

Associated Milk Producers, Inc. and Retail, Wholesale & Department Store Union, AFL-CIO-CLC, Food Division, Petitioner. Case 30-RC-3246

August 25, 1978

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

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 the Petitioner's objections to an election held on January 12, 1978,¹ and the Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the Employer's exceptions and brief and hereby adopts the Regional Director's findings and recommendations, but only to the extent consistent herewith.²

Petitioner's Objection 2 alleges, in substance, that on the morning of the election the Employer's plant manager, Jack Vail, went around and spoke to employees in groups and individually and told them that they did not need a union and that they should vote "no" in the election. The Regional Director recommended that this objection be sustained. We disagree.

The facts are as follows: The election was scheduled for 9:30 to 10 a.m. and 4 to 5 p.m. On the morning of the election, between 7:45 and 9 a.m., Plant Manager Vail spoke to every eligible employee. With one exception, these conversations took place at the employees' work stations.³ Vail spoke to most employees individually, only twice deviating from this pattern, speaking on one occasion to two employees at once while they were at their respective places of work, and on another to the three laboratory employees together.⁴ All conversations were apparently several minutes or less in duration and similar in content. Vail approached the employee, informed him or her that "today" was the day that the employees voted on whether or not they wanted a union, and stated that he did not feel that they needed a union and

hoped that they would vote "no" in the election.⁵

Although the Regional Director concluded that Vail's remarks were not coercive in nature, he found Vail's conduct to be objectionable in that it violated the rule established by the Board in *Peerless Plywood Company*⁶ prohibiting election speeches, by either employers or unions, to massed assemblies of employees on company time within the 24-hour period immediately preceding an election. He further found that to condone Vail's conduct on the theory that his remarks essentially were made to employees individually, rather than as an assemblage, would create a distinction without a difference particularly where, as here, the employer had "in a planned and systematic fashion" contacted every eligible voter "for a continuous and uninterrupted period of approximately one and one-quarter hours." Further, the Regional Director found that Vail's conversation with the three employees in the laboratory also contravened the rule. The Employer contends that the Regional Director in both instances misapplied the *Peerless Plywood* rule. We agree with the Employer.

The Board, in *Peerless Plywood* at 429, found that because of their timing, last-minute speeches on company time to massed assemblies of employees tend ". . . to create a mass psychology which overrides arguments made through other campaign media and gives an unfair advantage to the party, whether employer or union, who in this manner obtains the last, most telling word." The Board, therefore, placed a limited restriction on otherwise legitimate campaign activities in order to prevent captive audience speeches to massed assemblies of employees during the period just prior to the election. The rule was devised to facilitate the holding of free elections in an atmosphere of relative tranquility, conducive to a sober and thoughtful choice which a free election is designed to reflect, without placing unreasonable limitations upon a party's legitimate campaign activities.⁷ Emphasizing the limited restrictions imposed by the *Peerless Plywood* rule, the Board in *Livingston Shirt Corporation, supra*, pointed out at 408 that:

. . . even during the 24-hour period, the employer and the union still have the right to use all lawful means of persuasion, including speech, subject *only* to the one qualification that they cannot *assemble* employees on company premises during working hours for the purpose of addressing them en masse [emphasis supplied].

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 11 for, and 11 against, the Petitioner; there were no challenged ballots.

² In the absence of exceptions we adopt, *pro forma*, the Regional Director's recommendation that Petitioner's Objection 1 be overruled.

³ Vail spoke to employee Daniel Jansen while Jansen was punching in just prior to beginning work.

⁴ Vail spoke to the laboratory employees in this way rather than individually because the proximity of each one's work station to the others, due to the limited workspace available, made it unlikely that he could have spoken to each one separately without the rest hearing what was being said.

⁵ Several of Petitioner's witnesses claim that Vail reminded them of recent wage increases. Vail did not deny such remarks, but could not recall whether they were made in conjunction with his election day conversations.

⁶ 107 NLRB 427 (1953).

⁷ *Livingston Shirt Corporation*, 107 NLRB 400, 408 (1953).

