Ciervo Blanco, Inc. & Blanco Venado, Inc. ***and*** **Union de Periodistas, Artes Graficas y Ramas Anexas Afiliada a The Newspaper Guild (AFL–CIO), Petitioner.** Case 24–RC–5091

June 14, 1974

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, KENNEDY, AND PENELLO

Pursuant to a Stipulation for Certification Upon Consent Election an election was conducted on July 11, 1973, under the supervision of the Regional Director for Region 24 among the employees in the unit described below. Upon the conclusion of the election, the parties were furnished with a tally of ballots which showed that, of approximately 382 eligible voters, 340 ballots were cast, of which 160 were for the Petitioner, 136 were against the Petitioner, and 37 were challenged. There were seven void ballots. The challenged ballots were sufficient to affect the results of the election. Thereafter, the Employer filed timely objections to conduct affecting the results of the election.

In accordance with the National Labor Relations Board Rules and Regulations, the Regional Director conducted an investigation and on March 6, 1974, issued and duly served on the parties his Report and Recommendations on Objections and Challenged Ballots in which he recommended that the objections be overruled, that the challenges to 15 ballots be sustained, that the remaining challenges not be resolved as they do not affect the results of the election, and that the Petitioner be certified.

Thereafter, the Employer filed timely exceptions to the Regional Director'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 of the Employer 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, including plant clerical employees, employed by the Employer at its factory location in Fajardo, Puerto Rico, but excluding all office clerical employees, professional personnel, guards, and supervisors as defined in the Act.

5. The Regional Director found no merit in Employer's Objections 3, 4, 5, 6, 7, and 8 and recommended that they be overruled[1] and that a certification of representative be issued. He concluded that Petitioner's acts of violence and repeated threats were directed at maintaining its picket line, rather than influencing the election, that the misconduct was dissipated by the almost 30-day hiatus from the end of the objectionable conduct to the date of the election and by Petitioner's adherence to a private settlement agreement. We do not agree. In our view, Petitioner's conduct interfered with the employees' free choice in the election. For the reasons discussed below, we shall order the election set aside and a second election be held.

Petitioner on or about May 28, 1973, established and maintained a picket line at Employer's plant in support of its demands for recognition and its bargaining position. From May 28 through June 5, pickets, in the presence of Petitioner's organizers, threatened and assaulted employees attempting to cross the picket lines. On June 5, a petition was filed. Between June 6 and 12, an employee's automobile was firebombed and homes and automobiles of other employees were damaged. Individual strikers and groups of strikers visited employees' homes and warned and threatened them not to cross the picket line or their persons and families would be injured and property would be damaged. An organizer for Petitioner was present during these visits to employees' homes.

On June 15, the Employer and the Petitioner entered into a private settlement agreement. The agreement provided that (1) Petitioner withdraw its picket on or before 7 a.m. that day and notify all employees over the radio of such withdrawal and that all employees might return to work except eight named persons (who presumably engaged in picket line misconduct); (2) the parties execute a stipulation before the Board for an election on July 11, 1973; (3) the eight named persons referred to above be reinstated if Petitioner won the election, but not if Petitioner lost; (4) the Employer withdraw unfair

[1] We adopt the Regional Director's recommendation that Objections 1 and 2 be overruled and that challenges to 15 ballots be sustained in the absence of exceptions thereto.

labor practice charges it had filed against Petitioner; (5) the Employer would take steps after the election to have criminal proceedings involving picket-line misconduct dropped; (6) the agreement is of a private nature, not to be given publicity by either of the parties; and (7) any doubt, controversy, or dispute arising in relation to the agreement be resolved between designated attorneys for the respective parties. An addendum to the agreement provides that the Employer shall take no reprisals or discriminate against any employee for union activities.

There is no allegation or evidence of objectionable conduct occurring after June 15. However, the Employer contends that a Petitioner leaflet distributed on June 22, which stated, "If they [Employer] want war, then we will give them [Employer] war whenever they want it again," served to keep alive the atmosphere of terror, fear, reprisal, and coercion that it contends existed prior to June 15. The Employer also contends that Petitioner violated the secrecy clause of the June 15 private agreement by publicizing the agreement.

The agreement was adhered to except for the alleged breach of its no-publicity clause by Petitioner.

The Regional Director recommended the overruling of the objections to the extent that they involve events antedating June 5, the date of the petition. However, he considered such events as they lent meaning and dimension to postpetition conduct. The Regional Director found that the references to "war" in the leaflet were directed toward violations of the settlement agreement and not toward a resumption of the acts of violence. And the breach of the privacy clause of the private agreement in no way interfered with the free choice of the employees.

The Regional Director found that the conduct that occurred after the filing of the petition was of so aggravated a character as to create a general atmosphere of fear and reprisal that rendered a free choice of representative impossible.

However, because (1) the violence was directed toward effectiveness of the strike rather than toward influencing the election, (2) there was substantial adherence to the settlement agreement, and (3) there was a 30-day period of peace before the election, the Regional Director found that the affects had been dissipated. He therefore recommended certification.

We do not agree. This conduct during the critical period, no matter when during that period it occurs, is ground to set aside an election. Moreover, there is a fundamental inconsistency in saying at one point that the conduct made a free election impossible and immediately thereafter saying that the violence does not matter because it had another object. We have serious doubts that the employees made such nice distinctions. Accordingly, we shall set aside the election conducted on July 11, 1973, and order a new election.

ORDER

It is hereby ordered that the election of July 11, 1973, among the employees in the unit hereinbefore set out, be, and it hereby is, set aside.

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