

Jacob Wiesel d/b/a Saticoy Meat Packing Co. and Meat Cutters Union Local 556, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO. Cases 31-CA-1559 and 31-RC-1128

May 25, 1970

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS BROWN AND JENKINS

On February 9, 1970, Trial Examiner Benjamin B. Lipton issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He also found the allegations of the objections to the election in Case 31-RC-1128 to have been established by certain of the aforesaid unfair labor practices committed prior to the election, and recommended that the election be set aside and a new one be directed. Thereafter, the Respondent filed a brief in opposition to the Trial Examiner's Decision.

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 brief, and the entire record in this case, and hereby adopts the findings, conclusions,¹ and recommendations of the Trial Examiner.

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 Respondent, Jacob Wiesel d/b/a Saticoy Meat Packing Co., Saticoy, California, his agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

[Direction of Second Election² omitted from publication.]

¹ Chairman McCulloch would not find that Respondent's August 21 letter violated Sec 8(a)(1) See *Winn-Dixie Stores, Inc.*, 166 NLRB 227, fn 1

² 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, *NLRB 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 31 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

TRIAL EXAMINER'S DECISION

STATEMENT OF THE CASE

BENJAMIN B. LIPTON, Trial Examiner: In Case 31-CA-1559, a complaint was issued by the General Counsel¹ alleging that Respondent engaged in certain coercive conduct in violation of Section 8(a)(1) of the Act. In Case 31-RC-1128, pursuant to a stipulation for certification upon consent election, a Board election was conducted by the Regional Director on August 29,² following which timely objections were filed by the Union. On October 27, the Regional Director concluded that certain issues raised by the objections and other material issues disclosed in his investigation are related to and involve the same evidence as do the allegations in the unfair labor practice complaint and, accordingly, issued an order consolidating both cases for the purpose of hearing.³

On January 6, 1970, a hearing in the consolidated proceeding was held before me in Ventura, California. Full opportunity was afforded all parties to present relevant evidence, to argue orally on the record, and to file briefs. After the close, General Counsel submitted a brief, which has been duly considered.

Upon the entire record in the cases, and from my observation of the witnesses, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Jacob Wiesel d/b/a Saticoy Meat Packing Co., herein called the Respondent, is an individual proprietorship engaged at Saticoy, California, in the retail and wholesale packing and distribution of meats. Annually, Respondent

¹ The complaint issued on October 22, 1969, based on a charge and an amended charge by the Union filed and served by registered mail, respectively, on September 8 and October 21, 1969. All dates herein, unless otherwise noted, are in 1969.

² The election, among 22 eligible employees in a production and maintenance unit, resulted in a vote of 11 to 5 adverse to the Union, with 6 ballots challenged

³ The Regional Director's report on objections recites that a copy of the Union's objections was duly served upon the Employer At the instant hearing, Respondent introduced a letter dated September 9 in which it advised the Regional Office that it had not received a copy of the objections and that, therefore, the objections were defective as not conforming with the Board's Rules and Regulations Respondent presents the same argument herein, with no other evidence offered on the subject. Such an issue is not properly one to be resolved in this proceeding, but is rather an inherent procedural question within the representation case, with appropriate recourse available before the Board In any event, assuming the fact as stated by Respondent, I would find that it suffered no substantial prejudice thereby

has a gross volume of sales valued in excess of \$500,000, and has a direct inflow in interstate commerce valued in excess of \$50,000 Respondent admits, and I find, that it is engaged in commerce within the meaning of the Act

II THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of the Act

III THE UNFAIR LABOR PRACTICES

Respondent called no witnesses and did not attempt to refute the evidence adduced by General Counsel So far as pertinent, the record establishes the following undisputed facts

Sam Casteneda

Two or three days before the August 29 election, Casteneda, a meatcutter, had a conversation with the "boss," Jacob Wiesel, in the latter's office Wiesel told him in substance that, if the employees joined the Union, he was going to get rid of all the killing floor men and hire in their place more experienced "Union men," who could do the work better

Amando Ramos

On one occasion in June, Ramos was called by Wiesel into his office Ramos was asked if he signed "papers for a Union," to which he replied negatively He was asked if he knew who had signed, and answered, no He was then offered a raise to \$5 an hour (from his present rate of \$2 75) if he would find out, and tell Wiesel, which employees had signed for the Union

About July 19, Wiesel approached Ramos while he was in the freezer, in the presence of a named truckdriver Again he asked Ramos if he had signed papers for the Union Upon receiving a denial, Wiesel remarked that he had fought with Hitler and had fought with Russia, and was not going "to lose here with a Union"⁴

About July 26, in the kitchen with a few employees present, Wiesel told Ramos to advise the Union that it could work the picket line 10,000 times and he would not sign a contract

The employees were allowed a daily coffeebreak of 15 minutes, and the coffee, together with snacks, e g , bologna and salami, were freely furnished by Respondent On about four occasions within the period from June to August, Ramos testified that Wiesel spoke to employees concerning the Union during coffeebreak or lunchtime The substance of Wiesel's comments was that, if they joined the Union, he would no longer supply the coffee and snacks or allow the coffeebreaks, because the Union does not provide him with food

On the testimony of Casteneda, it is concluded that, in violation of Section 8(a)(1), Respondent threatened the killing floor employees with loss of their jobs and replacement by more experienced "Union men," clearly for the purpose of coercing them to vote against the Union

