

General Electric Wiring Devices, Inc. and International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 24-RC-3886

May 27, 1970

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, BROWN, AND JENKINS

Pursuant to a Stipulation for Certification Upon Consent Election an election by secret ballot was conducted in the above-entitled proceeding on October 23, 1969, under the direction and supervision of the Regional Director for Region 24. At the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately 264 eligible voters, 241 ballots were cast, of which 83 were for, and 155 against, the Petitioner. There were three challenged ballots.

On October 29, 1969, the Petitioner filed timely objections to conduct affecting the results of the election. The Regional Director caused an investigation of the objections to be made and, thereafter, on March 13, 1970, issued and served on the parties his report and recommendation on objections. In his report, the Regional Director recommended that Objections 1, 4, and 6 be sustained, that Objections 2 (that part of which alleges a denial of overtime to employees),¹ 3, and 5 be overruled, and that the results of the election be set aside and a second election be directed. Thereafter, the Employer filed timely exceptions to the Regional Director's Report.

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 the representation of 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 purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Employer at its plant in Juana Diaz, Puerto Rico, but excluding all office clerical employees, professional personnel, guards and supervisors as defined in the Act.

5. The Board has considered the objections; the Regional Director's report, and the Employer's exceptions, and adopts the Regional Director's recommendations for the reasons that follow:

Following the filing of the Union's election petition on September 3, 1969,² the Company embarked on an antiunion campaign which through a series of leaflets and speeches, when viewed in their entirety, conveyed an unmistakable threat of adverse economic consequences and loss of a statutorily protected employee right as the inevitable result of the employees' selection of the Union as their bargaining representative. Thus, as is more fully documented in the Regional Director's report, in a leaflet issued on September 26, the Company first alluded to a plant closing in the town of Utuado as follows:

ABOUT THE MATTER OF EMPLOYMENT SECURITY:

What did the I.A.M. Union do to prevent the layoffs at Micro Electric Motors of Utuado when this company did not have enough orders? What did it do for the workers at Micro who were left jobless when the factory closed?

The theme was pursued again on October 8:

The I.A.M. Failures in Industry:

And what about Micro Electric of Utuado? You know the story . . . May it rest in peace! What did the IAM and its organizer do for the employees who were left jobless? *NOTHING!!* Were the promises made to the Micro employees fulfilled? *NO!* On the contrary, the factory no longer exists. And the money that the employees paid as dues. . . . WHERE IS IT?

A subsequent leaflet issued on October 14 was devoted entirely to a discussion of the plight of the Micro workers. Attached to it is a letter allegedly prepared by former Micro employees addressed to the employees of General Cigar exhorting them to reject the Union at that plant. The letter in pertinent part states:

We know that next Sunday all of you will hold a meeting to vote concerning whether you accept the conditions that the factory has proposed for the contract with the IAM. We are in the obligation of making you understand that we are out of jobs due to the IAM demands. That union forced Micro to close down and, consequently, now we are jobless and said union has not worried about us and has not helped us to find jobs. We fell down because we wanted to fly fast and very high; we were asking for too much and we were left with nothing. This same thing is going to happen to you if you continue giving your support to that union.

* * *

¹ The remaining portion of Objection 2, alleging a discriminatory reassignment of an employee, is the subject of an unfair labor practice case (Case 24-CA-2774) now pending decision by the Board

² All dates hereafter are in 1969

We are living examples of the attitude of that union that wants to represent you. We believe that you can work in that factory without the need of the union, you will be more secure.

In a final leaflet, issued 2 days prior to the election, the Company stated:

You read the sheet that several former employees of Micro wrote to the employees of General Cigar of Utuado. You were able to see the difficulties and problems these employees went through when they remained jobless. You were also able to see the advice that, out of their own experience, they gave to the General Cigar employees.

The leaflet also noted that the Union has subsequently sued the former Micro employees who had signed the original message for \$200,000. A copy of the complaint was attached to this leaflet.

