

Caribe General Electric, Inc., General Electric Switchgear, Inc., and General Electric Circuit Breakers, Inc. and Union de Empleados de la General Electric, Inc., en Palmer, Puerto Rico, Petitioner. Case 24-RC-2922

April 30, 1969

**SUPPLEMENTAL DECISION, ORDER,
AND DIRECTION OF THIRD RUNOFF
ELECTION**

BY CHAIRMAN McCULLOCH AND MEMBERS
FANNING AND ZAGORIA

Pursuant to a Decision, Order, and Direction of New Runoff Election¹ issued by the National Labor Relations Board on August 16, 1967, an election was conducted on September 21, 1967 among the employees in the stipulated appropriate unit² at the Employer's plant in Palmer, Puerto Rico, under the direction and supervision of the Regional Director for Region 24. Upon conclusion of the election, a tally of ballots was furnished the parties which showed that of approximately 1,200 eligible voters, 1,130 cast ballots, of which 723 were for the Intervenor, International Association of Machinists and Aerospace Workers, AFL-CIO, 389 were against the Intervenor, 5 were challenged, and 13 were void. The challenged ballots were not sufficient in number to affect the results of the election.

Thereafter, on September 28, 1967, 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 issued and served on the parties on February 26, 1968, his Report and Recommendation on Objections, and, on February 28, 1968, an order correcting the report. In his report, as corrected, the Regional Director found all the objections to be without merit and recommended to the Board that they be overruled. On March 18, 1968, the Employer filed timely exceptions to the Regional Director's findings and recommendations with respect to all of the objections.

On May 24, 1968, the Board issued an order directing hearing. The order stated that the Board was of the opinion that the Regional Director's

¹An election was held herein on July 14, 1966, pursuant to a Stipulation for Certification upon Consent Election. Because none of the three choices on the ballot received a majority, a runoff election was conducted on August 4, 1966, between the Intervenor and "no union." The tally of ballots showed that a majority had not been cast for the Intervenor. Thereafter, the Intervenor filed timely objections to conduct affecting the results of the election. The Board, in its Decision, Order, and Direction of New Runoff Election dated August 16, 1967, adopted the Regional Director's Report and Recommendation, to set aside the election, and directed that a new runoff election be conducted. Objections to conduct affecting the results of that election are at issue herein.

²The stipulated appropriate unit included all production and maintenance employees employed by the Employer at its plant located at Palmer, Puerto Rico, excluding all office clerical employees, professional personnel, laboratory technicians, guards and supervisors as defined in the Act.

findings and recommendations with regard to Objection 2, and the Employer's exceptions thereto, presented credibility issues as to (1) whether C. P. Hayes made the statement attributed to him by the Intervenor, and (2) the circumstances, if any, forming the basis for the Intervenor's assertion in its campaign propaganda that such a statement was made. Accordingly, a hearing was directed for the purpose of taking testimony on the aforesaid issues, and the Regional Director was authorized to designate a Hearing Officer to hear the matter. The Hearing Officer was ordered to prepare and cause to be served on the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said issues.

Pursuant to the Board's Order, a hearing was held on July 1, 1968, before Hearing Officer Robert M. Ziskin. The Employer, the Intervenor, and counsel for the Regional Director appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. Pursuant to Order of the Board dated July 3, 1968, the parties were granted leave to file briefs. Thereafter, the Employer and the Intervenor filed briefs. On November 14, 1968, the Hearing Officer filed and duly served on the parties his Report and Recommendations, in which he recommended that the Employer's Objection 2 be overruled and that the Intervenor be certified as the collective-bargaining representative of the employees in the stipulated appropriate unit. The Employer filed timely exceptions to the Hearing Officer's Report and Recommendations, and a supporting brief.

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.

The 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 and Recommendations, the Employer's exceptions thereto and accompanying brief, and the entire record in this case, and makes the following findings:

The Employer's Objection 2 concerns the Intervenor's repeated use during the campaign of a statement attributed by it to Hayes, a high Company official,³ to the effect that "the Puerto Rican is bought real cheap." All, or nearly all, of the unit employees are Puerto Rican.

