

White Stag Mfg. Company and International Ladies' Garment Workers Union, Petitioner. Case 26-RC-4919

August 25, 1975

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN MURPHY AND MEMBERS FANNING AND PENELLO

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered objections to an election held on December 6, 1974,¹ and the Acting Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the Acting Regional Director's findings and recommendations.

The Petitioner's Objections II (A), (B), and (C), and (8) allege that, during in-plant speeches by certain managerial employees, the Employer threatened employees with economic reprisals following the selection of union representation. For the reasons more fully set forth in the relevant portion of the Acting Regional Director's report, which is marked "Appendix" and attached hereto, we agree with the Acting Regional Director's findings that the evidence submitted by the Petitioner fails to sustain these objections.

Our dissenting colleague takes certain of the Employer's statements out of context in order to build a case for setting the election aside and, indeed, for finding an unlawful advance refusal to bargain. In our view, the excerpted remarks must be read in light of other statements made in the same speeches. When so read, we agree with the Acting Regional Director that the speeches are not objectionable. Moreover, we note that although the dissent would sustain Objections II (A), (B), (C), and (8), no reasons are advanced for reversing the Acting Regional Director's findings with respect to Objections II (A) and (B).

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for International Ladies' Garment Workers Union, 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 Rela-

tions Act, as amended.

MEMBER FANNING, dissenting:

It is clear from the transcripts of meetings with employees in the early days of December 1974, as set forth in the Report on Objections, that this employer told its employees that, if the Union were voted in, the Employer was under no legal obligation to do anything other than sit at the bargaining table. This was the Employer's interpretation of good-faith bargaining.

" . . . that's what good faith means. We do not need to ever come to an agreement with this Union. All we've got to do is sit at the table. . . . Bargaining starts at what we call the bare table. That's the federal minimum It only starts at that level. . . ."

At another meeting, the Employer stated that, if the Union did not get in, the Employer would *guarantee* that existing rates "will not be tampered with." If, however, the Union won the election, existing benefits "can be taken away if the Union gets in." Again the Employer explained that this was so because bargaining started from the bare legal minimum, which was less than the employees were receiving. Thus, the message to the employees was clear. They had a lot of security to gain by voting against the Union and the possibility of losing what they had if they voted for it. All the Employer had to do under the law, they were told, was to "sit at the table" without agreeing to any new benefits and to negotiate terms and conditions of employment less favorable than existing benefits.

In my view, these statements of the Employer constituted threats that the Employer would not, in fact, bargain in good faith if the Union were selected by the employees to represent them, with the implied threat that the employees could actually lose existing benefits if the Union were voted in.

For these reasons I find merit in Objections II (A), (B), (C), and (8) and I would set aside the election.

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 70 for, and 133 against, the Petitioner; there were 7 challenged ballots, an insufficient number to affect the results.

APPENDIX

Objections II (A), (B), (C), and (8):

* * * * *

[1.] Based on testimony given by the Petitioner's employee witnesses, in-plant speeches were delivered by the Employer to the employees on October 23, December 2, 3, 4, and 5, 1974. The Employer refused to furnish to the Region copies of the above-men-

tioned speeches, which were taped, so the testimony of the Petitioner's employee witnesses, who were present at the speeches, and testimony of agents of the Employer will be relied upon to ascertain the content of these speeches.

The Petitioner presented six employee witnesses regarding speeches made to small groups of employees by supervisory personnel on October 23, 1974. [The petition was filed on October 23 and a copy was received by the Employer on October 25.] Although there are differences in the testimony of these employee witnesses as to the content and speakers in these meetings, all of the employee witnesses agreed that a wage increase was announced at this time. According to these witnesses, the guaranteed wage for production workers increased from \$2.10 per hour to \$2.20 per hour . . . effective December 2, 1974. These employee witnesses testified that they were not aware that a wage increase would be going into effect on December 2 until the meeting on October 23, 1974.