On Ramos' testimony, it is concluded that Respondent violated Section 8(a)(1) by engaging in (a) coercive inter-rogations as to the union activities of the employees, (b) solicitation of an employee, with an offer of reward, to act as informer concerning the union activities of fellow employees, (c) discouragement of employees from joining or voting for the Union by stating the intention not to enter into a contract, or bargain in good faith, with the Union, if selected as majority representative, and (d) threats to discontinue existing employee benefits, i e , coffeebreaks, coffee and snacks, if the Union were allowed to become the employees' representative

Preelection letter

On or about August 21, Respondent distributed to the employees a letter signed by Wiesel, concerning which General Counsel adverts particularly to the following paragraphs as allegedly coercive

It has always been our policy to deal directly with you as an individual and we value this personal relationship Up to now, you have always been free to come to us for help *with any problem* you might encounter But if the union wins the election, you will lose this right which you now enjoy by dealing with us personally with regards to your hours of work, wages, benefits and working conditions

Also, if the union wins, you will not be permitted to deal directly with us but only through strangers (union officers and agents) which many of you have never met or do not even know [Emphasis supplied]

General Counsel contends, with merit, that Respondent has thus conveyed an implied threat of loss of the employees' statutory right to present grievances directly to their employer, and to have such grievances adjusted without the intervention of the bargaining representative⁵ While it is fundamental in the Act that, upon the proper selection of a majority representative, the employer can no longer bargain individually with the employees as to wages, hours, and working conditions, I find that the intended purpose and reasonable effect of Respondent's language extended materially beyond this simple explanation of the law With the prefatory emphasis upon their existing freedom to seek help directly from Respondent with regard to "any problem," the subsequent comment that they will lose this right if the Union wins the election fails to specify or reveal that the employees may continue to present their griev-

⁴ The latter statement is taken only as indicative of Respondent's union animus

⁵ As long as the adjustment is not inconsistent with a collective bargaining contract then in effect Section 9(a) and e g *NLRB v Lundy Manufacturing Corp* 316 F 2d 921 925 (C A 2) cert denied 375 U S 895

ances personally. The likely effect upon the employees is sharpened by the record showing that many of them do not have a clear command or understanding of the English language. In full context, and in light of Respondent's known union animus, I find that the threat is well implied that, upon their selection of the Union, the employees would be deprived of the substantial benefit of being able to present grievances directly to Respondent. The violation of Section 8(a)(1) is, therefore, sustained.⁶

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of Respondent described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

Upon the foregoing findings of fact and upon the entire record, I make the following:

CONCLUSIONS OF LAW

1. Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By interfering with, restraining, and coercing employees in the exercise of rights guaranteed in Section 7 of the Act, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
5. By certain of the aforesaid conduct committed prior to the Board election, Respondent has interfered with and illegally affected the results of the Board election held on August 29, 1969.

V. THE REMEDY

Having found that Respondent engaged in certain violations of Section 8(a)(1) of the Act, I will recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. It has also been found that Respondent interfered with the election conducted on August 29, 1969. I will therefore recommend that the election be set aside and another be conducted at such time as may be appropriate.

⁶ *Graber Manufacturing Company, Inc.*, 158 NLRB 244, *Winn-Dixie Stores, Inc., Tampa Division*, 166 NLRB 227, *Block-Southland Sportswear, Inc.*, 170 NLRB No 101

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the cases, I recommend that Respondent, Jacob Wiesel d/b/a Saticoy Meat Packing Co., Saticoy, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees concerning their union activities or sentiments; requesting or instructing employees to engage in surveillance or to act as informers regarding the union activities of other employees; threatening employees with discharge, replacement, loss of benefits, or other reprisals to restrain them from union membership or from voting for the Union in a Board election; informing the employees or leading them to believe that, if they selected the Union as their bargaining representative, they would be deprived of their right to present their grievances directly to management; or informing the employees that it will not enter into a contract, or bargain in good faith with the Union, or any other labor organization, if chosen as majority representative of the employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Post at its plant and facilities in Saticoy, California, copies of the notice attached marked "Appendix."⁷ Copies of said notice, on forms provided by the Regional Director for Region 31, shall, after being duly signed by Respondent, be posted immediately upon receipt thereof, in conspicuous places, and be maintained for a period of 60 consecutive days. Reasonable steps shall be taken to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Trial Examiner's Decision and Recommended Order what steps Respondent has taken to comply herewith.⁸

⁷ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes. In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall be changed to read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

⁸ In the event this Recommended Order is adopted by the Board, this provision shall be modified to read "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

IT IS FURTHER RECOMMENDED that the election conducted among Respondent's employees on August 29, 1969, be set aside and a new election directed at an appropriate time.

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violations of the Act not specifically found herein.

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

WE WILL NOT ask you anything about a union, or who is in the union, or who favors the union, in a manner which would coerce you regarding your rights under the Act.

WE WILL NOT ask you to spy on other employees and report to us who joins the union, or who works for it.

WE WILL NOT threaten to fire you or to replace you with someone else, or to take away your coffee and snack privileges, or other benefits, in order to stop you from joining or helping a union, or to keep you from voting for a union in a Board election.

WE WILL NOT tell you, or lead you to believe, that you will lose the right to take your problems

or present your grievances directly to the Company, or that we will not sign a contract or bargain with the union—if the union is selected by a majority of the employees.

WE WILL NOT in any similar manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed employees in the National Labor Relations Act.

All our employees are free to become or remain, or to refrain from becoming or remaining, members of any union of their choice, except to the extent that such rights may be affected by an agreement requiring membership in a union as a condition of employment, as authorized by Section 8(a)(3) of the Act, as amended.

JACOB WIESEL
D/B/A SATICOY
MEAT PACKING Co.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

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.

Any questions concerning this notice or compliance with its provisions, may be directed to the Board's Office, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 824-7351.