Sprague Ponce Company *and* Oil, Chemical and Atomic Workers International Union, AFL-CIO, Petitioner. Case 24-RC-3734

February 20, 1970

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, BROWN, AND JENKINS

Pursuant to a Stipulation for Certification upon Consent Election executed on April 23, 1969, an election by secret ballot was conducted on May 16, 1969, under the direction and supervision of the Regional Director for Region 24, among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 172 eligible voters, 165 cast ballots, of which 80 were for, and 82 were against, the Petitioner. There were 3 challenged ballots The challenged ballots are sufficient in number to affect the results of the election. Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, the Regional Director conducted an investigation and, on September 16, 1969, issued and duly served upon the parties his report and recommendation on objections and challenges, in which he recommended that the challenges to the ballots be sustained, that certain portions of the objections be overruled, and that other portions be sustained and the election set aside. Thereafter, the Employer filed timely exceptions to the Regional Director's disposition of that portion of the objections relied upon by the Regional Director in recommending that the election be set aside.

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

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 representation of the employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act

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

> All production and maintenance employees employed by the Employer at its factory at Pampanos Ward, Ponce, Puerto Rico, including X-Ray technicians, process technicians, equipment maintenance technicians and group leaders; but excluding all office clerical employees and plant clerical employees, professional personnel, department leaders, watchmen, laid-off employees, guards and supervisors as defined in the Act.

5 The Board has considered the Regional Director's report, the Employer's objections thereto, and the entire record in this case, and hereby adopts his findings and recommendations.[1]

As framed by the Petitioner, the objections to the conduct of the election, conducted on May 16, 1969, were primarily concerned with the 24-hour period immediately preceding the election, but also alleged were "other acts of fragant [sic] and illegal abuse of the free speech guaranty of the Act." In his postelection investigation, the Regional Director determined from several employees that a speech was delivered on May 14, 1969, by the Employer's General Manager, in which alleged threats of a plant closing or removal were made. In sum, according to the Regional Director, some seven employees stated that the General Manager referred to the financial difficulties the Employer and its parent corporation, Sprague Electric Company, were experiencing, the fact that the parent company had already moved some of its installations to Matamoros, Mexico, in an effort to avoid rising labor costs, and that the Employer likewise might be forced to transfer its operations to Matamoros if the Petitioner won the election

In addition, the Regional Director also found that the day before the General Manager's speech to the employees, the Employer had distributed to the employees a letter relating recent financial losses of the company, a separate "comparative statement of Consolidated Income," and a newspaper clipping from the May 8, 1969, issue of the North Adams, Massachusetts[2] Transcript bearing the headline "Cheaper Labor Available — SPRAGUE WILL TRANSFER PRODUCT LINE TO MEXICO." The news article recounted the Employer's parent company's decision to move one of its operations to Matamoros, Mexico, to avoid labor costs.

Before issuing his report, the Regional Director requested that the Employer submit any evidence concerning the contents of the General Manager's speech. In a written reply, dated August 8, 1969, the Employer refused to furnish the requested information on the ground that the Petitioner's

[1] In absence of exceptions thereto by either party, we adopt, *pro forma*, the Regional Director's recommendations that challenges to the ballots be sustained and that objections to alleged verbal threats by pay clerks shortly before the election be overruled

[2] The headquarters of Sprague Electric Company is located in North Adams, Massachusetts

objections concerned only the conduct occurring during the 24-hour period immediately before the opening of the polls. Thereafter, the Regional Director in his Report noted his authority and obligation to consider matters outside the scope of the objections,[3] and weighing the uncontroverted testimony of seven employee-witnesses with regard to the General Manager's speech in the light of the literature circulated by the Employer the day before, found that the General Manager's speech contained threats of plant closure if the Petitioner won the election, thus interfering with the employees' free choice in the election.

The Employer in its exceptions alleges that the Regional Director arbitrarily broadened the scope of inquiry without due notice, and relied on statements of employees regarding the contents of the General Manager's speech, which testimony does not accurately reflect the actual remarks made. To support its position, the Employer now, for the first time, submits a copy of the General Manager's address and additional campaign material which it distributed prior to the election. The speech contained the following statements:

