

Amerace Corporation, ESNA Division and International Association of Machinists & Aerospace Workers, AFL-CIO, Petitioner. Case 26-RC-4862

May 7, 1975

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS FANNING, JENKINS, AND KENNEDY

Pursuant to a Stipulation for Certification Upon Consent Election executed on September 5, 1974, an election by secret ballot was conducted on October 11, 1974, under the direction and supervision of the Regional Director for Region 26, among the employees in the stipulated unit. At the conclusion of the election, the parties were furnished a tally of ballots which showed that, of approximately 238 eligible voters, 209 cast valid ballots, of which 67 were cast for the Petitioner, 142 were cast against the Petitioner, and 17 ballots were challenged. The challenged ballots were not sufficient in number to affect the results of the election. Thereafter, the Petitioner filed timely objections to the election.

In accordance with Section 102.69 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Regional Director conducted an investigation and on December 2, 1974, issued and duly served on the parties his Report on Objections, in which he recommended that Objections 1, 5, 6, 7, and 8(A) be overruled, and that Objections 2, 4, 8(B), and 8(C) raise issues that could best be resolved by a hearing. He also recommended that Objection 3 be sustained and that the election be set aside and a second election directed. He recommended that a hearing not be held on Objections 2, 4, 8(B), and 8(C) in view of the recommendation with respect to Objection 3. Thereafter, the Employer filed timely exceptions to the Regional Director's recommendations that Objection 3 be sustained.

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.

The Board has considered the Regional Director's report, the Employer's exceptions thereto, and the entire record in this case, and makes the following findings:

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 which 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 Sections 9(c)(1) and 2(6) and (7) of the Act.

4. The following unit, as stipulated by the parties, constitutes 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 Amerace Corporation, ESNA Division Pochontas, Arkansas, facility, but excluding all office clerical employees, professional employees, technical employees, guards, and supervisors as defined in the Act.

5. The Board has considered the Regional Director's report and the Employer's exceptions and brief, and hereby adopts the Regional Director's findings and recommendations with respect to Objection 3.

The Regional Director recommended sustaining Objection 3 on a series of speeches made to assembled groups of employees during working time in the critical period prior to the election.

The testimony of seven witnesses is in agreement that during the 2 or 3 weeks prior to the election speeches were made to all employees by company officials named Bradley, Wivell, and Woit. In addition, some of the employee witnesses testified that Plant Superintendent Massey also made speeches to employees during the critical period.

The Employer admits that Bradley, Wivell, and Woit delivered prepared speeches to employees in "captive audience" meetings during the critical period but denies that Plant Superintendent Massey did so. Massey does admit that he talked with assembled groups of employees on three occasions but asserts that each occasion occurred prior to the filing of the petition herein. He admits that he discussed the "Blue Book" which is the Employer's booklet explaining company policies and benefits. He denies the statement attributed to him during these speeches that the employees would have to strike to obtain any concessions from the Employer. In view of the fact that employees' statements regarding Massey's remarks show that they are similar to those admittedly made by the other three employer officials and in view of the findings regarding those speeches, the Regional Director found it unnecessary to resolve the conflict regarding speeches allegedly made by Massey.

The Employer submitted copies of speeches delivered by A. J. Bradley, director of industrial relations on September 20, 1974; by William E. Wivell, a corporate official on October 1, 1974; and by Erik W. Woit, president of ESNA on October 9 and 10, 1974.

In the first speech Mr. Bradley stated that only 6 of 21 plants of the Employer are represented by labor unions. He said, "The majority of our employees have put their confidence and futures in Amerace to provide them with good wages, benefits and working conditions without the fear of strikes and violence hanging over their heads threatening their livelihoods." He then discussed his firsthand experience of living under the threats of strikes and violence by describing a 50-day strike which occurred at the Employer's plant in Union, New Jersey. Bradley then told the employees that a good relationship had existed at that plant in New Jersey prior to the advent of the Union, Bradley said, "The flavor of our old family relationship with our employees has never been recaptured. Perhaps the three strikes at Union has had something to do with it. Perhaps the constant bickering over grievances throughout the years has been a factor. Perhaps the fact that we became no longer competitive in our industrial nut line—now being made here at Pocahontas, was a factor." Bradley then stated:

You know that we had to make a judgment as whether we would discontinue the industrial nut business or try to become competitive by producing the product elsewhere. Fortunately for you folks—and for us—the decision was made to relocate in Pocahontas in an attempt to remain competitive. Hundreds of employees in Union were laid off as a result of this move—and I remind you that they were covered under a union contract with all its security clauses, and they no doubt felt that they were secure and that such a thing could not happen to them. However, ladies and gentlemen, it did happen!

The antiunion employees distributed a leaflet which posed the question, "Do you realize that this Company can pick up and move as easily or more so than it did in New Jersey?"

On October 1, Wivell in his speech stated:

I'm certain you'll appreciate that this has not been an easy year. No matter how well you plan and anticipate problems something else can always go wrong. We have all grown together. We have tried to solve these problems together. This attitude of cooperation would not have been possible if a labor union had been inserted between management and the employees.