In addition to the foregoing campaign literature, company representatives made a number of speeches to the employees. In one, made some 4 weeks before the election, Quality Control Manager Alvarez identified himself as a former manager at Micro and proceeded to outline his version of the difficulties encountered by Micro with the Union which eventually led to its closing. He stated:

During the month of July 1968 we started negotiating a new contract with the IAM. The Union's demands came up to more than \$1.00 increases per hour. With these facts on hand Micro's future was insecure. The employment security that the Union preached about could no longer be guaranteed. During that time relations with the Union deteriorated to such a degree that there was the need to start looking for a new location for Micro. To top everything, the Union employed its favorite weapon—the strike! Strikes are not inevitable but everybody knows that strikes generally occur where unions are. Strikes mean losses of wages, at times loss of jobs but, what is still worse, the company loses customers like in the Micro case. The strike at Micro was short but some of our customers became scared and placed orders at other factories.

Alvarez noted that the strike settlement resulted in only a 5-cent-per-hour increase but the damage had been done and shortly thereafter the plant closed. The natural implication that the closing was an act of retaliation rather than the result of increased economic costs flowing from the agreement was made more directly by Alvarez' concluding remark that, "I believe that if a union had not interfered at Micro I would still be working there."

The Supreme Court has recently articulated the standards by which we are to determine whether a company prediction of the possible effects of unionization is proper and permissible:

[The employer] may make a prediction as to the precise effects he believes unionization will have on his company. In such a case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences

beyond his control or convey a management decision already arrived at to close the plant in case of unionization. If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on misrepresentation and coercion, and as such without the protection of the First Amendment. We therefore agree with the Court below that "[c]onveyance of the employer's belief, even though sincere, that unionization will or may result in the closing of the plant is not a statement of fact unless, which is most improbable, the eventuality of closing is capable of proof." (*NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618)

The Company's plain suggestion through its leaflets and speeches that unionization would bring about the closing of the plant had the natural tendency to imply retaliation for supporting the Union since that suggestion was not based on "demonstrably probable consequences beyond [the Company's] control." From its persistent emphasis throughout the campaign on the Union's part in causing the demise of the Micro operation, the employees could reasonably infer that their employment relation was threatened by unionization and that their employer was willing to use its economic power to ensure that the threat became a reality. On this basis alone we would find sufficient interference with the election process to require the direction of a second election.

In addition, however, Alvarez, in the same speech, threatened that the employees would lose their freedom to discuss complaints and grievances with the Company. He stated:

Right now you are absolutely free to bring your complaints to the supervisor, directly to Mr. Calder and even to any of the Company executives. Once the Union wins the election you then lose that right. You have to tell your problems to the Union delegate so that he then speaks with the supervisor. In other words, you have to pay dues to lose the freedom you now enjoy. Don't believe the propaganda that it is going to be easier to work in this factory if the Union wins.

The selection by employees of a union does not, of course, preclude employees as individuals from going to their employer with their problems.³ Alvarez's statement that after the Union came in employees would not be able to go to management with their problems was, by its nature, the threat of denial of a statutory right in reprisal for selection of a union and thereby

³ Sec. 9(a) of the Act provides that any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have their grievances adjusted without the intervention of the bargaining representative as long as the adjustment is not inconsistent with the terms of the collective bargaining contract or agreement then in effect. Provided further that the bargaining representative has been given opportunity to be present at such adjustment.

interfered with the employees' free choice in the selection of a bargaining representative⁴

Finally, we agree with the Regional Director that the sudden, unexplained appearance of a helicopter which hovered over the voting area for some 15 to 20 minutes, and whose occupants were observed taking photographs of the voters, was an improper interference with the Board's election process. The appearance of this alien element at such a critical time, considered in conjunction with the objectionable conduct engaged in by the Company during the election campaign, could reasonably have created such apprehension in the minds of the voters, as to destroy the laboratory conditions necessary for the conduct of a free and fair election.⁵ Accordingly, based on the foregoing,

⁴ *Graber Manufacturing Co Inc* 158 NLRB 244 248-249 *Block Southland Sportswear Inc* 170 NLRB No 101 TXD C 2 C

⁵ We deem it immaterial that at the time of the incident neither party was aware of who was responsible for the helicopter's appearance. Indeed the very uncertainty of where to place responsibility at that time may be said to have further contributed to the apprehension and confusion of the employees.

ORDER

It is hereby ordered that the election conducted herein on October 23, 1969, among certain employees of General Electric Wiring Devices, Inc Juana Diaz, Puerto Rico, be, and it hereby is, set aside

[Direction of Second Election⁶ omitted from publication]

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. *Excelstor Underwear Inc* 156 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 24 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.