

In the Matter of THE NATIONAL SUGAR REFINING COMPANY OF NEW JERSEY and INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1476, SUGAR REFINERY WORKERS

Case No. R-341.—Decided November 30, 1937

Sugar Refining Industry—Consent Election: Board refuses to vacate and set aside results of on failure of complaining union to show that election was not fairly conducted—*Petition for Investigation and Certification of Representatives:* upon results of prior consent election, Board finds that no controversy concerning the representation of employees exists; petition dismissed.

Mr. Charles H. Graham, for the Board.

Mr. Giddings Howd, of New York City, for the Company.

Mr. W. E. Goldman and *Mr. T. M. Kerrigan,* of New York City, for the I. L. A.

Mr. Harold I. Cammer, of New York City, for the C. I. O.

Mr. Henry H. Foster, Jr., of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

On September 20, 1937, International Longshoremen's Association, Local No. 1476, Sugar Refinery Workers, American Federation of Labor, herein called the I. L. A., filed with the Regional Director of the National Labor Relations Board for the Second Region (New York City) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The National Sugar Refining Company of New Jersey, herein called the Company, at its Long Island City, New York, plant, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. The I. L. A. further requested the National Labor Relations Board, herein called the Board, to vacate and set aside an election of the employees of the Company held on September 8, 1937, to which the Company, the I. L. A. and the Committee for Industrial Organization, herein called the C. I. O., had consented. The I. L. A. also requested that a new election be held pursuant to the rules and regulations of the Board. On September 17, 1937, the Board, acting pursuant to Section 9 (c) of the Act and Article III, Section 3, of National Labor Relations Board Rules and Regula-

tions—Series 1, as amended, ordered the Regional Director to conduct an investigation and provide for an appropriate hearing upon due notice.

Pursuant to a notice of hearing, duly issued and served upon all the parties, a hearing was held in New York City on September 27 and October 8, 1937, before H. R. Korey, the Trial Examiner duly designated by the Board. At the hearing the Board, the Company, the I. L. A., and the C. I. O. were represented by counsel. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded to all parties. Various motions and objections to the introduction of evidence were made during the course of the hearing by counsel for the parties. The Board has reviewed the rulings of the Trial Examiner on these motions and objections and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The National Sugar Refining Company of New Jersey is engaged in the business of sugar refining. The Company owns and operates two plants, one located in Long Island City, New York, and the other at Edgewater, New Jersey. We are concerned in this case only with the Long Island City plant.

The raw sugar refined at the Long Island City plant is grown in Puerto Rico, Cuba, the Philippines, and Hawaii. Approximately sixty per cent of the refined sugar produced at the plant is sold and shipped to points outside the State of New York. The Company advertises through newspapers published in many of the leading cities throughout the United States.

II. THE ORGANIZATIONS INVOLVED

International Longshoremen's Association, Local No. 1476, Sugar Refinery Workers, is a labor organization affiliated with the American Federation of Labor and accepts into membership employees of the Company's Long Island City plant.

The Committee for Industrial Organization is likewise a labor organization, which accepts into membership employees of the Long Island City plant.

III. THE QUESTION CONCERNING REPRESENTATION

On or about August 30, 1937, an agreement was entered into between the I. L. A., the C. I. O., the Company, and the Regional

Director for the Second Region, consenting to the holding of an election in an agreed unit of employees of the Long Island City plant. Instructions for an election to be held on September 8, 1937, were issued by the Regional Director and an election was conducted by an agent of the Regional Director on that date.

Representatives of the I. L. A., the C. I. O., and the Company were present during the voting and acted as tellers. At the conclusion of the election each of these representatives signed the Report of Tellers certifying that the "voting, counting, and tabulation of the ballots was fairly, impartially, and accurately done and that the secrecy of the balloting was maintained". This Report tabulated the results of the election as follows:

1. Total number eligible to vote-----	1,051
2. Total number of ballots counted-----	970
3. Total number of votes in favor of C. I. O.-----	507
4. Total number of votes in favor of I. L. A.-----	441
5. Total number of blank votes-----	0
6. Total number of void ballots-----	1
7. Total number of challenged votes-----	21

The I. L. A. contends that the results of the election should be vacated and set aside on the grounds that the C. I. O. was guilty of fraud and bribery, and that the C. I. O. violated the clause of the Regional Director's instructions which provided that "no electioneering will be allowed, on the day of the election, in the plant or at or near the place of voting".

The place of voting was a Company garage located approximately a block and a half from the refinery proper and adjacent to several other buildings of the Company. No testimony was introduced showing any solicitation or electioneering at the polls. The representative of the Regional Director who conducted the election testified that the vote was fair and that he saw no electioneering whatsoever.

Witnesses for the I. L. A. testified in the most part to the distribution of circulars and other electioneering at substantial distances from the polls and the plant. The testimony shows only two instances in which it is alleged that any solicitation occurred within a hundred feet of the polling place.¹ In these cases it is claimed that representatives of the C. I. O. accompanied voters to within 20 feet of the garage where the balloting took place. Witnesses for the I. L. A. also testified to several isolated instances of solicitation by employees in the refinery. The C. I. O. asserted that its representatives were stationed a considerable distance from the plant and the polls and denied that any electioneering occurred at or near such places.

¹ Section 194, Subdivision 1, Election Law of the State of New York, and Section 764, Subdivision 4, Penal Law of the State of New York, forbid electioneering in a polling place or within one hundred feet of a polling place.

The alleged instances of electioneering fail to impress us as having created any impediment to the fair conduct of the election, which was held by secret ballot and subject to the scrutiny of interested parties. Such slight irregularities, assuming them to have occurred, should not under the circumstances here involved defeat the will of the majority.

In support of its charges of fraud and bribery the I. L. A. introduced testimony that on the day of the election an I. L. A. member was offered an opportunity to exchange his I. L. A. membership book for a C. I. O. book and a one dollar refund. Representatives of the C. I. O. testified that it was the practice to offer a C. I. O. book in exchange for an I. L. A. book but that no offers of any refund were made. In our opinion the offer, if made, does not constitute fraud or bribery, such as to nullify the results of the election.'

Since in our opinion the election was conducted in a fair and impartial manner and a proper decorum was maintained at the polls, the results of the election should not be vitiated. The employees of The National Sugar Refining Company's Long Island City plant having expressed their preference, and the wishes of the majority having been ascertained, there remains no question concerning representation for the Board to pass upon.

Upon the basis of the above findings of fact, and upon the entire record in the case, the Board makes the following:

CONCLUSION OF LAW

No question concerning the representation of the employees of the Long Island plant of The National Sugar Refining Company of New Jersey, exists within the meaning of Section 9 (c) of the National Labor Relations Act.

ORDER

Upon the basis of the foregoing findings of fact and conclusion of law the National Labor Relations Board hereby dismisses the Petition for Investigation and Certification filed by International Longshoremen's Association, Local No. 1476, Sugar Refinery Workers.