

**Sonoco of Puerto Rico, Inc. and Division Industrial, Técnica y Profesional de la National Maritime Union of America, AFL-CIO, Petitioner. Case 24-RC-4979**

May 2, 1974

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

**BY CHAIRMAN MILLER AND MEMBERS JENKINS  
AND KENNEDY**

Pursuant to a Stipulation for Certification Upon Consent Election executed by the parties and approved by the Regional Director for Region 24 of the National Labor Relations Board on March 15, 1973, an election by secret ballot was conducted in the above-entitled proceeding on April 27, 1973, under the direction and supervision of said Regional Director. Upon the conclusion of the election, a tally of ballots was furnished the parties in accordance with the Board's Rules and Regulations, Series 8, as amended.

The tally of ballots shows that there were approximately 19 eligible voters and that 19 ballots were cast, of which 11 were for the Petitioner, and 8 were against the Petitioner. There were no void or challenged ballots.

On May 4, 1973, the Employer filed timely objections to conduct affecting the results of the election. The Regional Director completed an investigation of the objections and, thereafter, on July 30, 1973, issued and served on the parties his Report on Objections. In his report, the Regional Director recommended to the Board that all the objections be overruled and that the appropriate certification be issued. Thereafter, on August 16, 1973, the Employer filed timely exceptions to the Regional Director's report, contending that the election should be set aside and a rerun election ordered or, in the alternative, that the case be remanded to the Regional Director for a hearing on objections.

On November 2, 1973, the Board ordered that a hearing be held before a duly designated Hearing Officer for the purpose of receiving evidence to resolve the issues raised with respect to Employer's objections.

Pursuant to the Board's Order, a hearing was held on December 20 and 21, 1973, before Hearing Officer Sidney Smith. All parties participated and were given full opportunity to examine and cross-examine witnesses and to introduce evidence bearing on the issues. On January 28, 1974, the Hearing Officer issued and duly served on the parties his report, in which he recommended that the Employer's objections be overruled and that the Petitioner

be certified as the bargaining representative. Thereafter, the Employer filed timely exceptions to the Hearing Officer's 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 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 employees within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
4. 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 employed by the Employer at its factory located at Las Piedras, Puerto Rico, including saw-men, roll catchers, trimmermen, packers, chauffers, operators, quality control employees, and laborers, but excluding all office clerical employees, guards, 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 Employer's exceptions thereto, and the entire record in this case. We agree with the Employer that certain conduct by employees, hereafter described, requires that the election be set aside.

Relying on the Hearing Officer's credibility resolutions, we find that the following activity interfered with the free choice of the employees and destroyed the laboratory conditions of the election:

- (1) The day before the election the Petitioner hosted a party at "Mickey's Bar" which was attended by Laboy and Quinones, representatives of the Petitioner, Agustin Benitez, AFL-CIO regional director, and 13 employees. At the meeting Victor Rivera, who was characterized as the "spearhead" of union activity, stated that there were 13 employees present and the 13 had to vote for the Union. Furthermore, the Hearing Officer credited testimony that Santos Lopez, who was found to be one of the three most active union adherents, stated he expected

13 votes to be for the Petitioner, otherwise there would be "blows and slaps."

(2) Two weeks before the election, employee Jose A. Prado, who was also found to be one of the three most active union adherents, in the presence of employee Luis Rivera Concepcion, stated to Angel Velazquez Estela that "if you don't vote for the union, you will be beaten up."

(3) On the morning of the election, while inside the plant, prounion employee Juan Ramon Velazquez showed employee Hiram Vaquez Algarin his injured finger and stated that the same would happen to those who did not comply with the pact to vote for the Union.

(4) A few days before the election, Santos Lopez told Jose Antonio Roque Maldonado, an employee, that there "would be blows on election day."<sup>1</sup>

The Hearing Officer concluded the evidence was lacking that the above-mentioned incidents created an atmosphere of fear which rendered a free election impossible. After a thorough review of the entire record, we draw different inferences and conclusions from the facts.<sup>2</sup>

Although none of the threats involved herein was attributable to the Union, it has long been established that, while conduct not attributable to either

<sup>1</sup> This incident was set forth in the Hearing Officer's report and was based on the testimony of Roque. However, the Hearing Officer commented, "Roque did not report this incident to any supervisor" and apparently for that reason the Hearing Officer did not further discuss the incident in his conclusions. We find Roque's failure to report the threat to be an insufficient reason for disregarding this incident. Since the Hearing Officer specifically credited Roque's testimony on other incidents, and, since Roque's testimony as to this threat stands uncontradicted and undenied on this record, we find that it should be considered.

<sup>2</sup> See *Food Store Employees Union, Local 347, Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO [G. C. Murphy Co.] v.*

party to an election may be grounds for setting aside the election, less weight is accorded to such conduct than to the conduct of the parties.<sup>3</sup> In such circumstances, however, the Board has set aside elections where the conduct created a general atmosphere among the employees of confusion and fear of reprisal for failing to vote for or to support the Union.<sup>4</sup>

Here on four different occasions employees were threatened with the obvious aim of coercing the employees to vote for the Union, or suffer physical harm or injury. We are of the opinion that the character of the conduct was so aggravated as to create an atmosphere of fear and reprisal which rendered a free expression of choice of representatives impossible, and thus destroyed the laboratory conditions of the election.<sup>5</sup>

We shall therefore set aside the election and direct that a second election be held.

#### ORDER

It is hereby ordered that the election in this case conducted on April 27, 1973, be, and it hereby is, set aside.

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

*N.L.R.B.*, 422 F.2d 685 (C.A.D.C., 1969), enfg. 171 NLRB 370; *Sign and Pictorial Union Local 1175, Brotherhood of Painters, Decorators and Paperhangers of America, AFL-CIO [Webster Outdoor Advertising Co.] v. N.L.R.B.*, 419 F.2d 726 (C.A.D.C., 1969), enfg. 170 NLRB 1395.

<sup>3</sup> *Cross Baking Company, Inc.*, 191 NLRB 27, reversed on other grounds 453 F.2d 1346 (C.A. 1, 1971)

<sup>4</sup> *Steak House Meat Company, Inc.*, 206 NLRB No. 3; *Diamond State Poultry Co., Inc.*, 107 NLRB 3.

<sup>5</sup> *Steak House Meat Co., supra*; *Poinsett Lumber and Manufacturing Company*, 116 NLRB 1732.