

Humboldt Flakeboard and Jack L. Fleek, Petitioner and Lumber and Sawmill Workers, Local 2808, United Brotherhood of Carpenters and Joiners of America, AFL-CIO. Case 20-RD-583

April 9, 1970

**DECISION, ORDER, AND DIRECTION OF
SECOND ELECTION**

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

Pursuant to a Stipulation for Certification upon Consent Election, executed on April 15, 1969, an election by secret ballot was conducted on May 6, 1969, under the direction and supervision of the Regional Director for Region 20 among the employees in the stipulated unit. Upon the conclusion of the election, a tally of ballots was furnished to the parties which showed that, of approximately 89 eligible voters, 89 cast valid ballots, of which 35 were for, and 54 were against, the Union. Thereafter, the Union 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 July 16, 1969, issued and served upon the parties his Report on Objections, Order and Notice of Hearing on Objections. In his report, the Regional Director recommended to the Board that Objections 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 be overruled, and that a hearing be held to resolve the issues raised with respect to Objections 1 and 3.

On August 1, 1969, the National Labor Relations Board issued an Order in which it adopted the Regional Director's aforementioned recommendations in their entirety. Accordingly, the Board overruled all of the Union's objections, except Objections 1 and 3, and notified the parties that the issues raised by these latter objections would be processed pursuant to the Regional Director's Order and Notice of Hearing on Objections.

Pursuant thereto, a hearing was held on August 29, 1969, at Eureka, California, before Donald E. Twohey, Hearing Officer. The Employer and the Union appeared and participated and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. Petitioner was not represented by counsel, nor did he make an appearance at the hearing.

On November 20, 1969, the Hearing Officer issued and served on the parties his Report on Objections, recommending that Union Objections 1 and 3 be overruled in their entirety and that the results of the election be certified. The Union filed timely exceptions to the Hearing Officer's Report

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 Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

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 Union is a labor organization claiming to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain 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 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, including truckdrivers, employed by the Employer at its Arcata, California location, but excluding office clerical employees, guards, and supervisors as defined in the Act.

5. The Union, in its objections, contends that the Employer interfered with the decertification election conducted at its Arcata, California, plant by its dealings with two of its employees, Cleveland and Langjahr, about the proposed implementation of a contract loading plan, and also by making a concerted attempt to convey to its employees that wage increases already granted to employees in the Employer's nonunion mills in the spring of 1969 might be in jeopardy in the Employer's unionized Arcata mill because of the Union's presence there.

As to the first objection, the record shows that about 5 weeks before the election, the Employer's owner, A. A. Emerson, spent about 5 hours with employees Cleveland and Langjahr in a local restaurant. In a discussion about the forthcoming decertification election, Emerson said that he could live with the Union, but his five other mills were nonunion and he would like to see the Union out of the Arcata mill. Emerson further stated that he would like an opportunity to show the employees that they could live without the Union, and several times said that he would like to convert Cleveland, a known union adherent, to his side.

At one point, after determining that Cleveland's earnings for the preceding year had been \$8,000, Emerson said that car loaders like Cleveland had earned more at his nonunion mills under a contract loading plan. Cleveland mentioned his awareness that a friend of his had earned \$12,000 under such a

piece-work arrangement. Both employees expressed an interest in the plan, and Emerson said he would like them to have one. Emerson stated that the Union would not endorse such a plan because it might reduce the number of jobs. When Langjahr asked if they could have such a system under a union contract, Emerson replied that it would cause a slight problem, but he did not see why it could not be worked out; it was understood between the men, however, that the Union would be an impediment to such a plan.

After a considerable amount of discussion about the plan, Emerson stated that he would, and the two employees also should, speak further to plant officials Johnson and Fusi to work out details. On the following Monday, plant superintendent Fusi approached employee Cleveland, referred to Cleveland's earlier conversation with Emerson, and said he would certainly like to get the plan for the employees. On several other occasions thereafter, and before the election, Langjahr asked Emerson about the proposed plan. Emerson stated that he was serious about it; that there were a lot of details to be worked out; and that Cleveland and Langjahr should meet with Johnson and Fusi to discuss the matter.

The Hearing Officer found that the Employer's conversations with Cleveland and Langjahr regarding the incentive loading system raised serious questions about the fairness of the election, in view of owner Emerson's openly expressed desire to neutralize, diminish or destroy Cleveland's and Langjahr's support for the Union. However, he found that no interference with the election resulted from the Employer's conduct because Emerson's conversations with Cleveland and Langjahr were not made known to other employees.

