

Marlowe Manufacturing Company, Inc. and Communications Workers of America, AFL-CIO, Petitioner. Case 11-RC-3761

September 17, 1974

DECISION ON REVIEW AND CERTIFICATION OF RESULTS OF ELECTION

On March 18, 1974, the Acting Regional Director for Region 11 issued his Third Supplemental Decision and Direction in the above-entitled proceeding in which he sustained Petitioner's Objection 2 to conduct affecting the results of a runoff election, and directed that a second runoff election be conducted.¹ Thereafter, pursuant to National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a request for review of the Acting Regional Director's Third Supplemental Decision on the grounds, *inter alia*, that he erred as to substantial factual issues and departed from officially reported Board precedent.

By telegraphic order dated April 30, 1974, the National Labor Relations Board granted the request for review.

The Board has considered the entire record in this case with respect to the issues under review, including the Acting Regional Director's Third Supplemental Decision and the Employer's request for review and makes the following findings:

The Petitioner's Objection 2 relates to a leaflet² distributed by a group of employees known as the "Ouster Committee" during the early morning hours of the day on which the election was to be conducted.³ The Petitioner did not offer evidence establishing an agency relationship between the Employer and the Ouster Committee. In setting aside the election, the Acting Regional Director agreed with the Petitioner's contention that, by misrepresenting the reasons another plant, whose employees were also represented by the Petitioner herein, was forced to close, the leaflet constituted a threat that the Employer's plant would close if the Petitioner won the election. The Acting Regional Director noted that the establishment of an agency relationship is not necessary where there is third-party conduct which disrupts the election process and concluded that the distribution of the leaflet herein had such effect.

The Employer's request for review asserts that the leaflet, when scrutinized in the proper perspective,

contains no threat to employees of plant closure, but merely responds to the Petitioner's propaganda concerning job security. Moreover, the Employer notes that the Board has traditionally accorded less weight to acts of third parties than to acts of parties and hence the Acting Regional Director erred in sustaining the objection. Finally, it argues that, even assuming *arguendo* that the leaflet contained a threat, its distribution was effected by a group of rank-and-file employees having no connection with the Employer and it rejects as unsupported by the evidence the Acting Regional Director's implicit finding that such third-party conduct created an atmosphere of confusion or fear of reprisal, thus rendering free choice impossible.

We conclude, in agreement with the Employer, that the leaflet in question did not impair the election results. There was no evidence that the Employer itself engaged in any objectionable activity during the campaign, and, in the absence of any indication that it was at all involved in the preparation or distribution of the leaflet in question, we do not agree that the conduct by rank-and-file employees herein destroyed the election atmosphere.⁴ We therefore overrule Objection 2.

Accordingly, as the objection has been overruled and the tally of ballots shows that a majority of the valid votes have not been cast in favor of the Petitioner, we shall certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid votes have not been cast for Communications Workers of 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.

CHAIRMAN MILLER AND MEMBER FANNING, dissenting:

We are here faced with the issue of whether we should validate an election when, at the last minute, the voters have received a communication calculated (as we view it) to stimulate the fear that a union victo-

⁴ See *The DeVilbiss Company*, 115 NLRB 1164 (1956); cf. *Diamond State Poultry Company*, 107 NLRB 3 (1953). We view as distinguishable *Monarch Rubber Co., Inc.*, 121 NLRB 81 (1958), and *Automotive Controls Corp.*, 165 NLRB 450 (1967), relied on by the Acting Regional Director, as in these cases the third-party conduct involved local newspaper advertisements containing threats or explicit predictions of plant closure or loss of jobs if the union won. The advertisement in *Monarch* was ostensibly sponsored by local businessmen; that in *Automotive Controls* by named signatories, apparently townspeople. We consider such conduct as having a greater impact on employee free choice than the more localized and temperate antiunion sentiments expressed by fellow rank-and-file employees here. Moreover, the *Automotive Controls* case is further distinguishable on the basis that there was objectionable conduct by the employer (e.g., threats of reprisals against prounion employees) which constituted an additional basis for setting aside the election.

¹ The tally of ballots for the runoff election conducted on January 10, 1974, showed that of approximately 343 eligible voters, 321 cast valid ballots, of which 117 were for, and 204 against, the Petitioner.

² Attached hereto as an appendix.

³ The election was scheduled to commence at 2 p.m.

ry in the election would very likely result in a plant closing and a resultant loss of jobs for all the voters. The communication was not shown to have originated with the Employer, but rather was prepared and circulated by a group of employees called "The Ouster Committee."

Technically, the communication cannot be regarded as a threat, because an employee committee would have no power or authority to carry out the "threat"—i.e., close the plant.

But it was plainly a last-minute appeal to fear. Thus, it would compare with, for example, a last-minute circular saying that if the employees voted against the Union, the Union would inflict physical harm on, or cause property damage to the homes of, as many as possible of the employees. Even though such a document were to be circulated without union authority by a committee of employees, we would not validate the election.

For the Board does not validate elections held in an atmosphere of fear, no matter who creates that atmosphere.

Had the instant circular been distributed at an earlier time, so that it could have been countered by appeals to reason or even, we might hope, by an employer disavowal of any intent to close its plant in retaliation for the employees' selection of a bargaining agent, the situation would be different, because the appeal to fear might well have been dissipated by election day.

But this last-minute play upon the emotions—particularly the powerful emotion of fear—was, in our view, too full of potential for preventing the truly free choice which the Act guarantees to employees.

We would affirm the Regional Director's decision to conduct a second election.

APPENDIX

WHAT PRICE UNION SECURITY?

It is amazing what you can learn by doing some research; newspaper morgues and libraries provide a wealth of information. Products and services are not always what the labels claim them to be
. . . SO, WE INVESTIGATE BEFORE WE INVEST.

The union organizing committee *claims* that with a union we *will have job security* and a lot of other benefits. O.K. that's on their label
. . . let's investigate.

FIRST *no union can guarantee you job security.* Security comes from the company through their customers. *If the company cannot supply their customers with products when they want them, and at competitive prices, then they go elsewhere. The company loses customers and we lose jobs.* That is a fact and *the union cannot change it.* It's as simple as that.

SECOND we dug out a few samples of *what happened to hundreds of people who bought the union's pie-in-the-sky promises and security claims.*

DON'T SAY IT CAN'T HAPPEN HERE IT DID!!!

HYGRADE FOOD PRODUCTS, Orangeburg, closed down in 1969 . . . excessive union demands . . . more than 200 people out of work.

SMITH CORONA, Orangeburg. *Ask your CWA buddies about this one.* The union was voted in during 1968. *Contract signed in February 1970 plant closed in June 1970. 650 people left high and dry. These people went "ALL THE WAY WITH CWA."*

DEERING MILLIKEN, Darlington. The union was voted in September 1956 and the plant went out December 1956. *Poof another 550 jobs down the drain.*

Homes were lost cars and furniture repossessed human spirits totally broken.

A good number of these *people spent their lifetime working at these plants and the union represented them right out of their jobs.*

These are only a few examples *there are many, many more all tell the same story.*

All of them said, *"it can't happen to me; it couldn't happen here!" But it did, and the People were out of work and lost. The companies died.*

Any death is sad. *When the death affects the lives of hundreds of families, it is a tragedy!*

That's the price of union security.

VOTE FOR REAL SECURITY VOTE FOR YOURSELF VOTE NO!

The Ouster Committee