> WHAT THIS UNION DOEN'T SEEM TO REALIZE IS THAT BOTH SPRAGUE ELECTRIC COMPANY AND SPRAGUE PONCE COMPANY ARE ENGAGED IN A BATTLE FOR SURVIVAL 1968 WAS THE WORST YEAR YEAR IN SPRAGUE ELECTRIC COMPANY'S HISTORY ENDING IN A NET LOSS OF NEARLY 3 MILLION DOLLARS THIS WAS THE FIRST LOSS THAT THIS COMPANY HAD EXPERIENCED SINCE 1932 OR MORE THAN 36 YEARS SO FAR THIS YEAR WE HAVE NOT BEEN ABLE TO REVERSE THIS TREND SPRAGUE ELECTRIC'S OPERATING RESULTS FOR THE FIRST QUARTER OF 1969 SHOWED A NET LOSS OF ABOUT $400,000 THE OPERATING RESULTS OF SPRAGUE PONCE DURING THESE SAME PERIODS WERE NOT AS BAD AS SPRAGUE OVERALL BUT WE DID EXPERIENCE A TREMENDOUS DROP IN MANUFACTURING PROFITS IN 1968 SUCH REDUCTIONS WAS OF ALMOST 75% IF IT WERE NOT FOR THE MONEY THAT WE HAVE BEEN ABLE TO ACCUMULATE DURING OUR PAST GOOD YEARS, WE WOULD NOW BE IN SERIOUS FINANCIAL DIFFICULTY LAST YEAR WHEN SPRAGUE PONCE BUSINESS DROPPED OFF DRAMATICALLY WE WERE FORCED TO LAYOFF SOME OF OUR PEOPLE WE ABSOLUTELY DID NOT WANT TO DO THIS — BUT, WE HAD NO CHOICE TRYING TO REVERSE LOSSES, INCURRED IN 1968 SPRAGUE ELECTRIC COMPANY HAS UNDERTAKEN MANY PROGRAMS COMPANY WIDE TO IMPROVE OVERALL EFFICIENCY AND INCREASE PRODUCTION ONE SUCH PROGRAM, THE VEFAC PROGRAM, IS NOW BEING CONDUCTED THROUGHTOUT THE ENTIRE SPRAGE ELECTRIC COMPANY TODAY, WE FIND OURSELVES COMPETING FOR BUSINESS NOT ONLY WITH OTHER FIRMS IN THE U S BUT WITH OTHER PLANTS IN THE SPRAGUE ELECTRIC COMPANY THAT PRODUCE EXACTLY THE SAME PRODUCT LINES AS WE DO *THE COMPETITION IS SO GREAT THAT MANY ELECTRONIC FIRMS IN THE U S HAVE BEEN FORCED TO MOVE THEIR PLANTS OUT OF THE U S TO TAKE ADVANTAGE OF THE EXTREMELY LOW LABOR COSTS AVAILABLE IN AREAS LIKE TAIWAN AND MEXICO JUST LAST WEEK, SPRAGUE ELECTRIC ANNOUNCED THAT IT WAS MOVING ONE OF ITS ESTABLISHED PRODUCT LINES FROM NORTH ADAMS, MASS TO MATAMOROS, MEXICO WITH THE ONLY PURPOSE OF TAKING ADVANTAGE OF THIS LABOR SAVING I FIRMLY BELIEVE THAT WE, AT SPRAGUE PONCE, CAN STILL OVERCOME THIS KIND OF COMPETITION-BUT ONLY BY WORKING TOGETHER* [EMPHASIS SUPPLIED]

Continuing on the subject of high labor costs the General Manager summed up the position of the Employer:

> IF WE ARE TO CONTINUE IMPROVING YOUR WAGES AND BENEFITS EACH YEAR AS WE HAVE FOR THE LAST FIFTEEN YEARS WE MUST OPERATE MORE EFFECIENTLY THAN OUR COMPETITION WE HAVE TO REMEMBER THAT SPRAGUE PONCE IS IN THE ELECTRONIC COMPONENTS BUSINESS AND *NOT THE PETROCHEMICAL FIELD* WHERE THERE ARE GIGANTIC PROFITS AND LESS CONCERN FOR LABOR COSTS SPRAGUE PONCE CANNOT PAY PETROCHEMICAL BENEFITS WITHOUT ELIMINATING ITSELF FROM THE COMPETITIVE MARKET OUT JOB PROTECTION LIES IN OUR ABILITY TO PRODUCE A QUALITY PRODUCT, ON TIME DELIVERY, AND A COMPETITIVE PRICE NO UNION WILL EVER HELP US ACHIEVE THESE GOALS WE SIMPLY CANNOT AFFORD ANY LABOR PROBLEMS AT THIS TIME LET ALONE A WORK STOPPAGE OR A STRIKE

Upon careful consideration of the above remarks, and in view of the literature pertaining to the removal of the parent company's operations to Mexico which was distributed to the employees prior to the General Manager's speech, we conclude that these statements constituted veiled threats to close the plant should Petitioner be selected as the employees' bargaining representative, and that the cumulative effect of these statements was to lead the employees reasonably to fear that such action would be taken by the Employer in the event of a victory for the Petitioner.[4] Moreover, we find no substantial variance between the version of the speech given by the seven employees relied upon by the Regional Director and the Employer's actual remarks. We therefore find that the Employer prevented the

[3] See, e g, *Northlake Convalescent Hospital*, 173 NLRB No 149, *International Shoe Company*, 123 NLRB 682 Moreover, it is clear that the Petitioner, in its exceptions, also alleged "other acts of fragant [sic] and illegal abuse of the free speech guaranty of the Act" which presumably would furnish sufficient notice to the Employer that conduct other than that occurring during the 24-hour period immediately preceding the election could be considered by the Regional Director See *Thomas Products Co*, 169 NLRB No 55 Finally, as indicated above, the Regional Director requested that evidence as to the contents of the speech, concerning which substantial oral testimony had been already received during the investigation of this case, be submitted by the Employer Under these circumstances, we find that the Regional Director acted well within his authority in considering the Employer's address and, further, that the Employer had ample actual notice that the speech was being considered by the Regional Director

[4] See *Penland Paper Converting Corporation*, 167 NLRB No 126, *A Werman & Sons, Inc*, 154 NLRB 1037

employees from expressing a free choice, and thereby interfered with the election. In view of the above, the Employer's request for further investigation and a hearing are denied.

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

ORDER

It is hereby ordered that the election conducted herein on May 16, 1969, be, and it hereby is, set aside.

[Direction[5] of Second Election[6] omitted from publication]

[5]We also direct that the notice of election to be issued in this matter include the following paragraph

The election conducted on May 16, 1969, was set aside because the National Labor Relations Board found that certain conduct of the Employer interfered with the employees' exercise of a free and reasoned choice Therefore a new election will be held in accordance with the terms of this Notice of Election All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties

[6]In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them *Excelsior Underwear Inc*, 156 NLRB 1236, *N L R B* v *Wyman-Gordon Company*, 394 U S 759 Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 21 within 7 days after the date of issuance of the Notice of Second Election by the Regional Director The Regional Director shall make the list available to all parties to the election No extension of time to file this list shall be granted by the Regional Director except in extraordinary circumstances Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed