 1966 and these records show that Kennington took no safety samplings on election day, June 17. Kennington credibly testified that he took no samplings that day and credibly testified that he was not in the plant on election day with a clipboard. The clipboard he uses is bright orange-red and he has no other clipboard. In making the safety samplings he never calls out a name. He just looks at employees performing their duties and records whether their practices are safe or unsafe. In view of these facts I do not credit the testimony of General Counsel-Union witness Stewart that on election day Kennington was in the plant with a brown clipboard pausing in front of only em-

ployees wearing union insignia, mentioning their names, and making a mark on his clipboard. In addition Kennington was a more credible witness than Stewart and he denied stopping on election day in front of employees and calling their names and he denied ever checking only union people. Further Stewart initially testified that the alleged election day clipboard incident occurred after the election; and later, when recalled to the witness stand, testified it occurred shortly before the election. Stewart did not impress me as a reliable witness.

Two other General Counsel witnesses, Belk and Hornback, vaguely placing the date as sometime in May, testified that they saw Kennington walking around in the plant writing something on a clipboard. Hornback testified that he stopped only in front of those employees wearing union buttons and not others. Contrariwise Belk testified Kennington stopped at "no certain place." Hornback testified that one day he saw Kennington in three departments: wiring, pushbutton, and starter line. Respondent's records of all safety samplings made in 1966 show that the only dates when Kennington made safety samplings in those three departments were on April 6 and July 25. On the entire record I do not believe that Kennington ever used the "cover" of safety sampling to give the impression of spying upon the employees' union insignia or union activities. The employees openly wore their union insignia for weeks prior to the election and Respondent never prevented it or made any mention of it,³ except for Gouger's remark to Belk and Lanzilotta's remark to Faulkenberry considered above. Further, Respondent had a no-solicitation rule barring solicitations on working time, but took no action against working-time union activity reported to it because production was not being interfered with. Thus Respondent took a broad view of its own rule and permitted a limited amount of union activity on company time rather than a narrow view and consequent discipline against union affiliates. This is another indication that Respondent, while opposed to the Union, undertook with success to hold its opposition within lawful bounds.

F. Alleged "Solicitation of and Permitting Others To Solicit Antiunion Votes in Plant During Working Hours While Forbidding Union To Carry on Its Campaign" — Objection

During their lunch period on election day, from 11:15 to 11:45 a.m., Sue Hardin and Vera Hunter, who worked in the labeling department, ink stamped on some small yellow cards the sentiment "Clarks 100%." Their regular duties were to make labels upon orders from the office or from the various departments. In making labels they customarily used a small yellow card. The Union's testimony as to how many were made up was very self-contradictory. These "Clarks 100%" cards are hereafter referred to as the yellow badges.

As has been mentioned before, Respondent had in effect a no-solicitation rule barring solicitations during working time. In its objection 4 in the representation case, couched in the language quoted in the caption above, and in its evidence, the Union claimed in effect that Respondent knew about and condoned the making and distribution of the yellow badges while enforcing the no-solicitation rule against the Union.

As has been stated above the Respondent did not strictly enforce the no-solicitation rule against the Union. It was reported to Personnel Manager Cassidy that "Jean Sowell was taking notes during the work day, that Don Hornback had given a union badge to someone during working time, that something . . . had been posted in the washroom during company time, that there were conversations being conducted during working time." Cassidy took no action against the Union or any persons based upon what he heard. This testimony and the entire record shows that the Union failed to establish enforcement of the rule against it, which was the necessary foundation for showing discriminatory application of the rule.

The Union also failed to prove discriminatory treatment in favor of those who made and distributed the yellow badges. Not many were distributed. Several people picked up cards from the labeling area. Employee Bill Sumner passed out as many as possibly 25. It was not shown convincingly that management saw the making or distributing of the yellow badges, although the Union sought to show not only knowledge but also approval.

Ruth Ann Stewart testified that, while the yellow badges were being prepared, Personnel Assistant Kennington was present in the labeling department laughing and talking with Hardin and Hunter and employees Blackmon, Plyler, and Vincent were also there. She also testified that Foreman Stephens saw them being prepared. Jean Sowell testified that Kennington was present in the labeling area when Hardin handed Bill Sumner some cards, but that Plyler and Vincent were not there. Sowell quoted Kennington as approving Hunter's pinning a yellow badge on herself with the words, "I guess that will outshine the IBEW's T-shirts." Sowell testified General Foreman Lanzilotta was present when Hardin asked another employee if she wanted one of the yellow badges.

Kennington, Stephens, Lanzilotta, Hardin, Hunter, Blackmon, Plyler, and Vincent, testifying for Respondent, effectively and credibly denied and refuted the testimony of Stewart and Sowell. On the entire record and by their demeanor, Stewart and Sowell impressed me as less credible witnesses than these brought forward by Respondent. The credible testimony proved that Kennington toured the plant early on election day and was not in or near the labeling department thereafter. He knew nothing about the yellow badges until he saw one on an employee in an aisle far away from the labeling department shortly before the election. The election was held between 2:45 and 3:45 p.m. and the preelection conference, which was attended by Kennington, at 2:15.

Foreman Stephens credibly testified that he did not know the yellow badges were being made in the labeling department, which was under his responsibility, and did not see any being passed out. He testified he did not say anything to people wearing union badges or to those wearing the yellow badges, that he considered that they all had the privilege of wearing what badges they wished to wear.

Lanzilotta credibly testified that he knew nothing about the yellow badges until shortly before the election when he met an employee in the aisle who was wearing one. Lanzilotta warned this employee, Bill Sumner, that if Sumner were caught passing the badges out during working hours he could be discharged for it. Sumner corroborated this testimony. Sumner was sufficiently chastised that he immediately removed his yellow badge

³ Cf. *Precision Products & Controls, Inc.*, 160 NLRB 1119.

and put it in his pocket. This testimony runs counter to the union thesis that Respondent approved and condoned the making and distributing of the yellow badges.⁴

Upon the above facts and considerations, upon all the credible testimony in the record, and upon the preponderance of the testimony in the entire record, I find and hold that Respondent did not see or approve of the yellow badges being made, did not approve or condone the passing out of any of them on company time, if any of

⁴ Although the labeling area could be seen from the foremen's office, which was over the restrooms, there was no proof that any foreman saw or approved the making of the yellow badges.

them were, and did not discriminatorily apply its no-solicitation rule in favor of those who made and passed out the badges. It follows that Respondent did not on this count violate the Act or interfere with the election.

RECOMMENDED ORDER

As has been seen throughout this Decision, the preponderance of the evidence established that Respondent successfully held its opposition to the Union within lawful bounds. Under these circumstances I recommend that the complaint be dismissed and that the objections to the election be overruled.