One employee witness . . . allegedly took notes in one of the . . . meetings. According to her notes and testimony, Guy Traylor [plant manager] announced in addition to the wage increase that effective January 1, 1975, the employees would have a life insurance policy worth \$2,000. This employee witness also stated that the employees' hospitalization insurance would begin to pay \$40.00 per day on a room, instead of \$30.00 per day, which it had previously paid. According to this employee witness, Pete Riley [industrial relations manager from WARNACO, of which White Stag is a division] announced that the company retirement fund for employees would begin at 25 years of age instead of 30, effective January 1, 1975. . . .

Rognald Knutson, who, as vice president of manufacturing is in charge of wage and benefit programs for the various White Stag plants, stated that in or around August 1974, he began to discuss wage and benefit increases for White Stag plants with the plant managers, including Guy Traylor. Knutson and Traylor testified that on September 12, 1974, there was a meeting between Al White, the manufacturing heads, and the domestic plant managers, in which wage-benefit packages, as well as other topics, were discussed. Knutson stated that he usually liked to make wage and benefit increases effective in the fall of the year because this was a break in the season cycle for White Stag. Al White is Knutson's assistant.

According to Knutson, the budget, including wage-benefit packages, for the manufacturing division of White Stag had to be submitted to the corporate offices of White Stag on or before October 15, 1974. Thus, on October 15, 1974, Knutson stated that

he instructed Al White to telephonically inform the plant managers of White Stag facilities in Checotah, Oklahoma; Puerto Rico; Sylvania, Georgia; and Murfreesboro, Tennessee, of the contents of the wage-benefit packages for their particular plants. Guy Traylor testified that he received such a call from Knutson and White on October 15, 1974. Knutson stated that each time such a wage-benefit package is announced telephonically, two confirming letters are sent—one from Al White to the plant manager, and the other from the plant manager to Al White. A copy of the confirming letter which was sent from Al White to Traylor was shown to the Board Agent, and it was dated October 15, 1974.

Knutson stated that Traylor and the other plant manager who received the direction on wages and benefits on October 15, 1974, were instructed telephonically on that date to announce the new wage-benefit package to their employees on October 23, 1974. Guy Traylor stated that he received instructions to make this announcement on October 23, 1974, from Al White and Knutson on October 15, 1974.

Knutson stated that the wage and benefit packages, which were revealed simultaneously to the four plant managers and were announced the same day in the four plants, involved comparable wage and benefit increases. Knutson stated that, when he came to White Stag in 1973, one of his primary goals was to achieve uniformity among the White Stag plants. In keeping with this policy of uniformity, Knutson contended that he attempted to implement similar wage and benefit programs in plants simultaneously. Knutson also stated that he encouraged plant managers to make such announcements to their employees in meetings.

Gus Traylor stated that he announced the increase in wages and benefits to his employees on October 23, 1974, as he was instructed. Traylor stated that he announced a wage increase, which was to be effective on December 2, 1974, the establishment of a life insurance policy, the effective date of which was January 1, 1975, an increase in hospitalization benefits, effective December 1, 1975, and the lowering of the retirement age. According to Knutson, the wage-benefit increases in the other plants occurred in these same general areas.

Guy Traylor and Knutson stated that on October 15, 1974, when Knutson made the decision to announce the wage-benefit package on October 23, 1974, they did not know that a petition would be filed by the Petitioner. Traylor and Knutson testified that they discovered that a petition had been filed on October 25, 1974, at which time the Employer received a copy of the petition from the National La-

bor Relations Board.

This investigation disclosed that the Employer customarily announced wage and benefit increases such as the ones given in September 1973, and May 1974, to employees in meetings which were held on company time and premises and such announcements have, in the past, been made well in advance of the date of implementation. Thus, the meeting on October 23, 1974, in which such increases were announced was found to be consistent with the Employer's past practices.

