

**Caradco Corporation, a Subsidiary of Bendix Forest Products Corporation and International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), Petitioner. Case 33-RC-2714**

30 September 1983

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

**BY CHAIRMAN DOTSON AND MEMBERS  
ZIMMERMAN AND HUNTER**

The National Labor Relations Board has considered the objections to an election<sup>1</sup> held on 20 February 1981 and the attached Regional Director's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the Regional Director's findings and recommendations only to the extent consistent herewith.

In his report, the Regional Director found that the Employer made coercive statements and conveyed substantial and material misrepresentations of the facts concerning wage reductions at the Employer's other plants; he accordingly recommended that the objection be sustained, the election be set aside, and a second election be conducted. We find merit in the Employer's exceptions to these findings.

With respect to the Regional Director's findings that the Employer's statements constituted misrepresentations, the Board's decision in *Midland Insurance Co.*, 263 NLRB 127 (1982), which issued since the Regional Director's Report on Objections, is controlling on that issue. There the Board determined that it would no longer set aside elections based on campaign misrepresentations. Therefore, we will not set aside an election on the basis of the misrepresentations at issue herein.

With respect to the alleged coercive nature of the Employer's statements, as set out in the attached Report on Objections, the Regional Director found the overall impact of the Employer's campaign indicated selection of the Petitioner would result in reduced wages and benefits, and that this interfered with the election. To reach this conclusion the Regional Director focused on a letter to employees and three speeches delivered by the Employer's corporate industrial relations manager, Hugh Bannister. In the letter to employees, dated 13 February 1981,<sup>2</sup> the Employer, in pertinent part, stated:

<sup>1</sup> The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was 168 for, and 174 against, the Petitioner; there were no challenged ballots.

<sup>2</sup> All dates are in 1981.

On January 5th, I substantially increased the wages and benefits for all hourly employees at Caradco, as a matter of fact, it was the largest increase ever given at Caradco and more than the Company could afford to give.

\* \* \* \* \*

As I said, Caradco could not really afford to give you those increases, since Caradco did not make a profit at all in 1980, in fact, no profits have been made at Caradco to date under the present management.

On 18 and 19 February, the 2 days immediately preceding the election, Bannister addressed employees. On the first day he stated:

[C]an wages or benefits be negotiated downward [sic]. You are damn right they can and I have done some. We had one plant in Fresno in which we had 400 and some people and in 1977 to 1980 contract, we negotiated wages of 10%, 9%, and 8%. Four months later we reduced them 20%. Took the 10% away the first year, reduced the second year to 4%, and the third year to 4%. . . .

On the second day two meetings were convened with any employee attending only one meeting. At the first meeting Bannister said:

Will Caradco automatically have a Union Shop Clause in any agreement if the Union was elected? . . . [N]o . . . . Our philosophy is one . . . people . . . shouldn't be forced to join the Union. . . . [N]ow, what happens at the bargaining table if the Union came in and offered to give us a real good deal to reduce benefits, or wages or something like that, then I'd take another look at it or whoever was negotiating, I'm sure, would take another look at it. If it was very good, it would be very difficult to reject.

\* \* \* \* \*

Can wages or benefits be reduced in negotiations? It happens quite a bit. The answer is yes. In American Forest Products Corporation at its Fresno operation, wages were negotiated downward by 20% from 1977 to 1979. In 1977 we reduced wages 10%, reduced 5% in 1978, and 5% in 1979.

At the second speech Bannister, in pertinent part, said:

Two, will Caradco automatically have a Union Shop Clause in any agreement if the Union wins the election? The answer is "No," they won't automatically have one. It is a negotiable issue and the company must agree to it before it becomes a reality. The company's philosophy is one in which, if there is a Union in a plant an individual ought to have the right to join or not to join and not be forced to join. Take that for whatever it is.

However I guess that if I was setting [sic] at the bargaining table and the Union came in and said, listen, we want a Union Shop Clause very bad and we are willing to do this, give up some benefits, wages, and some other things to get it, then I might consider it. That would be very difficult to reject a proposal like that.

