

**Union Camp Corporation and United Papermakers
and Paperworkers, AFL-CIO, Petitioner. Case
11-RC-3544**

April 10, 1973

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

**BY CHAIRMAN MILLER AND MEMBERS
FANNING AND PENELLO**

Pursuant to a Stipulation for Certification Upon Consent Election, a secret ballot election was conducted among the employees in the stipulated unit, described below, at the Employer's Seaboard, North Carolina, plant on June 22, 1972. The tally of ballots furnished the parties showed that of approximately 47 eligible voters, 45 cast valid ballots of which 15 were for, and 30 against, the Petitioner. One ballot was declared void. The Petitioner filed timely objections, a copy of which was duly served on the Employer.

The Regional Director for Region 11, having conducted an investigation of the issues raised by these objections, issued and served on the parties his Report on Objections and Direction, dated September 25, 1972, in which report he directed that a hearing be held to resolve the issues raised by the Petitioner's objections. In a Notice of Hearing, dated October 4, 1972, the Regional Director further directed that the Hearing Officer 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.

The hearing was held before Hearing Officer David Kaufman on October 25, 1972, at Roanoke Rapids, North Carolina. The Employer and the Regional Office were represented by counsel, and the Petitioner by a union representative, all of whom participated in the hearing. All parties were afforded full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues. On December 12, 1972, the Hearing Officer issued his Report and Recommendations on Objections, pertinent parts of which are attached

¹ In finding objectionable conduct, Chairman Miller relies solely upon the Employer's statement to employees that accrued vacation benefits might be deferred should the Union win the election and choose to begin negotiating a contract covering such benefits.

Contrary to his colleagues, however, he would not find that the Employer engaged in objectionable conduct by timing the announcement of increased holiday benefits on the day before the election to achieve a tactical advantage during the election campaign where, as here, the increase in the number of holidays was not shown to have been granted for reasons which the Board would find objectionable. Chairman Miller notes that the increased holiday schedule appears to have become effective as of April 3, 1972, more than a month before the petition's filing, and that one of the

hereto as the Appendix, in which he found, *inter alia*, that the Employer had engaged in objectionable conduct and recommended that a new election be held.

Thereafter, the Employer filed exceptions to the Hearing Officer's Report and Recommendations on Objections and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding 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 certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

4. The parties have stipulated and we find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees of the Company's Chip N Saw Mill in the Building Products Division at Seaboard, North Carolina, but excluding clerical employees, salaried employees, watchmen, office janitors, storekeepers, foremen, and all other supervisory employees as defined in the Act.

The Board has considered the Hearing Officer's report, the Employer's exceptions and brief, and the entire record in the case, and hereby adopts the Hearing Officer's findings, conclusions, and recommendations.¹ Accordingly, having found that the Employer has engaged in objectionable conduct, we shall set aside the election of June 22, 1972, and direct that a new election be held.

Contrary to our dissenting colleague, we view the announcement by the Employer on June 21, 1972, the day before the election, that the employees would receive an additional paid holiday at Christmas,

additional holidays granted, Memorial Day, had been celebrated by the employees almost a month before the Employer brought the matter of increased holiday benefits to their attention in his preelection speeches. Since the Employer's initial effort in the matter of improving holiday benefits predated the Union's appearance on the scene, and, accordingly, cannot be characterized as simply a stratagem in response to the threat of unionism, he would find that the Employer's announcement of the improvement in holiday benefits was permitted under Sec. 8(c). See his dissenting opinion in *Tommy's Spanish Foods, Inc.*, 187 NLRB No. 31, adopted by the court in *N.L.R.B. v. Tommy's Spanish Foods, Inc.*, 463 F.2d 116 (C.A. 9).

1973, 18 months hence, as calculated to influence the employees in their choice of a bargaining representative. As the Hearing Officer held, in these circumstances the burden is on the Employer to show that factors other than the pendency of the election prompted the announcement of this benefit to the employees at this critical time.

ORDER

It is hereby ordered that the election conducted on June 22, 1972, be, and it hereby is, set aside.

[Direction of Second Election and *Excelsior* footnote omitted from publication.]

APPENDIX

Conversely, the record supports the Union's contention No. 3 that Foreman did make promises of additional benefits to employees in his speech of June 21. I find, based on Foreman's own testimony, that he did interfere with the election by announcing the promise of benefits one day before the election since Employer failed to show that timing of the announcement was governed by factors other than the pendency of the election. The Board has set aside elections on the grounds that the granting of benefits at that particular time was calculated to influence the employees in their choice of a bargaining representative.¹⁰ The burden of showing these other factors is upon the Employer.¹¹ Assuming the Employer's uncontradicted assertion that it had formulated its modified holiday plan in April, prior to the filing of the petition, and that the Employer had previously given the unorganized plant the same fringe benefits as was negotiated for its organized employees, the Employer's actions as of April 3 gives rise to several questions. The first question is, why did the Employer not post or announce the increased holiday benefits on or about April 3, when it posted the general wage increase?

Secondly, in view of Memorial Day being celebrated on Monday, May 29, why did the Employer withhold the announcement until Thursday, May 25?—only four calendar days prior to the holiday.

Thirdly, why did the Employer announce to its employees on June 21 the fact that they would receive an additional paid holiday at Christmas time 1973—18 months hence?

The Employer's inconsistent actions with regard to announcements of increased holiday benefits subse-

quent to April 3 fails to convince me that the June 21 announcement of the additional holiday benefit scheduled for Christmas 1973 was governed by factors other than the pendency of the election.

I believe that the announcement, of an increased holiday benefit for 1973, was scheduled to fall one day before the election when it would have "maximum possible impact on the minds of the employees."¹²

The fact that the Petitioner's witnesses were slightly confused as to their holiday benefits is readily understandable in view of the Employer's policy of not regularly posting, distributing or otherwise informing the employees on a regular basis what their benefits were.

With respect to Union's contention No. 4, Foreman testified that he was aware of the Employer's legal position insofar as granting existing benefits promised, as of April 3, notwithstanding any Union petitions. Foreman made it a point to state that all eligible employees who had already earned their vacation and vacation pay would get it. He nonetheless then proceeded to convey certain assumptions to the employees as established fact and reasoned from them that the result of the Union's advent would mean a deferral of their vacation pay and vacation benefits. He made an *a priori* assumption that the Union might wish to negotiate their already vested vacation benefits. I do not find that Foreman's assumptions and predictions can be rationally justified. Additionally, I find his statement that the employees' vacation benefits which were due the following week¹³ would be indefinitely deferred was calculated to induce the employees to vote against the Union.

In conclusion, Foreman misinformed the employees with respect to the law by stating that the withholding of their benefits was due to the forthcoming Union election. Additionally, by implying that a Union victory would result in the deferment of their earned benefits, he sought to place the responsibility of any delay on the Union, thereby attempting to discredit the Union and influence the employees' vote. His statement strongly implied that a rejection of the Union could quickly free the Company to grant these benefits.

Accordingly, I find merit to Union's contention No. 4.

¹⁰ *Bata Shoe Company, Inc.*, 116 NLRB 1239.

¹¹ *Food Fair Stores*, 120 NLRB 1669; *Bata Shoe Company, Inc.*, *supra*.

¹² *Food Fair Stores, supra*; *Bata Shoe Company, Inc., supra*.

¹³ Foreman testified that vacation pay was distributed on June 30, the Friday preceding July 4.