In view of the evidence presented, there was no indication that the announced wage-benefit package on October 23, 1974, was unlawfully motivated. This wage-benefit package had obviously been planned for this plant, as well as other White Stag plants, for at least one month-and-a-half before the petition was filed. Also, the decision to announce the increase in wages and benefits to the White Stag employees in four plants on October 23, 1974, was made on October 15, 1974, and the announcement was made by plant managers in those plants on October 23, 1974, as planned. It should be noted that the Petitioner states in its objections that this increase was announced prior to the filing of this petition. The Petitioner did not offer any proof for its allegation that there was a threat made by the Employer that the wage increase would be nullified by a majority vote for union representation. The Board has consistently held that, when an employer is confronted with a union organizing campaign, it should decide the question of granting or withholding benefits as though the union was not in the picture, which this Employer did.³ In the announcements of the benefits on October 23, the investigation revealed the Employer did not make the announcement in the context of antiunion expression. As there was no evidence presented which would indicate that the announcement of a wage-benefit increase on October 23, 1974, and its implementation on December 2, 1974, interfered with the conduct of the election, it is found that Objection II (B) is without merit.

[2.] An employee witness for the Petitioner stated that on December 2, 1974, Supervisor Claudia Ligon's group, of which the employee witness was a member, was called into a meeting with Rognald Knutson, Al White, and Guy Traylor. According to the employee witness, Knutson said that the Employer had always given raises to employees, and it did not need anyone to tell it when to take such action. This employee witness alleged that Knutson said that, if the Union won, the Company would have to negotiate in good faith, but the Company would not

have to sign a contract. Knutson added, according to this witness, that negotiations would begin at the minimum levels and go up, instead of starting at the current levels of the employees' benefits and wages. Knutson also allegedly outlined the assets of the Petitioner to the group of employees. He also said that, if there was a strike, the employees who wished to work could do so, and the strikers would be replaced.

According to the employee witness in Ligon's group, Al White also spoke at this meeting and showed the employees charts which illustrated the new pay increase and the amount of money an employee would lose during a strike. Guy Traylor also allegedly spoke at this meeting. He told the employees that he had formerly worked for Bobbie Brooks, which was organized. Traylor supposedly stated that the employees would not want a union because, as a result of union representation, there would be a middle man between the employees and the management.

The employee witness from Claudia Ligon's group, together with another employee witness from this group, which consisted of approximately 20 to 25 employees, submitted to the Board a tape recording, which is purported to be a tape of this meeting which occurred on December 2, 1974. A transcript⁴ of this tape is attached hereto as Exhibit C. One passage from this transcript reads as follows:

If the Union wins, what happens? Many think that if the Union wins the election that it is an automatic contract. The law says that the Company must negotiate with the Union in good faith. Good faith bargaining does not include signing a contract. Good faith bargaining is if we reject a demand we feel in any way would jeopardize this factory or in any way put this company in a non-competitive position, that's what good faith means. We do not need to ever come to an agreement with this Union. All we've got to do is sit at the table. For example, another thing, many people thought that bargaining starts at where you are today. This is not true. Bargaining starts at what we call the bare table. That's the federal minimum, and the necessary things that FICA and unemployment requires that we pay under the law. It only starts at that level. We negotiate holidays, we negotiate vacation, we negotiate pension, we negotiate wages, base rates, you name it, and it's negotiable. The Union knows this, but I doubt very much they told you this at their meetings or at your homes. It starts at the bare table. Many people think well, what's really so bad about——— in the

³ *The May Department Stores Company*, 174 NLRB 770 (1969)

⁴ The content of this speech was difficult to hear on this tape, so this transcript is rough and somewhat incomplete

Union? What can I lose? Let's start———. Everything is up for negotiation. It's horsetrading.

The Employer was requested to provide a transcript of this tape, as well as others, but he was unable to locate it. The Employer's counsel, when asked to make a statement of position in regard to this passage, stated that he felt that it was not quite accurate, although he did not specifically state what was inaccurate about this quotation.