Number three: Can wages or benefits be reduced in negotiations? You damn right they can. I personally have been involved in several negotiations recently that we reduced the wages. In our AFPC operation at the Fresno plant, wages were negotiated downward by 20% in the 1977-1979 Contract. After it had been put into effect, we went back and reduced the 1977 wages 10%, we reduced the 1978 5% and the 1979 5%. Incidentally, there are 250 to 400 people working in a factory very similar to this. We make boxes, wooden boxes, for the fruit and vegetable markets all in Southern California and Arizona, Texas, and those areas.

The Regional Director found that, against the background of the letter containing the statement that the Employer could not really afford the raises it gave employees a month prior, the Employer's speeches about wage reductions at affiliated plants conveyed the message that selecting the Petitioner as their bargaining representative "would result in the reduction of wages and benefits from the present levels." He further found that Bannister's speeches conveyed the impression that wage reductions were unilaterally imposed at the unionized facilities. We disagree.

The Employer's communications with respect to reductions in wages were attempts to balance the Petitioner's rosy predictions as to the effect of unionization. Thus, its letter dated 13 February responded to union literature advising employees that all new contracts the Petitioner negotiated provided increased wages and improved benefits.<sup>3</sup> The

<sup>3</sup> In particular, the Union distributed a leaflet stating:

Question: Has the UAW negotiated cuts in wages and benefits in contracts covering newly-covered workers?

Employer was entitled to present its views, including negative views, on unionism as long as it did not do so in a manner that threatened employees with retaliation. The Employer's communications were not threatening. Nothing Bannister stated suggested that the California wages and benefits reductions referred to in his speeches were made for retaliatory reasons. He did not intimate that they were made for reasons other than economic necessity. Neither did he suggest that those plants' experience had any application to the Rantoul, Illinois, plant. Further, Bannister did not state that whatever economic problems motivated the California reductions were then, or were likely to be, present at the Rantoul plant,<sup>4</sup> nor did he suggest that the California examples would be mirrored at said plant or that the employees would suffer a comparable setback in wages and benefits if they were to select the Petitioner. Thus, the Employer's communications did not in any way threaten employees that it would retaliate by reducing wages or benefits if they selected the Petitioner as their exclusive bargaining representative.

Nor do we agree with the Regional Director's finding that there was a nexus between the Employer's 13 February letter and the subsequent speeches. In advising employees in the 13 February letter that it had not earned a profit under the new management, the Employer did not suggest it would rescind the recent wage increase if the Petitioner won the election. Rather, it was trying to convince employees that conditions, including wages and benefits, were favorable even without a union. It pointed to the raise as an immediate and direct example of that fact. It never linked the possibility of wage cuts to the January raise. Nor did the subsequent references to wage cuts change the effect of the letter so as to render Bannister's speeches objectionable. Mere references to a wage increase at the Rantoul plant followed by unconnected references to wage cuts elsewhere do not amount, without more, to a threat of a reduction of wages at this facility.

Furthermore, each of Bannister's references to the California reductions established that such cuts were made after engaging in negotiations with the Union, thereby establishing that those changes were not, as the Regional Director found, unilaterally imposed. Although Bannister did occasionally speak in the first person<sup>5</sup> it is apparent that his

Answer: No. All new contracts negotiated by UAW have all provided for increased wages and improved benefits.

<sup>4</sup> To the contrary, the Employer's 5 January raise suggests that it was financially optimistic, notwithstanding its comment that it had not yet earned a profit under the present management.

<sup>5</sup> "You are damn right [wages and benefits can be negotiated downwards] and I have done some." And, about a small California operation,  
*Continued*

only purpose was to indicate personal familiarity with examples of employees represented by unions who had their wages reduced. Bannister sought credibility by saying "I." He did not indicate that the reductions were unilaterally made. Rather, in each of the 18 and 19 February speeches Bannister repeatedly indicated that the California wage and benefit reductions took place through negotiations with the employees' union. He made it clear that the collective-bargaining representative agreed to those changes. Thus, we find that the Employer did not exceed permissible campaign conduct. Nothing it said can be construed as a threat to reduce employee wages or benefits if the Petitioner won the election.

Accordingly, inasmuch as the Petitioner's objection does not indicate that the Employer's speech constituted a threat to retaliate against employees by reducing wages and benefits if the Petitioner won the election, it is hereby overruled. Because the tally of ballots shows that the Petitioner failed to receive a majority of the valid ballots cast, we shall 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 International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), and that said labor organization is not the exclusive representative of all the employees in the unit involved herein within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

he said "they were reduced in 1978, I reduced their wages twenty-two cents an hour."