The Board went on to enumerate various nonobjectionable means of communicating with employees during the 24-hour period and included in this list "talk to individual employees."⁸

Since *Livingston*, the Board consistently has declined to expand the limited restriction of the *Peerless Plywood* rule to cover noncoercive antiunion statements made by management representatives to individual employees at their work stations within the 24-hour period prior to an election.⁹ Nothing in the circumstances of the instant case warrants or requires us to take a different position here or to find that the present situation is equivalent in nature or analogous to that involving speeches to massed employee assemblies on company time, as the Regional Director has concluded. Thus, Vail did not call employees away from their work stations to speak to them singly or to address them as a group. Instead, with the two exceptions discussed below, he approached the employees individually while they were at work. Briefly, and informally, he expressed the opinion that they did not need a union to represent them and the wish that they vote "no" in the election.

Clearly, Vail's brief comments advocating nothing more than a vote against the Union did not constitute a formal speech and made, as they were, to the employees individually, as well as informally, such remarks were unlikely to create the mass psychology referred to in *Peerless Plywood* or give "an unfair advantage to the party" making them. Nor are such statements elevated to the status of a speech to a massed employee assembly merely because they were repeated by Vail to every employee one after another at each one's workplace. That each employee during work hours was spoken to about the same subject with a similar refrain does not negate the fact that Vail spoke to each of them personally, informally, and separately, as individuals. Thus, we conclude that the repetitious nature, reach, location, and timing of these individual conversations did not singly or in combination transform Vail's comments into a speech as if made to all the employees collectively. We therefore find that Vail's speaking to the employees individually did not constitute objectionable conduct.¹⁰

⁸ *Id.*

⁹ E.g., *The American Sugar Refining Company (Domino Bag)*, 123 NLRB 207, 208 (1959); *Montgomery Ward Co.*, 119 NLRB 52, 53-54 (1957).

As to Vail's speaking to the laboratory employees as a group, we find little distinction between that incident and his conversations with employees individually. To begin with, the limited working space and close quarters of these employees virtually dictated his approaching them in this manner rather than singly. Further, his remarks to them, as to individual employees, were brief and informal, and conveyed the same simple appeal. In these circumstances, the Board has repeatedly held that the *Peerless Plywood* rule does not prohibit very minor conversations between a few employees and a union agent or supervisor for a 24-hour period before an election.¹¹ We therefore find that Vail's conversation with the three laboratory employees was not objectionable within the meaning of the *Peerless Plywood* rule.¹²

Based on the foregoing, we find the Petitioner's Objection 2 is without merit, and that it should be, and it hereby is overruled. Accordingly, we will certify the results of the election.

CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for Retail, Wholesale & Department Store Union, AFL-CIO-CLC, Food Division, 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 Relations Act, as amended.

¹⁰ We find *Montgomery Ward Co.*, 124 NLRB 343 (1959), and *Honeywell Incorporated*, 162 NLRB 323 (1966), relied on by the Regional Director, to be distinguishable from the instant case. In *Montgomery Ward*, the employer gathered six of seven eligible voters for a 30- to 40-minute question-and-answer session during which the employer's antiunion views were expressed. Although employee questions may have been addressed individually, the employees were nonetheless assembled in a group where all could hear the entire exchange concerning employment conditions of particular interest to them. In *Honeywell*, while the employee group was relatively small, the employees were forced to listen to a 1-1/2 hour speech, part of which was devoted to antiunion electioneering. Thus, both of those cases involved a lengthy and compulsory massed assembly during which substantive matters pertinent to the election campaign were addressed.

¹¹ *Business Aviation, Inc.*, 202 NLRB 1025 (1973); *Independent Linen Service Company of Mississippi*, 124 NLRB 717, 179 (1959); *Setzer's Super Store, Inc.*, 123 NLRB 1051 (1959).

¹² While the Regional Director did not make a finding with respect to Vail's conversation with a "group" of two other employees at their respective work stations, we note that the circumstances of that incident were similar in nature and content to all the others herein, and, thus, we find that conversation was not within the proscription of *Peerless Plywood*.