Another of the Petitioner's witnesses, who was in Supervisor Lillian Alexander's group, which consisted of approximately 16 employees, stated that Knutson, White, and Traylor spoke to her group on December 3, 1974. According to this employee witness, Knutson described in detail the insurance benefits, holidays, vacations, and leave for jury duty which the employees received from the Employer. Knutson allegedly stated that the Union did not pay wages, and he informed the group in general terms about what the Union could not do for employees. This employee witness testified that Knutson declared that there was not an automatic contract following the Union's victory in an election. He said that the government only requires the Employer to sit down and bargain in good faith, and a company would not be required to sign a contract which would eliminate it from competition in its field. According to the Petitioner's employee witness Knutson stated that negotiations begin at the bare table with regard to holidays, benefits, and pensions. Knutson allegedly compared contract negotiations with horse trading. In answer to a question from the audience, Knutson allegedly stated that the mechanics in Portland, Oregon, pay \$11.50 per month in union dues. Knutson also described some of the Union's assets, which were listed on a report issued by the Federal Government. According to the employee witness, someone in the audience asked Knutson if the employees had to vote one way or the other, and Knutson replied that, although the Company would like to get their vote, the employees were free to vote as they chose. Another employee allegedly asked Knutson why the hourly workers had not received a pay increase, and Knutson responded that he did not want to get sued for an unfair wage increase, but he added that he had not forgotten the hourly workers.

The Employer did not have a transcript of this particular speech at the time it gave evidence in the matter.

The Petitioner presented two employee witnesses who stated that they attended a meeting between Knutson, Traylor, White, and Ben Robinson's group, which consisted of approximately 17 or 18 employees on or around December 3 or 4, 1974. According to

one employee witness, Knutson stated that, if the employees wanted a union, they had a legal right to such representation. Knutson also allegedly declared that, if the Union won, the Company would bargain in good faith according to the law. However, the employee witness stated that Knutson said that the law did not require the Company to sign a contract. According to the witness, Knutson said that, if the Union won the election, bargaining would begin at the bare table and go up.

The other employee witness from Ben Robinson's group gave substantially the same account of Knutson's speech in this meeting. However, she stated that Knutson also said that, if the employees went out on strike, the plant would remain open and the strikers would be replaced. Knutson allegedly stated that the Company, rather than the Union, sets production rates.

* * * * *

Rognald Knutson allowed the Board Agent to copy portions of the transcript from his meeting with Robinson's group on December 3, 1974. A passage from this transcript reads as follows:

Question: If the Union should not get in, will you really change the rates? If the Union does get in, would they be taken away?

Knutson: The answer to the first question is that I can guarantee you if the Union does not get in that those rates will not be tampered with. If the Union does get in, I would negotiate from the federal minimum. Then I would say yes, they can be taken away if the Union gets in, if the Union agrees in the negotiations that that is what we settle for, because it is negotiable. You negotiate from the bare minimum. We have no intentions of taking away, history proves that we never have.

The Petitioner presented an employee witness from Georgia Lance's group, who was in a meeting between approximately 20 employees and Knutson, Traylor, and a man who the employee witness was unable to identify. According to the employee witness, Knutson stated that WARNACO, of which White Stag is a division, had aided in White Stag's growth and, as a result, White Stag could pay wages of \$2.10 per hour. However, Knutson allegedly stated that he could not guarantee that he would be able to meet the Union's wage demands.

According to the employee witness, the unidentified man in this meeting, presumably Al White, illustrated, through the use of charts, White Stag's contribution to Murfreesboro and the amount of White Stag's profits for the previous year. Traylor also al-

legedly described his aforementioned frustrating experience at the organized Bobbie Brooks plant. Finally, the employee witness contended that Knutson, Traylor, and the unidentified man stated that the employees did not need a union.