#### APPENDIX

##### REPORT ON OBJECTIONS

Following the filing of a petition on January 30, 1981,<sup>1</sup> and pursuant to a Stipulation for Certification Upon Consent Election approved February 9, by the Regional Director for the Thirty-Third Region, an election by secret ballot was conducted on February 20 under his supervision within the following unit:

All full-time and regular part-time production and maintenance employees at the Company's Rantoul, Illinois facility; but excluding foremen, office clerical employees, professional employees, quality control employees, guards, confidential and supervisory employees as defined in the Act.

<sup>1</sup> All dates herein are 1981 unless stated otherwise.

The Tally of Ballots, copies of which were furnished to each of the parties on the day of the election, shows the results of the election were as follows:

Approximate number of eligible voters.....	362
Void ballots.....	3
Votes cast for Petitioner.....	168
Votes cast against participating labor organization.....	174
Valid votes counted.....	342
Challenged ballots.....	0
Valid votes counted plus challenged ballots.....	342

Challenges are not sufficient in number to affect the results of the election.

Timely Objections to Conduct Affecting the Results of the Election were filed by the Petitioner on February 27, and a copy thereof was duly served upon the Employer. The Objections are attached hereto as Exhibit A.<sup>2</sup> [Exhibit A omitted from publication.]

Pursuant to Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8, as amended, the undersigned, after reasonable notice to all parties to present relevant evidence, hereby issues his Report thereon.

##### *The Remaining Objection*

In this Objection, identified in Exhibit A as Objection No. 1, the Petitioner alleges that the Employer, through Corporate Industrial Relations Manager Hugh Bannister, at meetings held on February 18 and 19,<sup>3</sup> made threats and materially misrepresented the facts concerning plant closure and wage reductions at unionized facilities of the same Employer.

The investigation revealed that during the election campaign both parties distributed handouts and letters. The Employer also held mandatory-attendance meetings with all employees on February 18 and again with two separate groupings of employees on February 19. One of the issues raised in the campaign and pertinent to this Objection is whether, as a result of selecting a Union as their bargaining representative, employees would suffer a reduction in wages and/or benefits. Petitioner discussed this issue in various handouts which are attached hereto as Exhibits B-1 through B-7. [Exhibits B-1 through B-7 omitted from publication.] One of them, Exhibit B-1, states:

"question: Has the UAW negotiated cuts in wages and benefits in contracts covering newly-organized workers?"

<sup>2</sup> The Petitioner's request to withdraw Objection Nos. 2 through 7 is hereby approved. Accordingly, only the remaining objection is the subject of this report.

<sup>3</sup> Although the Petitioner's filed objections made reference to only the February 19 speech by Bannister, during the course of the investigation it raised objections to remarks made at all the captive-audience speeches. I deem both speeches and the Employer's literature within the scope of my investigation of the objection. *Aeronca Manufacturing Corporation*, 121 NLRB 777; *Carter-Lee Lumber Co.*, 119 NLRB 1374; *International Shoe Company*, 123 NLRB 682.

answer: No. All new contracts negotiated by UAW have all provided for increased wages and improved benefits.

**WE CHALLENGE THE COMPANY TO SHOW EVEN ONE FIRST CONTRACT COVERING NEWLY-ORGANIZED WORKERS WHERE THESE LOST IN WAGES AND BENEFITS."**

The Employer first addresses the issue in a handout to employees on February 10. The handout attached hereto as Exhibit C-1, stated in part [Exhibit C-1 omitted from publication]:

"Once again, Caradco and its employees are faced with a union organizing confrontation.

Caradco is absolutely opposed to a union and will use every legal, lawful option at our disposal to keep a union out of this plant.

According to the latest information, some employees are dissatisfied with the wage adjustments and benefit improvements, voluntarily given by Caradco on January 5, 1981. Overtime requirements, scheduling, job security and sick leave among other issues seem to be of concern to some employees.

I don't know what the union has promised or led you to believe can or will be negotiated, but I do know, if the union is successful in negotiations, it will be because the company voluntarily agrees to demands.

