

IN the Matter of SIMPLEX WIRE AND CABLE COMPANY *and* WIRE & CABLE WORKERS FEDERAL LOCAL UNION 21020, AFFILIATED WITH THE A. F. OF L.

IN the Matter of SIMPLEX WIRE AND CABLE COMPANY *and* WIRE & CABLE WORKERS FEDERAL LOCAL UNION 21020, AFFILIATED WITH THE AMERICAN FEDERATION OF LABOR

IN the Matter of SIMPLEX WIRE & CABLE CO. *and* SIMPLEX EMPLOYEES ASSOCIATION

Cases Nos. C-359, R-396, and R-397, respectively

SUPPLEMENTAL DECISION

AND

ORDER

May 31, 1938

On March 29, 1938, the National Labor Relations Board, herein called the Board, issued a Decision, Order, and Direction of Election in the above-entitled cases.¹ The Direction of Election directed that an election by secret ballot be conducted within 15 days from the date of the Direction among the production and maintenance employees of Simplex Wire and Cable Company, Cambridge, Massachusetts, herein called the respondent, who were employed by it on September 23, 1937, including printers but excluding supervisory employees, factory clerks, factory-office clerks, shipping-office clerks, general-office clerks, other clerical employees, and those who had since quit or had been discharged for cause, to determine whether or not they desired to be represented by Wire & Cable Workers Federal Local Union, No. 21020, affiliated with the American Federation of Labor, herein called the Federal Local, for the purposes of collective bargaining.

In its Decision the Board found that the respondent had dominated and interfered with the formation and administration of the Simplex Employees Association, herein called the Association, and had contributed and was contributing support thereto. The Board ordered the respondent to cease and desist from such domination, interference, and contribution of support, to disestablish the Association as

¹ 6 N. L. R. B. 251.

a representative of its employees for the purposes of collective bargaining, and to notify the Regional Director within ten (10) days from the date of the order what steps the respondent had taken to comply therewith. The respondent notified the Regional Director that it would not disestablish the Association as ordered.

Pursuant to the Direction of Election, an election by secret ballot was conducted, on April 12, 1938, at Cambridge, Massachusetts, under the direction and supervision of A. Howard Myers, the Regional Director for the First Region (Boston, Massachusetts). Full opportunity was accorded to the parties to this investigation to participate in the conduct of the secret ballot and to make challenges. On April 18, 1938, the said Regional Director, acting pursuant to Article III, Section 9, of National Labor Relations Board Rules and Regulations—Series I, as amended, issued and on April 20, 1938, duly served upon the parties his Intermediate Report on the ballot.

As to the balloting and its results the Regional Director reported as follows:

Total Number Eligible to Vote.....	469
Total Number of Ballots Cast.....	404
Total Number of Blank Ballots.....	1
Total Number of Void Ballots.....	1
Total Number of Ballots Cast for Wire & Cable Workers Federal Local Union, No. 21020, affiliated with the American Federation of Labor.....	198
Total Number of Ballots Cast against Wire & Cable Workers Federal Local Union, No. 21020, affiliated with the American Federation of Labor.....	202
Total Number of Challenged Ballots.....	2

On April 20, 1938, the Federal Local filed with the Regional Director its Objections to the Intermediate Report. In its Objections the Federal Local referred to two documents submitted by it to the Regional Director on April 16: (1) a letter dated April 8, 1938, addressed by the Association to a representative of the Federal Local, inviting him or some other Federal Local representative to participate in a debate with the attorney for the Association at an Association meeting to be held on April 11, on the question of whether or not it is better for the employees of the respondent to join the Federal Local or the Association; (2) a letter dated April 8, addressed by the Association to the employees of the respondent, containing a notice of the Association meeting of April 11, setting out in full the invitation to the Federal Local representative to participate in the debate, and urging the employees to attend the meeting. The Objections state that the meeting of the Association was held for the purpose of intimidating and coercing the employees eligible to vote in the election; that statements were made at the meeting discrediting the Federal Local; and that the circulars addressed by the Association to the employees were intended to

misinform the employees and to indicate that the Federal Local representatives had accepted the challenge to participate in the debate. There is no allegation, however, of participation by any supervisory officials of the respondent in these activities.

We have considered the Objections to the Intermediate Report filed by the Federal Local and do not find that they warrant setting aside the election. We shall, accordingly, overrule the Objections to the Intermediate Report.

The results of the election show that no collective bargaining representative has been selected by a majority in the appropriate unit. However, in view of the fact that the attempts to influence the votes of the eligible employees were made by an organization which the Board had ordered disestablished, we shall order the petition for investigation and certification filed by the Federal Local to be dismissed without prejudice.

ORDER

Pursuant to Article III, Sections 8 and 9, of National Labor Relations Board Rules and Regulations—Series 1, as amended, the National Labor Relations Board hereby orders:

1. That the Objections to the Intermediate Report filed by Wire & Cable Workers Federal Local Union, No. 21020, affiliated with the American Federation of Labor, be, and they hereby are, overruled; and

2. That the petition filed by Wire & Cable Workers Federal Local Union, No. 21020, affiliated with the American Federation of Labor, for investigation and certification of representatives of employees of Simplex Wire and Cable Company, Cambridge, Massachusetts, be, and it hereby is, dismissed without prejudice.

MR. DONALD WAKEFIELD SMITH, DISSENTING:

In its Objections to the Intermediate Report, the Federal Local alleged that the meeting held under the auspices of the Association on the evening immediately preceding the election of April 12 was for the purpose of coercing, intimidating, and misinforming the employees eligible to vote in the election.

In its Decision of March 29, 1938,² the Board found that the actions of the respondent indicated quite definitely that the respondent favored the formation of the Association and looked with disfavor upon any outside organization, and further found that the Association formed and administered with such encouragement and support from the respondent became an organization of the respondent's choice. As a result of such findings, the Board ordered the respondent to

cease and desist from dominating or interfering with the administration of the Association and from contributing support thereto, and ordered that the respondent should take immediate affirmative action by disestablishing the Association as a collective bargaining agency. The respondent notified the Regional Director that it would not disestablish the Association as ordered. Thus, the meeting on the evening immediately preceding the election was alleged to have been held under a hostile atmosphere, by an organization found to be company-dominated and which the respondent has refused to disestablish, in defiance of the Board's order.

While organized or unorganized employees may lawfully engage in campaign activities prior to an election to determine collective bargaining representatives, the attempt by a labor organization, found by the Board to be company-dominated and ordered by the Board to be disestablished, to influence the results of an election under such circumstances as are here alleged—by coercion, intimidation, and misinformation—implies interference of a character intended to preclude a free choice of representatives by the employees, and warrants a hearing to ascertain whether or not there was any direct or indirect employer participation or interference.

The majority of the Board has overruled the Objections to the Intermediate Report upon the ground that such Objections do not warrant setting aside the election. I believe a hearing should be held to investigate the allegations contained in the Objections filed by the Federal Local before any final determination of the matter is made.