

**Evening Post Publishing Company and the News and Courier Company and Raymond P. Wright, Petitioner and Charleston Typographical Union No. 43, International Typographical Union, AFL-CIO.** Case 11-RD-141

April 14, 1969

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

BY CHAIRMAN McCULLOUGH AND MEMBERS  
BROWN AND JENKINS

Pursuant to a Stipulation for Certification upon Consent Election approved on July 29, 1968, an election by secret ballot was conducted on August 23, 1968, under the direction and supervision of the Regional Director for Region 11 among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished with a tally of ballots which showed that of approximately 78 eligible voters, 77 cast ballots, of which 38 were for, and 39 were against the Union. On August 30, 1968, the Union filed timely objections to conduct affecting the results of the election.

On December 2, 1968, the Regional Director issued his Report on Objections in which he recommended that the objections be overruled in their entirety and that the Board issue an appropriate certification of results of election. Thereafter, the Union filed timely exceptions to the 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 labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of the employees of the Employer within the meaning of Section 9(a)(1) and Section 2(6) and (7) of the Act.

4. The following employees, as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All employees employed in the composing room and proof-teletypesetter department of the Employer's Charleston, S.C. newspaper operation, including mark-up men, hand compositors, typesetting machine operators, makeup men, bank men, proofpress operators, proofreaders, operators and machinists on all mechanical devices which cast or compose type or slugs,

operators of tape perforating machines, Justape computers and recutter units for use in setting type; but excluding employees of all other departments, custodial employees, guards, supervisors as defined in the Act, temporary employees, and office clerical employees, and part-time employees.

5. The Board has considered the Regional Director's Report, the Union's exceptions, and memorandum in support thereof, and hereby adopts the Regional Director's findings and recommendations with respect to Objections 1, 3, 4, and 5.

We do not agree, however, with the Regional Director's recommendations as to Objections 2 and 6.

Objection 2 alleges that in April 1968, a month after the decertification petition was filed, the Employer unilaterally granted improved insurance benefits covering hospital costs and maternity benefits to its employees, many of whom are women. The Employer asserts that the benefits were provided on the advice of its insurance carrier in order to conform with rising hospital costs in the area. Additionally, the Employer states that the increases accord with past practice, since similar benefits were granted in 1961, 1963, and 1966. The Regional Director found that in these circumstances, the Union's objection should be overruled.

Objection 6 charges that during the preelection period, the Employer granted wage increases, as was its custom, to employees outside the bargaining unit, but denied similar increases to those in the unit. The Employer has each March for many years given wage increases to all employees in the mechanical department. After bargaining for approximately a year with the Union without reaching agreement on wages, the Employer granted the customary March wage increases to all mechanical department employees except those in the bargaining unit.

On August 19, the Union wrote to the Employer demanding that the bargaining unit employees receive the same wage increases given other employees. The Employer rejected the Union's demand by letter on August 22, 1 day before the election, asserting that it was prevented by law from granting such increases either during negotiations or while an election was pending. On the same day, the Employer issued this letter together with an additional letter to its employees which stated that "the company's desire, all along, has been to implement wage increases for all employees in a consistent manner, and that this was prevented solely by union actions during negotiations." The letter concluded with the following paragraphs:

If a majority votes yes, for continued representation by a union, then wages and other matters will continue legally to be subjects for bargaining in negotiation sessions like those which were held between March 1967 and March 1968;

If a majority votes no, against representation, the company will not be obliged legally to continue such sessions, and will at that time legally be free unilaterally to consider wages and other matters.

The Union contends that the legal position relied upon by the Employer to justify denying the wage increases conflicts with the position taken to justify the granting of insurance benefits. The inference to be drawn from this contradiction, the Union urges, is that the Employer's legal arguments are pretextual; designed to mask its actual intent to undermine employee support for the Union. Moreover, the Union alleges that the Employer's disingenuous motives are further revealed in its August 22 letter in which it blamed the Union for the withheld wage increase and implied that these wages would be forthcoming if the Union was decertified.

In overruling Objection 6, the Regional Director was apparently persuaded that the Employer acted in good faith in withholding the wage increase. Thus, without attempting to reconcile the variance in the Employer's legal arguments, he decided that "The evidence does not establish that the withholding of increases to voters in the bargaining unit was for the purpose of influencing the voters' choice in the election." Presumably referring to the letter of August 22, the Regional Director also stated that "the respective positions had been advanced before and were familiar to the employees who . . . were thus in a position to evaluate the underlying issues and the last-stated positions of the parties."

We disagree with the Regional Director's conclusions. Generally, benefits may not be conferred unilaterally where collective-bargaining negotiations are in progress, nor may they be granted to influence employees where an election is pending.<sup>1</sup> And it is also true that an employer may not withhold benefits with the purpose of encouraging or discouraging union membership.<sup>2</sup> Against this standard, contradictions in the Employer's conduct discredit its claim of mere adherence to a good-faith legal position. Thus, it is

clear that after the Union demanded the same pay increases for its members as had been given to other employees in the mechanics department, legal obstacles no longer prevented a wage concession. Moreover, while withholding wage increases with one hand, the Employer granted improved insurance benefits with the other. This inconsistency in the Employer's course of conduct reveals that its actual purpose was to undermine employee support for the Union and thereby manipulate the outcome of the election.

Our conclusion is buttressed by the language of the Employer's August 22 letter. Through its remarks, the Employer sought to discredit the Union by wrongfully shifting to it sole responsibility for the employees' failure to obtain the wage increases. Further, the last two paragraphs contain a thinly veiled message that the employees will be promptly rewarded if they reject the Union. In our opinion, these statements were deliberately calculated to interfere with and discourage the employees' choice of the Union as their bargaining representative.<sup>3</sup>

In the circumstances set forth above, we conclude that the Employer interfered with the holding of a fair and free election. Accordingly, we shall set aside the election of August 23, 1968, and direct that a second election be held.

#### ORDER

It is hereby ordered that the election conducted herein on August 23, 1968, among the employees of the Evening Post Publishing Company and The News and Courier Company, at its Charleston, South Carolina plant be, and it hereby is, set aside.

[Direction of Second Election<sup>4</sup> omitted from publication.]

<sup>3</sup>*Sonoco Products Co v NLRB*, 399 F 2d 835 (CA 9)

<sup>4</sup>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 11 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

<sup>1</sup>See *NLRB v Exchange Parts Co*, 375 U S 405 (1964)

<sup>2</sup>*Dan Howard Mfg Co*, 158 NLRB 805, 813