

**Copps Food Center, Inc. (Central Bakery) and
United Food & Commercial Workers Union
73A, AFL-CIO-CLC, Petitioner. Case 30-RC-
4863**

August 31, 1989

**DECISION AND DIRECTION OF
SECOND ELECTION**

**BY CHAIRMAN STEPHENS AND MEMBERS
CRACRAFT AND DEVANEY**

The National Labor Relations Board, by a three-member panel, has considered objections to an election held January 27, 1989,¹ and the hearing officer's report recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 15 for and 21 against the Petitioner, with 5 non-determinative challenged ballots.

The Board has reviewed the record in light of the exceptions and briefs, has adopted such of the hearing officer's findings² and recommendations as are consistent with the following decision, and finds that the election must be set aside and a new election held.

In her discussion of Objection 5, the hearing officer found that in a January 9 meeting with employee Peterson, Supervisor Burmeister told Peterson, "I hope you didn't sign anything," and that when Peterson told Burmeister that she had signed a card, Burmeister told her not to sign anything else. The hearing officer also credited Peterson's testimony that in a January 19 meeting with Burmeister, Burmeister told her that a strike was likely if the Union was elected and then told Peterson:

And, if I [Peterson] signed a card they would know very quickly who had signed one, and

that that individual, or whoever, who signed a card would not be allowed to return to work if they opened up the bakery. And, that they would certainly reopen the bakery with ununionized [sic] people, and that I would not be transferrable. I would no longer be employable. I would not be considered an employee of Copps Central Bakery, and that I could not work at their main new store or at any other location, and the reason for that was they would be fearful that I would try to incite a union on those locations.

However, the hearing officer found Burmeister's "implied threat of unspecified consequences if Peterson had signed or would sign anything for the union and the threat to not hire her at another Copps facility in the event of a strike [to be] isolated, not of such severity to affect the larger unit, and not part of a pattern of objectionable conduct" and that the conduct "occurred well before the election on January 27." The hearing officer therefore concluded that Burmeister's statements were "insufficiently objectionable to set aside the election."

We disagree with the hearing officer's conclusion. We find that Burmeister's January 19 statements, which threatened Peterson with discharge and "blackballing" if she signed a union card, involved serious objectionable conduct. Also, unlike the hearing officer, we find that Burmeister's meetings with Peterson, which occurred 18 and 8 days before the election, were not remote in time from the election.³ In addition, we note the hearing officer's failure to consider the closeness of the election. As noted above, the tally of ballots was 15 for and 21 against the Petitioner, with 5 challenged ballots. If the five individuals whose ballots were challenged were eligible and voted for the Petitioner, a change in only one vote would have altered the outcome. Peterson's vote would then be determinative.⁴ Given the nature of the statements, their proximity in time to the election, and the closeness of the election, we conclude that Burmeister's statements to Peterson are not de minimis and that the election must be set aside.⁵

[Direction of Second Election omitted from publication.]

¹ All subsequent dates refer to 1989 unless otherwise noted

² The Petitioner has excepted to some of the hearing officer's credibility findings. The Board's established policy is not to overrule a hearing officer's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect *Stretch-Tex Co.*, 118 NLRB 1359, 1361 (1957). We find no basis for reversing the findings.

In the fourth sentence of the fourth paragraph of her discussion of Objection 7, the hearing officer inadvertently substituted Supervisor Burmeister's name for that of General Plant Manager Watry in the phrase "Burmeister's reply deferred review of Peterson's productivity until after the election."

We find that the hearing officer erred in stating, in her discussion of Objection 3, that none of the employees who testified regarding the January 25 meetings in which Employer President Copps and Vice President Geis had addressed assembled employees "testified that Copps or Geis said anything regarding wage raises or union dues." The record shows that employee Glisczynski testified that Copps "said to us several times during the course of his [January 25] conversation that the only thing we could be sure of if we did vote for union was paying union dues. . . ." We find, however, that these comments by Copps do not constitute objectionable conduct.

We find it unnecessary to rely on the hearing officer's statement in her discussion of Objection 4 that "a suggestion that collective bargaining may diminish employee benefits does not constitute objectionable conduct."

³ See *Video Tape Co.*, 288 NLRB 646 fn 2 (1988)

⁴ Peterson testified that she told a "co-worker" about the statements Burmeister had made at the January 19 meeting. There is no evidence in the record of whether this "co-worker" was a unit employee.

⁵ See generally *Video Tape Co.*, supra

We find that *Clark Equipment Co.*, 278 NLRB 498 (1986), in which the Board found that employer misconduct involving only 8 employees in a unit of 800 employees did not warrant setting aside an election that the union lost by almost 100 votes, is distinguishable from the instant case