Phelps Dodge Corporation *and* International Union, United Plant Guard Workers of America, Petitioner. Case 28-RC-1864

June 30, 1969

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN MCCULLOCH AND BROWN AND ZAGORIA

Pursuant to a Stipulation for Certification upon Consent Election approved November 25, 1968,[1] an election by secret ballot was conducted December 11, under the direction and supervision of the Regional Director for Region 28 among the employees in the agreed-upon unit. At the conclusion of the election, the parties were furnished a tally of ballots which showed that of approximately 20 eligible voters, 20 cast ballots of which 7 were for and 13 against Petitioner; none was challenged or void. Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election.

In accordance with National Labor Relations Board Rules and Regulations, the Acting Regional Director conducted an investigation and, on January 23, 1969, issued and duly served upon the parties his Report on Objections in which he recommended that Objections 1, 2, 4, and 5 be overruled and that a full and complete hearing be held to resolve the issues raised by Objection 3. No exceptions were filed to the Acting Regional Director's report, and on February 10, 1969, the National Labor Relations Board adopted the recommendations of the Acting Regional Director as set forth in his report and ordered that a hearing be held on objection 3.

Pursuant to the Board's Order, a hearing was held February 18, 1969, before Hearing Officer L. L. Porterfield. All parties participated and were given full opportunity to examine and cross-examine witnesses and to introduce evidence bearing on the issues. On March 7, 1969, the Hearing Officer issued and duly served on the parties his report in which he recommended that objection 3 be overruled. The Petitioner filed timely exceptions to the report and a brief in support thereof.

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.

2. The labor organization involved claims 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 collective bargaining within the meaning of Section 9(b) of the Act:

> All guards and special guards employed by the Employer at its Morenci Branch, Morenci, Arizona; excluding all other employees, office clericals and supervisors as defined in the Act.

5. 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, the Petitioner's exceptions thereto, the Acting Regional Director's Report on Objections and the exceptions thereto, and the entire record in the case, and hereby adopts the Hearing Officer's findings and his conclusion only to the extent consistent herewith.

Petitioner's Objection 3 alleged:

> That on or about November 19, 1968, and continuing to the date of the election, the Employer, by its supervisors and agents, interrogated individual employees at their work stations concerning their union sympathies and affiliations. During such interrogations, representatives of the Employer made threats to reduce the work week and to otherwise unilaterally change terms and conditions of employment.

The record fairly establishes that chief-watchman, Wood, whose supervisory status was conceded, on instructions of management, engaged in interrogation of a number of employees as to whether they or other employees, had been approached by the Union and had signed union cards. The Hearing Officer properly found that Wood's interrogation of employees R. D. Carrell and Hart and his conversation with employee Brown had occurred before the petition herein was filed on November 12, 1968, and therefore concluded that such conduct could not be considered in determining whether it interfered with the election.[2] However, the evidence establishes, and the Hearing Officer found, that Wood had also interrogated employee Raley, who had been identified by Brown as one who might have signed a union card, and Wood asked Raley if in fact Raley had signed such card. Raley denied that he signed and Wood declined to disclose from whom he had received such information. The Hearing Officer found this incident too isolated in character to justify setting aside the election.

We agree with the Hearing Officer's conclusion that Wood's interrogation of Raley was improper and coercive, but we do not agree that it was of an isolated character. The record shows that after his

[1] All dates except as otherwise noted are 1968.

[2] *Ideal Electric and Manufacturing Company*, 134 NLRB 1275

interrogation of Raley on November 12, Wood thereafter suspended his activities to complete his vacation, but on his return on November 17, he was again instructed by his superiors to speak to the employees and present the Employer's position on union organization. It is not disputed that Wood thereafter had conversations with nearly all of the 20 guards. Much of the testimony, undenied by Wood, relates to conversations conducted by him with employees, conversations that occurred either in a truck Wood used in the performance of his supervisory duties, or at the employees' work stations or their homes.[3] The Hearing Officer found that Wood's conduct in initiating the conversations and expounding on the Employer's case in opposition to union organization was not coercive interrogation because Wood did not go beyond asking if the particular employee had already been approached by the Union, or telling the employee that he assumed that the employee had already heard the Union's case. However, Wood's own testimony refutes such findings.

Wood admits that he had prior knowledge of the employees' union interests before undertaking to speak to them. He testified that he did not present the Employer's case to at least three employees, Weatherholt, Mayo, and Leo Montgomery, because he was fully informed of their "interest . . . in regard to the Union." But, whether Wood had obtained such knowledge through acts of surveillance or by direct interrogation of other employees, Wood in his conversations with some of the employees certainly gave the impression that there had been surveillance and interrogation. Thus, Wood testified regarding a conversation with employee Sid Garrett, a week or two before the election, "And I did let it be known that I knew he was involved in the union through different sources," and added, "Sid, well I would feel a lot better about it if you all would come out in the open, if the union is what you want rather than finding out the way I found it out." As in the case of Raley, Wood declined to tell Garrett who had informed him of Garrett's interest in the Union.