Rognald Knutson allowed the Board Agent to copy a portion of what is purported to be a transcript of his speech which was given before Georgia Lance's group on December 2, 1974. One passage of this transcript reads as follows:

Knutson: Let's take it if the Union should win, what happens then. The law says that we must negotiate in good faith. I think there is a misunderstanding that it means if the election is over and the union wins we must have an automatic contract. This is not true. The law states that you negotiate in good faith, but you need not come to an agreement, for it is good faith bargaining to reject any demand that would put this factory in a bad financial situation, make it noncompetitive, or in fact, put the jobs here in jeopardy.

Also, another misunderstanding is that people think who have not been exposed to this kind of situation that bargaining starts at where you are today. This is not true. It starts at what you call the federal minimum, it starts at the FICA, the unemployment comp that we are mandatory to pay, and the \$2.00, which will be \$2.10.

Rognald Knutson stated that all of the Employer's speeches to groups of employees were taped, but they were not read from a prepared text. Knutson testified that a broad outline was followed in these meetings, but the exact content of speeches would vary somewhat.

Mr. Knutson admittedly did make speeches to groups of employees in which he stated that negotiation would begin at the bare table or the federal minimum. While the Employer indicated that it would make minimum initial bargaining proposals, there were no expressed or implied threats that it would unilaterally eliminate the benefits of the employees and require the Union to negotiate to reestablish them. Therefore, it is found that the Employer's statements were permissible expressions of views regarding the nature of collective bargaining and its possible effects on the conditions of employment at the plant.⁵

Assuming, *arguendo*, that on December 2, 1974,

Rognald Knutson made to a group of employees the remark, "Good faith bargaining does not include signing a contract." When taken in isolation, this comment could be considered objectionable. However, within the same passage Mr. Knutson emphasizes that everything is subject to negotiations with the Union, including holidays, vacations, and pensions, thus indicating the Employer's willingness to negotiate with the Union regarding the employees' terms and conditions of employment. The import of the foregoing is not that the Employer would refuse to bargain in good faith, but it is rather an expression of the Employer's views about the nature of collective bargaining. The above-mentioned remark which was allegedly made by Knutson, when read in context, does not imply the futility of union representation, and thus, did not exceed the bounds of permissible campaign propaganda.⁶

Thus, it is found that this portion [C] of Objection II is without merit.

[3.] The Petitioner presented four employee witnesses who testified that they attended a meeting between Mr. Traylor, Mr. Knutson, Mr. Riley, and all of the employees on the morning of December 5, 1974. One of the Petitioner's employee witnesses stated that, according to her watch, the meeting began at approximately 8 a.m. and ended at about 8:15 a.m. Another employee witness stated that the meeting began shortly after she started to work at 7 a.m.

Two employee witnesses who were presented by the Petitioner have submitted an alleged tape of this meeting on December 5, 1974. . . . Three of the Petitioner's employee witnesses read this transcript and stated that it was an accurate record of the speeches which were made in the meeting on December 5, 1974.

Mr. Knutson stated that, according to his watch, this meeting in which Traylor, Riley, and he spoke began at 8 a.m. and ended at approximately 8:30 a.m. on December 5, 1974.

Although the Petitioner states that the Employer implied at that meeting that the law could not compel it to engage in anything other than surface bargaining, there were no statements to that effect in the tape which the Petitioner submitted. As the content of these speeches is found to be within the bounds of permissible campaign propaganda and the meeting did not violate the Board's 24-hour prohibition on speeches to massed assemblies of employees, Objection II (8) is found to be without merit.

⁵ *Computer Peripherals, Inc.*, 215 NLRB No 22 (1974)

⁶ *Rudy's Farm Company, Inc.*, 190 NLRB 324 (1971)

[4.] The Petitioner did not present any witnesses in support of its contention that supervisory personnel had talked to employees individually and informed them that the selection of a bargaining agent would immediately reduce the actual pay being received by

employees to minimum standard established by law. Thus, Objection II (A) is found to be without merit.

Having found, as set forth above, that none of the objections herein have merit, it is recommended that Objections II (A), (B), (C), and (8) be overruled.