

**Coverall Rental Service, Inc. and Local 215, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO.** Case 25-RC-5321.

August 27, 1973

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

BY MEMBERS JENKINS, KENNEDY, AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election approved May 4, 1973, an election by secret ballot was conducted on May 15, 1973, under the direction and supervision of the Regional Director for Region 25 among the employees in the unit agreed to be appropriate. At the conclusion of the balloting the parties were furnished a tally of ballots which showed that of approximately 192 eligible voters, 182 valid votes were cast, of which 83 were for and 99 against the Petitioner. There were four challenged ballots which were not determinative of the results of the election.

On May 22, 1973, the Petitioner filed timely objections to conduct affecting the results of the election. The Regional Director conducted an investigation and, on June 25, 1973, issued and served on the parties his report on objections in which he recommended that the three objections specified by the Petitioner be overruled, but that the election be set aside and a second election ordered on the basis of other conduct discovered in the course of his investigation which the Regional Director found had interfered with the employees' rights to cast their ballots free from coercion. Thereafter, the Employer filed timely exceptions to the Regional Director's report with a supporting brief, and the Petitioner filed a brief in opposition. The Regional Director determined to treat the Employer's exceptions as a motion for reconsideration and, on July 10, 1973, issued a supplemental report in which he denied the motion for reconsideration.

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 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 the following employees 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 employed at the Employer's Fort Wayne, Indiana plant, but excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

5. During the course of his investigation of the Petitioner's objections, the Regional Director discovered certain conduct by the Employer which he found to constitute implied promises of benefits. The Regional Director found that prior to the filing of the petition the Employer had retained the services of one Jim Cavanaugh to act as an employee-management relations consultant, with the duty of hearing employee complaints for the purpose of submitting a report with recommendations for improvement of working conditions. As he explained in his supplemental report, the Regional Director did not rely on the retention of Cavanaugh, as such, in finding objectionable conduct on the part of the Employer. Instead, he believed that a letter from the Employer to its employees dated April 25, 1973, and a speech to the eligible voters by the Employer's president on May 14, 1973 (the day before the election), constituted an implied promise of benefits intended to influence the employees' votes in the upcoming election.

The relevant section of the letter of April 25, 1973, is as follows:

If you were one of the 92% of our employees who voluntarily agreed to interviewed by Jim Cavanaugh, I thank you. . . .

Jim has not yet finished his written report or his recommendations but he did tell me that he was very pleased with the frank honesty and truthfulness he feels was given him by those whom he interviewed. . . . Shortly after I receive Jim's written report and recommendations we will share them with you.

The relevant portion of the speech of May 14, 1973, is as follows:

Thru Jim, you have pointed out some unfairnesses and have made us aware of them. We recognize those. We ask that you give us a chance to work together so that you know you have job security, so you can have good helpful supervisors and direct communication.

The Regional Director found that these two statements, in light of their timing, implied that the Employer would substantially remedy those grievances

expressed to the consultant, Cavanaugh, and thus obviate the need for a union.

As a second and independent ground for setting aside the election, the Regional Director cited the following excerpt from a letter sent to the employees 2 weeks before the election as constituting an implied promise of benefits:

As with everything else, profit sharing plans have gradually developed and changed. Last October, I attended a 3-day seminar, during which we discussed the various improvements which could be made to a profit sharing plan and, since early this year, your Board of Directors has been considering several of those. Some plans permit periodic withdrawals prior to retirement for certain specific purposes such as education, home purchasing and home improvement. Other plans permit the employee to voluntarily use profit sharing as a way of having an expert invest additional money of his own for him at no expense. However, as you probably understand, any improvement or promise of improvement in our profit sharing plan at this time might be misunderstood to be an unfair labor practice and it is our hope that the coming election will be conducted fairly.

The Regional Director found that this letter clearly implied to the employees that the Employer was about to announce improvement in its profit-sharing plan, but that such announcement was being delayed only because of the election.

We do not agree with the Regional Director's findings of implied promises of benefits as to either the statements concerning the consultant or the letter

concerning the Employer's profit-sharing plan. We find the statement rather to be recognizable by employees as paternalistic campaign propaganda to the effect that the Employer would take better care of them in the future generally. No specific improvement of any substantial nature was mentioned even as a distinct probability, and we think the employees could evaluate such election tactics for themselves. Thus, we find that the Employer's statements are not sufficient grounds for setting aside the election. Accordingly, as the tally of ballots shows that the Petitioner has not received a majority of the valid ballots cast, we shall certify the results of the election.

#### CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for Local 215, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

MEMBER JENKINS, dissenting:

The Respondent announced possible forthcoming improvements in its profit-sharing plan, which it stated could not be put in effect because the election was pending. This announcement was made less than 2 weeks before the election, after such improvements had been under study for at least 6 months. Such conduct amounted to a not very subtle promise of benefits. Accordingly, I would affirm the Regional Director's decision to rerun the election.