

Al Long, Inc. and Automotive Salesmen's Association, affiliated with Seafarers International Union of North America, AFL-CIO, Petitioner.
Case 7-RC-8755

October 29, 1968

DECISION, ORDER, AND DIRECTION
OF SECOND ELECTION

BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND JENKINS

Pursuant to a Stipulation for Certification upon Consent Election, approved February 16, 1968, an election by secret ballot was conducted in the above-entitled proceeding on February 28, 1968, under the direction and supervision of the Regional Director for Region 7. Upon the conclusion of the election, a tally of ballots was furnished the parties, in accordance with the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended.

The tally of ballots shows that there were approximately 13 eligible voters and that 13 ballots were cast, of which 7 were for the Petitioner, 1 was against the Petitioner, and 5 were challenged.

On February 29, 1968, the Employer 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 April 12, 1968, issued a decision thereon, in which he concluded that the objections raised substantial and material factual issues involving the necessity of credibility resolutions. Accordingly, he ordered that a hearing be held to resolve the issues raised by the objections. A Notice of Hearing was issued and served upon the parties. It was further ordered that the Hearing Officer designate to conduct such a hearing should prepare and cause to be served on the parties a report containing resolutions of credibility of witnesses, findings of fact, and recommendations to the Board concerning disposition of the issues involved.

Pursuant to said Notice, a hearing was held on April 26, 29, and 30, 1968, before Hearing Officer David L. Murphy, Jr. All parties participated and were given full opportunity to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. On June 13, 1968, the Hearing Officer issued and duly served upon the parties his report, in which he recommended that the objections be overruled in their entirety and that a Certification of Representatives be issued to the Petitioner. Thereafter, the Employer filed exceptions and a supporting brief, and the Petitioner filed a brief in support of the Hearing Officer's Report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the 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 National Labor Relations 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 all new and used car and truck salesmen employed by the Employer at its Warren, Michigan operations, but excluding office clerical employees, guards and supervisors as defined in the Act, and all other employees, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. The National Labor Relations Board has reviewed the rulings made by the Hearing Officer at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Hearing Officer's Report on Objections and the exceptions thereto, the briefs of the parties, and the entire record in the case, and finds merit in certain of the exceptions for the reasons discussed below.

The Employer operates a Ford automobile dealership in Warren, Michigan. On January 29, 1968, the Petitioner filed a petition seeking to represent the Employer's new and used car and truck salesmen. Then on February 7, 1968, the Petitioner commenced a strike against the Employer, which continued until after the election, which was held on February 28, 1968.

In its objections, the Employer alleged that certain conduct which occurred during the critical period destroyed the conditions necessary for a fair and free election. Among the matters alleged by the Employer are the following (1) rifle shots fired by unknown parties through the Employer's main window while employees were within the building; (2) anonymous telephone calls in the night threatening bodily injury to employees eligible to vote in the election; (3) anonymous telephonic bomb threats made to the dealership; and (4) massed and unruly picketing by the Petitioner, including harassment of employees, customers, and deliverymen with threats of bodily injury, and requiring the city of Warren to station full-time police and a police car in front of the Employer's premises.

The record discloses, as more fully set forth in the Hearing Officer's Report, that within 2 weeks of the inception of the picket line, six rifle bullets penetrated the main windows of the dealership. Another incident of property destruction during the critical period consisted of the throwing of rocks at the Employer's sign by picket Leo Roach, following which Roach was arrested for malicious destruction of property.

After the commencement of the strike, employees Davis and Humphreys received threatening anonymous telephone calls. Davis originally had served on the picket line, but he decided to return to work. He had an unlisted telephone number which was in the possession of strike captain Giovanelli. Humphreys, on the other hand, after the strike vote had been taken, decided to continue working. Each man received 15 to 40 threatening telephone calls before the election. Humphreys testified that he received several calls one night between the hours of 11:15 p.m. and 2:30 a.m. The calls received by both men were similar in nature. Although the callers made no mention of either the election or the strike, both Davis and Humphreys were threatened with bodily harm if they returned to work. Nevertheless, both men continued to work at the dealership.

During the strike period preceding the election, frequent complaints were lodged against pickets for their unruly conduct. These charges ranged from the carrying of an ax and large stick on the picket line to the threatening of customers and deliverymen if they crossed the picket line. These circumstances necessitated the city of Warren to assign full-time police and a police car in front of the Employer's premises.

On February 23, 5 days before the election, the Warren Police Department telephoned General Manager Ben Long to inform him that according to an FBI report the dealership would be bombed on the weekend. The following day a large number of Warren policemen came to the dealership in response to a report that a bomb had been planted there. They proceeded to search the premises for a bomb which was never found. The dealership was closed at 4 p.m. that Saturday as a result of this threat. There were several eligible voters working in the dealership at the time, and there were numerous eligible voters walking the picket line on that day. They were all aware that a bomb threat had been reported and that the police were searching for the device. Ben Long testified that

a bomb had been found at another Ford agency while the Union here involved was engaged in picketing activities at that dealership.

The Hearing Officer found that the evidence concerning the above-described conduct was not such as to link the Union with the responsibility for the bomb threat, the anonymous phone calls, or the window damage. He further found that there were no eligible voters present when the rock throwing incident involving Leo Roach allegedly occurred. Although the Hearing Officer found that the window damage and the telephone calls were evidently connected with the strike, he concluded that the physical damage which was inflicted on the Employer's premises and the bomb threat were not the type of activity which could reasonably interfere with the employee's free choice to the degree necessary to set this election aside.

Upon the facts as found by the Hearing Officer an issue is raised as to whether the election was conducted under such circumstances and under such conditions as to be conducive to the sort of free and untrammelled choice of representatives contemplated by the Act. Here the election was conducted in the face of an often violent and emotion-filled strike. Events occurring during the critical period included extensive property destruction, anonymous telephone threats to eligible voters, the report of a bomb threat and subsequent police investigation which caused the dealership to close down on the Saturday preceding the election, and apparently unruly conduct on the picket line which resulted in the stationing of full-time police and a police car in front of the dealership. It is apparent that the election was held in a general atmosphere of confusion, violence, and threats of violence, such as might reasonably be expected to generate anxiety and fear of reprisal, and to render impossible a rational, uncoerced expression of choice as to bargaining representation.¹ It is not material that fear and disorder may have been created by individual employees or nonemployees and that their conduct cannot probatively be attributed either to the Employer or to the Union. The significant fact is that such conditions existed and that a free election was thereby rendered impossible.² Accordingly, finding as we do that the election was held in an atmosphere not conducive to freedom of choice, we shall set aside the election of February 28, 1968, and direct that a second election be held.

¹ *Pousett Lumber and Manufacturing Co.*, 116 NLRB 1732, *The Falmouth Co.*, 114 NLRB 896, *Diamond State Poultry Co., Inc.*, 107 NLRB 3.

² *Diamond State Poultry Co., Inc.*, *supra*.

ORDER

It is hereby ordered that the election conducted herein on February 28, 1968, among the employees

of Al Long, Inc., at its Warren, Michigan, establishment, be, and it hereby is, set aside.

[Direction of Second Election³ omitted from publication.]

³ 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 7 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. *Excelsior Underwear Inc*, 156 NLRB 1236.