W. T. Grant Company *and* Retail Clerks International Association, AFL–CIO, Petitioner. *Case No. 1–RC–7056. June 11, 1964*

SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to the Board's Decision, Order, and Direction of Second Election herein, dated March 28, 1963,[1] a second election was conducted by secret ballot on April 26, 1963, under the direction and supervision of the Regional Director for the First Region, among the employees in the appropriate unit. Following the election the Regional Director served upon the parties a tally of ballots which showed that of approximately 24 eligible voters, 10 cast votes for, and 12 cast votes against, the Petitioner, and 2 ballots were challenged. Thereafter, the Petitioner filed timely objections to conduct allegedly affecting the results of the election.

The Regional Director thereafter investigated the objections and, on June 4, 1963, issued and duly served upon the parties his report on objections in which he found no merit to the objections and recommended that they be overruled in their entirety, and that a certification of results of election be issued. Thereafter, the Petitioner filed timely exceptions to the Regional Director's report.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman McCulloch and Members Leedom and Jenkins].

The Board has considered the Regional Director's report and the Petitioner's exceptions thereto, and upon the entire record in this case adopts the Regional Director's findings and recommendations.

The Petitioner alleged in objection No. 1 that a notice dated April 4, 1963, and posted by the employer for at least 3 weeks preceding the election, contained a threat by the Employer not to bargain with the Petitioner in the event it won the election, thereby interfering with the employees in their choice of a bargaining representative. The Petitioner asserts in its exceptions that the Regional Director erred in overruling this objection and urges that the notice should be considered in the complete context of the Employer's conduct and statements from the very beginning of this case, including its conduct preceding the first election found to have been objectionable in the Board's earlier decision.

[1] Not published in NLRB volumes.

The notice stated:

> The National Labor Relations Board has ordered a second election in your store. The reason for this order is that the union filed objections to the last election. The objections filed by the union were dismissed but in its investigation the National Labor Relations Board learned that I had spoken to six employees in the Manager's office. Because of this fact, the government held that my speaking to six employees "interfered with the conditions necessary for the conduct of a free election."
>
> It is my opinion as an attorney that this decision is completely wrong. However, there is no appeal from this decision. The only way that this decision of the National Labor Relations Board may be reviewed by the courts is an extremely complicated one. It would come about in the situation where the union is victorious in the second election. If and when this event happens, the Company would take the position that it is not obligated to bargain with the union because the decision overruling the election and ordering a second election was erroneous. If the union does succeed in winning the second election, the Company will most surely appeal the decision ordering the second election.
>
> Mr. Strout will continue to keep you informed as to when the election will take place.

The first election in this case, which was held on September 28, 1962, was set aside because the systematic interviewing by the Employer's attorney of individual employees in the store manager's office shortly before the election constituted interference. No contention is now made, nor has any evidence been submitted, that the Employer has continued to engage in such conduct since the first election. Moreover, except for the posting of the above notice, it does not appear that the Employer made any other statements to employees before the second election.

In the circumstances of the case, we believe that the posted notice was no more than an expression of the Employer's disagreement with the Board's action in setting aside the first election and of its determination to test the validity of that action in the only way open to it, through an 8(a)(5) proceeding. We are unable to conclude that knowledge of the Employer's position in this regard, without more, would justify the conclusion that employees were thereby inhibited in the exercise of their freedom of choice in the election. This case is factually distinguishable from the *Dal-Tex*[2] and *Lord Baltimore*,[3]

[2] *Dal-Tex Optical Company, Inc.*, 137 NLRB 1782 (Chairman McCulloch and Members Fanning and Brown; Member Leedom concurring separately).

[3] *The Lord Baltimore Press*, 142 NLRB 328 (Chairman McCulloch and Member Fanning; Member Rodgers dissenting).

cases, in each of which the employer's statement of legal position, read in the context of its other objectionable campaign statements, was construed by the Board to mean that it would *in no event* bargain collectively and that selection of a representative would be a futile act.[4]

Accordingly, as we have overruled all the objections and as the Petitioner did not secure a majority of the valid votes cast in the second election, we shall certify the results.

[The Board certified that a majority of the valid votes has not been cast for Retail Clerks International Association, AFL–CIO, and that the said labor organization is not the exclusive representative of the employees in the unit found appropriate.]

[4] We reject the exceptions relating to other objections, as in our opinion, they raise no substantial issues warranting reversal of the Regional Director's findings with respect thereto and his recommendations that they be overruled.

United Brotherhood of Carpenters and Joiners of America, AFL–CIO, Local 743 [C. R. Tumblin, Wilbur Rickett, and John C. Reaves, d/b/a Tumblin Company] *and* William R. Parker. *Case No. 21–CB–2140. June 12, 1964*

DECISION AND ORDER

On March 18, 1964, Trial Examiner Howard Myers issued his Decision in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and supporting briefs and General Counsel filed a reply brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Leedom, Fanning, and Brown].

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.