\* \* \* \* \*

Does representation by a union mean your wages and benefits will automatically go up or that overtime policies, scheduling, and job security will change . . . . .

The answer to that question is *NO* !

\* \* \* \* \*

The law specifically says good faith bargaining does not mean the making of concessions. Stated another way, there are *no guarantees* that anything will or must change or improve.

In the process of negotiating a contract your wages or benefits could go up, they could remain the same, or they could go down.

\* \* \* \* \*

Before you vote, I strongly urge you to get the organizing committee to put in writing everything they have led you to believe they will get for you at the bargaining table.

\* \* \* \* \*

The only guarantee at the bargaining table is the right and obligation to negotiate in good faith."

The Employer, in a letter to employees dated February 13, (attached hereto as Exhibit C-2) stated in part [Exhibit C-2 omitted from publication]:

"On January 5th, I substantially increased the wages and benefits for all hourly employees at Caradco, as a matter of fact, it was the largest increase ever given at Caradco and more than the Company could afford to give.

Even so, you received these increases without having a union represent you and more importantly to you *without paying union dues!*

As I said, Caradco could not really afford to give you those increases, since Caradco did not make a profit at all in 1980, in fact, no profits have been made at Caradco to date under the present management.

\* \* \* \* \*

Have you ever figured out what union dues might cost you should the union be voted in as your representative and were successful in negotiating a union shop clause in an agreement?

Example . . . . If the yearly dues and assessments were \$200.00 and you worked 2,000 hours a year, the cost could be 10 cents per hour out of your paycheck.

Incidentally, if union dues are based on the dues payers hourly wage rate, the dues would automatically be increased whenever wages were increased. Think about it . . . union dues could be costly!

This is especially true, since even with a Union representing you there are no guarantees that anything will change for Caradco employees as a result of negotiations.

In my letter of February 10th, I stated there were two alternatives for the union if the Company did not agree to the Union demands. After thinking about it there are actually two other options for the union. 1.) The Union could eventually accept whatever the Company offered, or 2.) Do what the UAW did at M & W Gear Company in Gibson City - the union negotiated with the Company off and on for about a year - went on strike for 6 working days - and then walked away without a contract. Many M & W Gear employees crossed the union picket line to return to work, with what they had before the strike - except that the strike cost some of them 6 days pay."

The subject was again raised in speeches to employees on February 18 and 19. The Employer taped the remarks of its speakers, many of whom apparently read from prepared text, and transcripts were furnished to the undersigned during the course of the investigation. The remarks of Hugh Bannister to employees on February 18 are attached hereto as Exhibit D. His remarks to employees at two separate meetings on February 19 are attached hereto as Exhibit E-1 and E-2. [Exhibits D, E-1, and E-2 omitted from publication.]

The transcripts show that at the meeting with all employees held on February 18, Hugh Bannister informed employees that the Employer has both non-union and union operations, and that he has negotiated many labor agreements. The stated purpose of his remarks was to answer questions that had been asked of him more frequently than others. During his talk he made the following statements:

"Three, can wages, this is another one that has been hammered at me, and I have tried to answer it the best way I can because in many negotiations that I have had, particularly in the last four years, it is true, can wages or benefits be negotiated downward. You are damn right they can and I have done some. We had one plant in Fresno in which we had 400 and some people and in 1977 to 1980 contract, we negotiated wages of 10%, 9%, and 9%. Four months later we reduced them 20%. Took the 10% away the first year, reduced the second year to 4%, and the third year to 4%.

Firebaugh, an operation we had. We reduced that 24 cents an hour. No mind you they were only getting about \$5.30 an hour at that time. They were one of our lowest shops, but we went to the bargaining table and said listen we can't afford to give any money as a matter of fact I am going to ask for a dollar reduction and ended up with a 22 cent reduction. Just an example.

Here is an article that was the Chicago Tribune, Saturday, February 14, which states very clearly that there are a hell of a lot of operations today that are reducing their wages. They are negotiating them down. One of the statements, "Wages do go down." Some of the more publicized cases of wages being cut recently involved unionized workers at Chrysler, Uniroy, Firestone, Armour, and Conrail. It is not uncommon, it is going on all the time.

