The Louis-Allis Company *and* International Union of Electrical, Radio and Machine Workers, IUE, AFL-CIO,CLC, Petitioner Case 25-RC-3992

May 14, 1970

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN MCCULLOCH AND MEMBERS FANNING AND BROWN

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted in the above-entitled proceeding on March 26, 1969, under the direction and supervision of the Regional Director for Region 25 among the employees in the appropriate unit At the conclusion of the balloting the parties were furnished a tally of ballots which showed that of approximately 248 eligible voters, 248 valid ballots were cast, of which 108 were for, and 140 were against, the Petitioner There were no challenged or void ballots Thereafter, the Petitioner filed timely objections to con duct affecting the results of the election

The Regional Director conducted an investigation and on June 30, 1969, issued and served on the parties his report on objections and recommendations to the Board and, on July 11, 1969, an Errata thereto In his report, as corrected, the Regional Director recommended that Petitioner's Objections 1, 2, and 3, and the additional alleged interference be overruled and that a hearing be held to resolve the factual issues raised in Objection 4

Thereafter, the Employer filed timely exceptions[1] to the Regional Director's report, the Petitioner filed exceptions to the report and a brief in support thereof, and the Employer filed an answering brief to the Petitioner's exceptions On September 5, 1969, the National Labor Relations Board ordered that the issues raised by Petitioner's Objections 1 and 2, as well as Objection 4, be processed pursuant to the Regional Director's order directing a hearing [2]

Pursuant to the Regional Director's order a hearing was held on October 7, 8, and 14, before Hearing Officer Albert G Fisher All parties were afforded full opportunity to be heard, examine and cross-examine witnesses, and to introduce evidence bearing on the issues On January 16, 1970, the Hearing Officer issued his report recommending that Petitioner's Objections 1 and 2 be overruled,[3] that Objection 4 be sustained, and the results of the election be set aside and a second election directed

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 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 labor organization involved claims 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 all production and maintenance employees, work leaders, truck drivers, plant clerical employees, inspectors, shipping and receiving employees, and janitors at the Employer's Evansville, Indiana, plant, excluding all office clerical employees, all guards, professional employees 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

5 In his report on objections the Regional Director found Exhibit 66 (the Hearing Officer's Exh 5 herein) was subject to a coercive interpretation [4] He then indicated, however

> Whether standing alone Exhibit 66 could be construed as an implied threat of plant removal need not be decided Petitioner has produced substantial evidence that the Employer himself expressly or impliedly so construed it to various employees

One of the purposes of the hearing was to determine how the Employer through its foreman construed Exhibit 66 to the employees In his report, however, the Hearing Officer states only that the statements in Exhibit 5 (the R D Exh 66) were substantially similar to those read to the employees by their foreman, the testimony of the Petitioner's witnesses which was rather vague

---

[1] The Employer requested that its exceptions be considered only if the Petitioner excepted to the Regional Director s report on objections with respect to the alleged additional interference Since the Petitioner did not except to that portion of the Regional Director s report the Employer s exceptions were not considered

[2] In the absence of exceptions thereto the Board adopted *pro forma* the Regional Director s recommendation that Petitioner s Objection 3 and the additional alleged interference be overruled

[3] In the absence of exceptions thereto the Board adopts *pro forma* the Hearing Officer s recommendation that Objections 1 and 2 be over ruled

[4] Exh 66 (Hearing Officer s Exh 5) was a statement which the Employer conceded and the evidence shows was read by the Employer s foremen to the employees a few days before the election It states

> I constantly hear and read where the IUE organizer is telling you that you need the IUE to protect your jobs here at Louis Allis and that the IUE will guarantee you that thing called job security What a joke! The unions should be the last ones to make such a statement or promise
>
> Did you know that a total of eight (8) unionized companies in *Evansville* involving approximately *30 000* employees *closed their doors permanently* since 1955? That s right—30 000 jobs wiped out And what good did the union security do these people? Why does it appear that only unionized plants seem to closed their doors for good? Real job security is generated by you and your company working together and not pulling in opposite directions with some union between us We have demonstrated this already in the short life of our plant and together we can continue to do so Don t take an unnecessary risk Vote NO !!!

and at times contradictory established little more. We are thus left to decide whether Exhibit 66 on its face could be construed as an implied threat of plant removal which would warrant setting aside the election. The Hearing Officer so construed it. We do not agree.

Initially, we note that both the Union and the Employer engaged in vigorous compaigns. The Union distributed or mailed about 40 items of campaign literature. One of the primary issues of the Union's campaign was job security, and the Union as the only means for the employees to obtain job security. The statement read by the Employer's foremen was directed precisely to the point raised by the Union—job security. We note in this connection that earlier, in a leaflet to employees, the Union had referred to the Employer's "implied claim that Unions caused 29,000 jobs to leave town" as "The Big Hoax," pointing out that the leading employers who left Evansville had "all moved to Union plants" and had taken "the Evansville people wishing to go with them." The same leaflet also pointed out that plant closings in Evansville were not confined to unionized plants. We note, further, that the Employer did not assert, or leave to necessary inference, that the unionized plants in Evansville which had closed their doors had acted for retaliatory reasons. On the contrary, in a letter to employees, distributed on or about March 21, 1969, the Employer explicated the reasons for the closings as due to the companies' loss of money in area operations resulting from unreasonable economic pressures which had been imposed upon them.

Viewing the allegedly objectionable statement not as an isolated statement, but in the complete context of the entire election campaign, we do not think that the statement exceeded the bounds of permissible persuasion. Accordingly, we overrule the Hearing Officer's finding that the statement read by the Employer's foreman would lead the employees to fear that the plant would be closed in the event of a union victory. As all of the Petitioner's objections have been overruled and as the Petitioner failed to secure a majority of the valid ballots cast, we shall certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid votes had not been cast for International Union of Electrical, Radio and Machine Workers, IUE, AFL–CIO, CLC, and said labor organization is not the exclusive representative of the employees in the unit found appropriate within the meaning of Section 9(c) of the Act.

MEMBER BROWN, dissenting:

Contrary to the majority, and as found by the Hearing Officer, I would sustain Objection 4 and direct a second election. In my opinion the portion of the Employer's statement attributing plant closures and loss of jobs to union representation, backed with the admonition: "Don't take any unnecessary risk. Vote No! ! !" was calculated to elicit antiunion votes by instilling fear that employees would suffer a similar fate in the event of a union victory.