With regard to the Hearing Officer's finding that there was no dispersal of information about the proposed incentive loading plan beyond Cleveland and Langjahr, it is clear that such conversations may have come to the attention of at least one employee well-placed to disperse information about the proposed plan to others. Thus, in answering a question from the Hearing Officer as to whether he told other employees about such conversations, employee Langjahr stated that he thought he might have told John David, the car checker on the evening shift, about the contract loading discussions. Good news concerning a prospective plan for increasing earnings must be presumed to have some amount of notoriety. More important, however, is the fact that owner Emerson himself recognized employee Cleveland as an ardent union supporter, and admittedly wished to enlist his support in Emerson's attempt to rid the Arcata mill of the Union. Holding out the promise of a substantial increase in earnings to a known union advocate, in the context of a discussion about a forthcoming election, and at the same time suggesting that the Union might be an obstacle to achievement of that

increase, is an inducement to revoke the Union's representative status and constitutes interference with employees' freedom of choice. Equally, as the Hearing Officer points out, such direct dealings with employees, with the obvious purpose of showing them that they do not need a union to better their lot, derogates from the Union's status as representative of all the unit employees and further tends to interfere with freedom of choice in the election.

As to the second objection, the facts show that sometime during the week preceding the May 6 election, general manager Johnson mentioned to employee Blair that the employees at the Employer's nonunion mills had received a 30-cent increase. Blair replied that he was aware of this fact. About May 2 or 3, foreman Lancaster told employee Cleveland about the 30-cent increase and added that there would be no increase for the unit employees. When asked why, Lancaster said that because of the Union's representative status, there would have to be negotiations for any raise. Cleveland replied that the employees were going for more than a 30-cent raise, in any event. On the morning of the election, in the course of a conversation about the balloting, foreman Strahan said to employee Langjahr that if it were not for the Union, the unit employees would probably have received a 30-cent increase as of May 1, when employees at nonunion mills received their raise. On at least one other occasion prior to the election, foreman Strahan talked to another employee about the 30-cent increase, although the precise nature of the conversation is not known.

The Hearing Officer found that these remarks to several employees by Employer officials emphasizing that wage increases had been recently granted at the Employer's five nonunion mills but would have to await negotiation in the Arcata mill were nothing more than accurate statements of fact in which he could find no election interference. Such remarks, in his view, merely conveyed to employees information about wage increases in the nonunion mills, which they had already learned about through a local newspaper, and correctly informed them that their own wage increases would have to be negotiated.

The record discloses that at least some large nonunion mills in the Humboldt County area, where the Arcata mill is located, customarily granted wage increases each year in the spring, somewhat before union contracts expired in union mills around June 1. Petitioner filed no specific objections with respect to the wage increases granted at the Employer's nonunion mills, and there is no evidence to show that they were granted for any other reason than to maintain the Employer's competitive position in the lumber industry. But, even so, in a situation where employees were no doubt aware of industry wage practices and collective-bargaining procedures, there is no valid explanation of why, just prior to an election, Employer officials would make an effort to

stress to employees that such increases had already been received in nonunion mills but would be delayed in the Arcata mill because of the presence of the union. The unusual pattern of supervisors approaching employees to inform them that their raises, unlike those of nonunion employees, would be subject to the uncertainties of the negotiating process, can be reasonably characterized as a deliberate attempt to suggest to employees that receipt of the increases could be long-delayed if the Union were not voted down. Certainly, in view of the pending election, the employees could have construed the unsolicited proffers of information to mean as much. In other circumstances, the conveying of such information might be of no coercive effect; in the present case, the volunteering of such information by supervisors might well have carried with it, to the closely-attuned ears of employees, the implication that their wage increases could rest upon the results of the election.

The case, in sum, presents a situation where the Employer has bypassed the Union and sought to undermine its representative capacity and support by dealing with two employees, in the bargaining unit, about increased benefits, for the manifest purpose of ridding the Employer of the Union, and, in addition, has engaged in a pattern of conduct designed to less-than-subtly utilize a wage adjustment made in the Employer's own nonunion mills to convey to employees the impression that their economic interests would be better served without their union

representative. In our view, this conduct destroyed the requisite conditions for a fair election and thereby interfered with the employee's freedom of choice to determine whether or not to retain their collective-bargaining representative.¹

Accordingly, we shall order that the decertification election conducted on May 6, 1969, be set aside, and shall direct that a new election be held in the appropriate unit

ORDER

It is hereby ordered that the decertification election conducted herein on May 6, 1969, be, and it hereby is, set aside.

[Direction of Second Election² omitted from publication]

¹*Allen Fruit Co.*, 101 NLRB 761

²In 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 *Excelstor 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 20 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.