During the critical period⁴ before the instant

³Hayes was general manager of the Company's Circuit Protective Devices Department, headquartered in Plainville, Connecticut.

⁴The critical period was from the date of the first runoff election, August 4, 1966, to the date of the second runoff, September 21, 1967. *The Singer Company, Wood Products Division*, 161 NLRB 956, fn. 2.

election of September 21, 1967,⁵ the Intervenor and the Employer distributed numerous campaign leaflets. The Intervenor's leaflet of August 28, alleged in substance that certain employees had recently been recalled to work in an attempt by the Employer to secure votes in the upcoming election. The Employer responded with a leaflet on August 29, which stated, in part:

Speaking about fear, we have had information from several women employees who were recalled to work from the layoff to the effect that the union people are saying that they are being recalled to vote in favor of the Company and that once the election is over they will be laid off again.

Apparently to confirm this, in his leaflet of today "Red" (as the organizer calls himself) again makes the allegation that the Company is recalling the employees from layoff so that they vote in favor of the company. Then he makes it appear between the lines that they can be put on layoff once the election is over.

Naturally the answer to all these false allegations is an absolute NO. Not only is this absurd and ridiculous, but also we consider it an insult to the high dignity and morals of these ladies.

Do these misguided petty leaders perhaps believe that our women employees are capable of selling their votes for a few days of work? *Or is it perhaps that they don't know that Puerto Rican women have always distinguished themselves for their moral values?* [Emphasis supplied.]

The Intervenor then published another leaflet, which for the first time told the employees of the remark allegedly made by Hayes. That leaflet, distributed on August 30, according to the Intervenor's business agent in response to the above leaflet of the Employer, in relevant part stated:

At a meeting held recently at one of the most luxurious hotels in the capital, with members of management, Mr. Hayes, the boss of bosses around here, gathered the G. E. chiefs and told them, and I quote: "If the IAM Union gets into this plant, one of you is going to pay." (All looked at Laborde Montaner.) Mr. Hayes added "There is no reason for the employees to progress with the Union" and he emphatically said: "Do you know why?" No one dared to answer him but he added: "*Because the Puerto Rican is bought real cheap.*"

Now then, Laborde Montaner, when Hayes mentioned that the Puerto Rican is bought real cheap, why didn't you come out to the defense of Puerto Ricans, of those that you call your intelligent employees? Or, is it that your opinion of them is like that of Hayes, or is it lower, or, is it that you were afraid to answer him?

Then, with what moral value do you dare to

mention in one of your articles of yesterday "Is it perhaps that they don't know that the Puerto Rican woman distinguishes herself for her great moral values." Why then don't they have a woman supervisor? Why isn't there a female Group leader? Where is that recognition of the value of the Puerto Rican woman that the company denies them?

The Employer responded the next day with a leaflet wherein Hayes denied that he had made the statement attributed to him. The Intervenor and the Employer subsequently issued a number of leaflets each, with the Intervenor repeating the statement and the Employer denying that Hayes had made it.⁶

The Hearing Officer found that Hayes never made the statement attributed to him by the Intervenor. The basis for the Intervenor's assertion that the statement was made, according to the Hearing Officer's findings, was solely hearsay. According to testimony of employee Diaz, employee Reyes was told of the making of the statement by Reyes' supervisor, Gonzalez, and Reyes in turn told Diaz, who then passed it on to the Intervenor's organizer, Maldonado. Maldonado gave substantially the same account of his conversation with Diaz. The Hearing Officer found that Diaz did tell Maldonado of his alleged conversation with Reyes. However, the Hearing Officer discredited Diaz' testimony regarding his alleged conversation with Reyes. Thus the Intervenor's only basis for attributing the statement to Hayes was hearsay, several times removed from its alleged source. Moreover, the Hearing Officer found that Maldonado failed to verify or seek to verify Diaz' information.