Further in the text the following appears:

Another thing you have heard the Union talk about is that you have nothing to lose and everything to gain if the Union is voted in. Now let's examine that statement for a minute. If the Union

should win the election, all it means is that the law imposes a mutual obligation on the Company and on the Union to bargain in good faith. This we will do. But it means nothing more than that.

The Union can make demands on the Company, the Company also has the legal right to make demands on the Union. All of the present existing benefits that you have, every one of them, are as much the subject of negotiation in that situation as are any union demands for additional benefits.

After further discussion of the possibility that the Union will trade existing benefits for items such as superseniority for job stewards, he concludes that paragraph with the statement:

No one can predict what terms a union contract will contain. No one can guarantee that with a union the employees are going to get everything they have now plus more. The Union makes all sorts of promises. Their promise is that they can only hope that the Company will make good. In other words, they are promising for the Company.

Further, in the printed text of his speech, he referred to wages, stating:

You should know that the Union positively cannot force or compel Amerace, or any other employer, to give unrealistic or uneconomic increases in wages. The only thing they can do is to take the employees out on strike, if the negotiations do not produce the results of what they have already promised you.

Wivell stated from the text that IAM has one of the worst strike records of any union in the United States, and then remarked, "Who's gonna pay—you pay and you pay."

Wivell next discussed strikes at two of the Employer's plants this year and concluded by saying:

Nobody's going to win in the case of a strike, everybody loses. You're going to lose and the Company's going to lose. Customers go somewhere else, a lot of them never come back.

Wivell concluded his remarks with the statement:

Remember, the only way you have to prevent ever having to go out on strike and becoming involved with violence will be to vote no union on October 11.

Next, we consider the speech made by Mr. Woit on October 9 and 10, and on page 1 of his remarks appears the following:

Art and Bill [referring to the two previous speeches] have explained to you why the Company hopes you will vote "no." I, too, hope so, because I feel that having a union here would hurt our ability to get orders from the customers who make all of our jobs possible and to keep them coming.

Carrying on the theme of the Employer's campaign "You pay," Woit discussed dues, strikes, and violence, concluding after each with the statement "You pay." In regard to strikes the following appears:

Talking about paying, have you thought much about strikes? Unions can't give their members anything except the right to strike. Who pays when there is a strike—union members pay which means that

You Pay.

Another reason I urge you to vote "no" is that I know what kind of violence strikes can cause. I know what it is like, not only at the plant, but even when it involves employees' homes. The fact of the matter is—and this is important, is that you *don't* have strikes if you *don't* have a union.

The Employer also posted notices on the bulletin boards during the campaign. The messages contained in several of the exhibits are essentially restatements of points made by the employer officials in one or more of the three speeches. The obvious predominant theme of the posters concerns strikes.

Considering the total content of the speeches given by employer officials, buttressed by certain of the posters, we find those campaign tactics went beyond permissible bounds of electioneering. The campaign tactics had the effect of conveying to the employees the futility of selecting Petitioner for the purpose of improving their working conditions. The Employer, in effect, told the employees the plant in Pocahontas had been established as a result of labor discord at the Employer's plant in New Jersey and the point was driven home that hundreds of employees covered by a union contract lost their jobs as a result of the move of the Employer's product from that union plant to the new plant in Pocahontas. The inference was clear, the same thing would happen in Pocahontas if the union came in.

In arguing against unionism, an employer is free to discuss rationally the potency of strikes as a weapon

and the effectiveness of the union seeking to represent his employees. It is, however, a different matter when the employer leads the employees to believe that they must strike in order to get concessions. A major presupposition of the concept of collective bargaining is that minds can be changed by discussion, and that skilled, rational, cogent argument can produce change without the necessity for striking. When an employer frames the issue of whether or not the employees should vote for a union purely in terms of what a strike might accomplish, he demonstrates an attitude of predetermination that bargaining itself will accomplish nothing. Employees should not be led to believe, before voting that their choice is simply between no union or striking. The whole message to the employees was to instill in them a fear of the adverse effects of collective bargaining, coupled with the admonition that the selection of the Petitioner as their bargaining representative was an excursion into complete futility.

We find on the above facts that the thrust of the Employer's campaign was to convince the employees of the inevitability of a strike in order to obtain concessions from the Employer and its emphasis on replacement of strikers and loss of jobs, the possible dissension created, and the loss of jobs through possible plant closing. Therefore, we find that the Employer's campaign remarks created an atmosphere of fear which interfered with the employees' free choice in the election. Accordingly, we agree with the Regional Director's recommendation that Petitioner's Objection 3 has merit and we shall set aside the election.¹

ORDER

It is hereby ordered that the election previously conducted herein on October 11, 1974, be, and it hereby is, set aside.

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

MEMBER KENNEDY, dissenting:

I am not persuaded that the quoted remarks of the employer in the majority decision interfered with the election. I would direct a hearing on Objections 2, 3, 4, 8(B), and 8(c).

¹ *Boaz Spinning Company, Inc.*, 177 NLRB 788 (1969); *Electro-Voice, Inc.*, 191 NLRB 425 (1971)