Furthermore, even if we agreed with the Hearing Officer that Wood in initiating conversations with the employees merely asserted that he assumed the employee had already heard the Union's case, or did not go beyond asking whether the employee had already been approached by the Union, we do not agree with the Hearing Officer that these remarks were not coercive interrogation. If nothing more, they elicited, or tended to elicit, from the employee an admission, such as in the case of employee Tinney, that he did or did not support the Union, or information as to the activities of other employees. Thus, Wood testified that he spoke to employee Tinney the latter part of November and "I told him he probably had been contacted by some of the men regarding the Union, and he [Tinney] said, 'Yes, Oliver Weatherhold contacted me . . . last night.' Then he told me he had a card to sign." Tinney apparently disclosed that he would not support the Union, and the disclosure was not lost on Wood. For the record shows that Wood urged, indeed appeared to insist, that those employees who, he believed, were not in favor of the Union be sure to vote in the election. Thus, as to his conversation with Tinney, Wood testified that "I stressed even though he wasn't interested in it, that when the election came we would want him to vote. I mean it was his choice . . . I contacted him later, as I did the rest of them, and told him the time and place to vote."

Nor do we agree with the Hearing Officer that Wood's remarks about changing the workweek and being less lenient than before if the Union came in were noncoercive because the employees understood that such changes would only occur through or as a result of bargaining and not be unilaterally imposed by the Employer. We cannot draw any such conclusion from Wood's conversation with Garrett or other employees. Garrett testified, testimony which was not denied by Wood, that Wood told him "he was disappointed at me going along and letting Mr. Weatherholt sucker me into a deal like that . . . the company had always tried to be lenient with us . . . the company gave us special consideration . . . but if we did get a union the company might cut our schedule . . . we might even go to a 5-day week and that would off-set any raise that the union might give us. And he told me that he had always been too lenient with us."[4] While it is clear that Wood testified that he told the employees that ". . . if the Union comes in there would be a contract . . . they would have a contract to live up to and there would be things for me to abide by," it is anything but clear that this statement was understood by the employees to mean that what they stood to lose would depend entirely on the give and take of collective bargaining. On the contrary, Garrett testified "I thought that he was trying to say, that if we did get in the union that we probably would be cut." This is not the reaction of an employee who understood that changes that might occur would depend on negotiations.[5] In our opinion it is more likely, and reasonable to infer, that the employees took Wood's statements simply as threats of loss of

[3]The evidence shows that Wood engaged at least two employees in conversations about the Union at their homes. Such conduct, the Board has found tends to restrain and coerce employees in their union activities. See *The Hurley Company*, 130 NLRB 282, *F N. Calderwood, Inc*, 124 NLRB 1211, *Peoria Plastic Co.*, 117 NLRB 545, *Mrs Baird's Bakeries, Inc*, 114 NLRB 444

[4]Garrett testified that apparently as an example of leniency, which Wood thought called for some disciplinary action, Wood mentioned an incident where Wood said he had seen Garrett's truck at the residence of the carpenter foreman's home when he, Garrett, should not have been there.

[5]We are not persuaded otherwise by the fact that Garrett answered, "Yes," to leading questions put to him by Employer's Counsel to wit, "I

benefits and privileges and of economic reprisals if the Union was successful.[6]

The Hearing Officer found that employees who were interviewed by Wood in his truck were not coerced within the principle of *Peoples Drug Stores, Inc.*,[7] as the truck was not the locus of final authority in the plant. While it appears that Wood had an in-plant office, the nature of his supervisory duties required him to spend most of his working time in his truck. The truck was equipped with a two-way radio through which he gave commands and received messages, and the manner in which he conducted his interviews with employees indicated that he regarded his truck as much as a locus of his final authority as the in-plant office. Wood testified that many of his conversations with employees about the Union occurred away from the employees' stations and in the confidential confines of his truck's cab. Where the guards patrolled in pairs, Wood conceded that his practice was to call each employee separately into his truck and speak to him about the Union. In view of such circumstances, we find that Wood's truck was as much a locus of final authority as any in-plant office that may have been his. Such conduct therefore in calling the men into his truck's cab for the purpose of speaking out against the Union was, in our opinion, a clear violation of the principle of *Peoples Drug*.[8]

In view of the foregoing and on the record as a whole, we find contrary to the Hearing Officer, that the Employer, by reason of Wood's coercive interrogation of its employees as to their union activities, his conveying the impression of surveillance, his threats of depriving employees of benefits which they then enjoyed, his ordering employees into his truck for the purpose of presenting the Employer's case in opposition to the Union's organizational efforts, interfered with the employees' statutory rights to a free selection of a bargaining representative. Accordingly, we shall set aside the election and direct a second election.[9]

ORDER

It is hereby ordered that the election conducted herein on December 11, 1968, be, and it hereby is, set aside.

[Direction of Second Election[10] omitted from publication.]

assume he was referring to some raise which might be negotiated with the company, is that right? And that the cutting of the work schedule would come then after the raise had been negotiated, is that right?" The questions in our opinion are no more clearly suggestive of action not to be taken unilaterally by the Employer than were Wood's statements

[6] *Marsh Supermarkets, Inc* v *N L R B*, 327 F 2d 109, 111 (C A 7), enfg in material part 140 NLRB 899, cert denied 377 U S 944

[7] 119 NLRB 634

[8] *Ibid*

[9] We find, contrary to the Hearing Officer, that Company Manager O'Neil's letter of December 7, 1968, which made no reference whatsoever to Wood's conduct, which in essence merely told employees that the Employer was opposed to the Union and that he wanted them to vote against the Union, could not, nor even was intended to, dissipate Wood's improper conduct

[10] 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, 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, *N L.R B* v *Wyman-Gordon Company*, 394 F 2d 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 28 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