The Hearing Officer concluded that the phrase in question is ambiguous, and that the Intervenor did not deliberately design its campaign literature to invoke hatred or prejudice of the Puerto Rican employees for white "State-side" management. Rather, he found the campaign propaganda was designed to encourage economic betterment through racial self-consciousness and concerted action. In addition, the Hearing Officer concluded that the Employer's leaflet of August 29, containing the statement that "Puerto Rican women have always distinguished themselves for their moral values," opened the door to the issue, and that the Intervenor's leaflet of the next day which contained the first mention of the alleged statement by Hayes was in response to the Employer's leaflet. The Hearing Officer recommended that the Employer's Objection 2 be overruled, and that the Intervenor be certified.

⁶In addition to the foregoing, according to credited testimony there were three signs posted outside the Employer's main gate within three weeks of the election. Two of the signs read, in Spanish, "Mr. Hayes said Puerto Ricans sell themselves cheap," and "Mr. Hayes, not all Puerto Ricans sell themselves cheap." The Hearing Officer found that there was insufficient evidence to establish the Intervenor's responsibility, if any, with respect to the signs.

⁵All dates hereafter refer to 1967, unless otherwise specified.

The Employer, in its exceptions to the Hearing Officer's Report, contends that the phrase at issue contained no legitimate or positive appeal to racial pride or consciousness. In addition, the Employer disputes the Hearing Officer's conclusion that the Employer's mention of Puerto Rican women being "distinguished for high moral values" opened the door for the Intervenor's use of the phrase in question, inasmuch as the Hearing Officer specifically found the Employer's reference to Puerto Rican women to be a proper appeal to racial self-consciousness and nationalism.

We find merit in the Employer's objections. In our view, the issue is not whether the statement attributed to Hayes was a legitimate appeal to economic self-betterment or an improper injection of a racial or nationalistic issue into the election campaign.⁷ For, as found by the Hearing Officer, the fact is that Hayes never made the statement in question. Whatever objective impropriety might be found in the statement itself is compounded by the tactic of repeatedly attributing the comment to Hayes, with the implication that this constituted a racial slur by him. As established at the hearing, nothing in the circumstances justified this repeated publication of the statement. On the contrary, the Union continued to publish the statement and the assertion that Hayes had made it, and even hinted there was a tape recording in existence of Hayes making the statement,⁸ in spite of renewed denials by the Employer. Moreover, the Union never had — nor ever made an attempt to get — any more basis for the charge than the hearsay upon which the original assertion was based. We conclude that this

was a tactic which overstepped the bounds of fairness,⁹ and interfered with the election. We shall, therefore, set aside the second runoff election, and shall direct the Regional Director to conduct a third runoff election.¹⁰

[Direction of Third Runoff Election¹¹ omitted from publication.]

⁷Cf. *Archer Laundry Company*, 150 NLRB 1427; *Baltimore Luggage Company*, 162 NLRB 1230.

⁸One of the Intervenor's leaflets, although inartfully worded, could be interpreted to infer that a recording of the speech containing the alleged statement was in existence. That leaflet, issued September 19 (the election was September 21), read in part:

As you all know, today you will be taken outside the plant to the yard where they have set up some benches for you to listen again to G.E.'s crying; when once more they will try to brainwash you as in past years. Completely contrary to democratic principles, they will possibly not allow you to ask questions, or perhaps it is because it is not convenient for Laborde Montaner and his combo to answer them. According to a person from the office, who asked us not to reveal his name, we were told that possibly there would be a recording of Mr. Hayes at the meeting where Mr. Hayes stated that "the Puerto Ricans can be bought very cheap," trying to deny his already famous statement.

⁹*Cranbar Corporation and Penso Corporation*, 173 NLRB No. 200; *Chillicothe Paper Co.*, 119 NLRB 1263; *United Aircraft Corporation*, 103 NLRB 102.

¹⁰In view of the long passage of time since the payroll eligibility date used for the second runoff election, the eligibility payroll period for the third runoff election shall be that immediately preceding the date of issuance of the notice of third election. See, e.g., *The Interlake Steamship Co., et al.*, 174 NLRB No. 55.

¹¹An 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 Third Runoff 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.