Anything can happen at bargaining. If, let's take the Union Shop. If the Union was really eager, and that is one of their key issues, if they were really eager to get a Union Shop, obviously that is their security and they want that. It is not uncommon for them to reduce other benefits to get that Union Shop. I know that probably wouldn't be too much of an issue with some of the employees, they wouldn't mind maybe getting the representation and not paying any dues, but they don't hesitate a damn minute to bargain on that issue because they want it. That goes along with payroll of union dues as well. Check on them."

Hugh Bannister addressed employees for the second time on February 19, the day before the election, but apparently not within the 24 hour period proscribed by the Board's *Peerless Plywood* rule.<sup>4</sup> He addressed the issues of union shop clauses and wages in both sessions as questions 2 and 3. His remarks as transcribed show he stated:

<sup>4</sup> The *Peerless Plywood* rule forbids election speeches on company time to massed assemblies of employees within 24 hours of the scheduled time for an election. *Peerless Plywood Company*, 107 NLRB 427.

#### (FIRST MEETING)

"2. Second question. Will Caradco automatically have a Union Shop Clause in any agreement if the Union was elected? The answer is no, they won't automatically have one. The issue is a negotiable item and the company must agree to it before it becomes a reality. Our philosophy is one in which, if there is a Union here, people ought to have a choice as to whether they want to join or not. They shouldn't be forced to join the Union. That is our philosophy, now, what happens at the bargaining table if the Union came in and offered to give us a real good deal to reduce benefits, or wages or something like that, then I'd take another look at it or whoever was negotiating, I'm sure, would take another look at it. It was very good, it would be very difficult to reject.

3. Can wages or benefits be reduced in negotiations? It happens quite a bit. The answer is yes. In American Forest Products Corporation at its Fresno operation, wages were negotiated downward by 20% from 1977 to 1979. In 1977 we reduced wages 10%, we reduced 5% in 1978, and 5% in 1979. There is 250 to 400 people there depending on the season. We make, we are a manufacturing factory like this, where we made boxes and this type of this and ship to the fruit and vegetable industry.

Rigley operation is down the road a few miles from Fresno. They have about 55 people there. They were reduced a dollar an hour the first year, in 1977. We gave them a choice if they wanted the dollar in wages or did they want to break it up. They took seventy cents in wages and thirty cents in holidays. And they wiped those out of the agreement. The second year, they were reduced 6% and the third year we reduced 5%, that was in 1979.

Firebaugh, a small operation we have where we just shut down the other day, there is about 20 people that have been employed in there for quite a few years and they were reduced in 1978, I reduced their wages twenty-two cents an hour. All of these are California Union operations.

#### (SECOND MEETING)

Two, will Caradco automatically have a Union Shop Clause in any agreement if the Union wins the election? The answer is "No," they won't automatically have one. It is a negotiable issue and the company must agree to it before it becomes a reality. The company's philosophy is one in which, if there is a Union in a plant an individual ought to have the right to join or not join and not be forced to join. Take that for whatever it is.

However, I guess that if I was setting at the bargaining table and the Union came in and said, listen, we want a Union Shop Clause very bad and we are willing to do this, give up some benefits, wages, and some other things to get it, then I might consider it. That would be very difficult to reject a proposal like that.

Number three: Can wages or benefits be reduced in negotiations? You damn right they can. I personally have been involved in several negotiations recently that we reduced the wages. In our AEPC operation at the Fresno plant, wages were negotiated downward by 20% in the 1977-1979 Contract. After it had been put into effect, we went back and reduced the 1977 wages 10%, we reduced the 1978 5% and the 1979 5%. Incidentally, there are 250 to 400 people working in a factory very similar to this. We make boxes, wooden boxes, for the fruit and vegetable markets all in Southern California and Arizona, Texas, and those areas.

We have a plant near there called Rigley. We only have about 55 people there. But, their wages were reduced, wages and benefits I might say, in 1977 \$1.00 an hour. They decided, we gave them a choice as to how to hell they wanted it and they said, we will take seventy cents an hour reductions in wages and you can take away all the holidays, so the other thirty cents were in holidays.

In 1978 we reduced their wages 6%. In 1979 we reduced their wages 5%.

Fireball, that's another little operation near there, in 1978 we reduced their wages 22 cents an hour. All of these were in California and they were all Union shops.

It is interesting that in the Chicago Tribune on Saturday, February 14, 1981, I've got a few copies up here, it gives a pretty good run-down on the fact that wages are being reduced in a lot of areas. They are all Union shops, most of them. Let me quote just one little area "Wages do go down." Some of the most publicized cases of wages being cut recently involved unionized workers at Chrysler, Uniroyal, Firestone, Arbor, and Conrail."

Petitioner contends that the remarks by Corporate Industrial Relations Manager Hugh Bannister constitute threats of wage and benefits reductions if employees select it as their bargaining representative, and further, constitute substantial misrepresentation of contractually negotiated wages and fringe benefits at the corporation's other locations, and were made at a time when the Petitioner did not have an adequate opportunity to reply. The Employer asserts that Bannister's remarks were truthful and do not constitute a threat. In support of its position, the Employer furnished documentary evidence with respect to various labor agreements at its Fresno, Reedley and Firebaugh, California facilities where bargaining relationships exist between the Employer's American Forest Product Corporation and a labor organization other than the Petitioner.

An examination of the documents submitted reveal that a number of the Employer's California operations of AFPC were covered by a collective bargaining Master agreement dated December 1, 1977, for the three-year period June 1, 1977 through May 31, 1980. That agreement provided for wage increase at the Fresno and Reedley facilities, among others, of 10%, 9% and 9% each June 1st beginning in 1977. Thereafter, by date of February 28, 1978, the parties to the Master Agreement

entered into a supplemental agreement applicable only to the Fresno operation, wherein it was agreed to discontinue the 10% wage increase for the remaining three months of that wage year (June 1, 1977 - May 31, 1978). Additionally, it was agreed that the scheduled 9% increases to be effective June 1, 1978 and June 1, 1979, be reduced to 4% increases (attached hereto as Exhibit F). With respect to the Reedley facility, the parties in October 1977, entered into an agreement to reduce all hourly wage rates for certain classifications by 70¢ per hour effective November 1, 1977, and effective the same date, to discontinue seven paid holidays (attached hereto as Exhibit G). [Exhibit G omitted from publication.] Subsequently, the parties entered into two other supplemental agreements which restored some of the paid holidays, and modified the wage agreement for 1978 and 1979 to provide for a 15¢ per hour increase for certain classifications, effective retroactive to June 1, 1978, computed on the rates in effect on May 31, 1978, and a 4% increase for all classifications effective June 1, 1979, computed on the rates in effect on May 31, 1979 (attached hereto as Exhibits H and I). [Exhibits H and I omitted from publication.] The Firebaugh facility was covered by a separate contract effective from October 1, 1975 to September 30, 1978. It provided for wage increases effective October 1 of each year (pertinent pages attached hereto as Exhibit J). [Exhibit J omitted from publication.] Thereafter, by date of February 9, 1979, the parties entered into an agreement to extend the contract for one year. The agreement also provided for a reduction of 22 cents per hour effective February 12, 1979, from the rates in effect October 1, 1977, and for the company to increase its contribution to the Health and Welfare fund from \$98.25 per calendar month per employee to \$136.31 effective March 1979<sup>5</sup> (attached hereto as Exhibit K). [Exhibit K omitted from publication.]

Upon due consideration, I do not agree with the Employer's assertion that its remarks to employees on February 18 and 19 were truthful and devoid of any coercive effect. Bannister's statements followed literature from plant manager Mark Kable which informed employees that the company had granted a substantial increase in wages and benefits on January 5, several weeks before the instant petition was filed, at a time when Caradco had not made a profit. It was described as the largest increase given and more than the company could afford to give, and employees received it without a union representing them. The literature goes on to state the company's opposition to unions, and that with a union representing them "there are no guarantees that anything will change for Caradco employees as a result of negotiations" (Exhibit C-2, p. 2). The message that union representation does not mean that wages and benefits will automatically go up was repeated in the February 10 letter. Bannister's remarks on the 18th and 19th

<sup>5</sup> The Employer argues that the increase in the Health and Welfare fund was not a *quid pro quo* for wage reductions, but rather occurred as a result of a dispute between the company and the trust fund. However, the Employer concedes, and I so find, that the increase was a product of negotiations which resulted in the February 1979 extension agreement. I do not find material the reasons the individual parties may have had for agreeing to the increase.

continued to convey this message to employees and sought to legitimize this warning by reference to first-hand facts as a result of his knowledge of negotiations at unionized facilities of the company in California. He also stated that based on his experience, unions in their quest for a union shop clause would sometimes agree to reduce other benefits as a *quid pro quo*. The overall impact of the company's communication can reasonably be deemed to convey to employees the impression that selection of the union as their collective bargaining representative would result in the reduction of wages and benefits from the present levels, whereas rejection of the union would assure the company's continued largess. Such communication goes beyond permissible electioneering as to the parties' legal obligation to bargain in good faith, and reasonably can be deemed to have interfered with the holding of a free and untrammelled election. Moreover, I find that the Employer's remarks about wage negotiations at its California operations constitute a substantial misrepresentation of fact on a material issue in the campaign, and occurred at a time when the Petitioner did not have an opportunity to reply.

An employer's omission of critical facts on the subject of wage reductions tends to render the statements made so misleading that the omission has a material and substantial effect on the employees' free choice in an election. The courts have held in *P. Lorillard Co. v. FTC*, 186 F.2d 52, 58 (C.A. 4), "to tell less than the whole truth is a well-known method of deception; and he who deceives by resorting to such method cannot excuse the deception by relying on the truthfulness *per se* of the partial truth by which it has been accomplished." In Board-conducted elections, the Board and the courts have long recognized that material omissions of fact are as likely to materially mislead employees as positive misstatements of fact. *Bausch & Lomb, Incorporated*, 185 NLRB 262. Clearly, here the statements made in speeches to employees within days of the election were made by a party who is in an authoritative position to know the true facts, and it cannot be assumed that the employees would possess independent knowledge of the facts. Finally, the statements were made at a time which would prevent the other party from making an effective reply. See *Hollywood Ceramics Company, Inc.*, 140 NLRB 221; *General Knit of California, Inc.*, 239 NLRB 619; *Western Health Facilities, Inc.*, 208 NLRB 56.

The statements in question concerned wage rates, a matter of prime concern to all employees. Therefore, any substantial misrepresentation could well have significantly affected the results of the election through the erroneous picture of the wage reductions. In my opinion, the only logical interpretation of the statement made is that there was a "ratchet effect" during three successive years, wherein each year's wages were reduced, with the subsequent reductions culminating in wage rates 20% less than the initial wage rates. Whereas in fact, the union involved in the employer's California facilities had negotiated wage increases, and even taking into consideration later wage concessions, employees wage levels, in-

cluding fringe benefits, were higher during the contract term than at its outset. The impression given by the misrepresentation is that the selection of a union and wage reductions go hand-in-hand.

Further, the statement conveys the impression that the wage reductions were unilaterally imposed and the union was merely afforded the opportunity to discuss how the ultimate reduction would be divided between wages and benefits. The manner in which the Reedley and Fresno wage reductions were presented portrays a clear impression that the amounts were unilaterally determined. Employees, for example, were told "we negotiated wages of 10%, 9%, and 9%. Four months later we reduced them 20%" and "They (wages at Reedley) were reduced a dollar an hour the first year, in 1977. We gave them a choice if they wanted the dollar in wages or did they want to break it up." With regard to Firebaugh it was simply stated, "I reduced their wages 22¢ an hour." In essence, the implication is that the reductions in wages at these various organized plants were effected through unilateral action of the Employer rather than through the give and take of collective bargaining.

The omission of critical facts, combined with the impression that such wage reductions have regularly been imposed at unionized facilities, compel me to conclude that the Employer's statements constitute coercive statements and also substantial and material misrepresentations of the facts. This is clearly not a situation where a party to an election is guilty only of an inartistically or vaguely worded message which might be subject to different interpretations. Rather than being merely "ambiguously worded," these statements give a distinct picture of decreases in wage rates for this Employer's unionized facilities. Petitioner had neither time to reply nor access to the facts of the situations described by the Employer. Further, the statements made could not be properly evaluated by the employees, who cannot be expected to have knowledge of the wages of employees of other subsidiaries of their Employer half way across the country. Such misrepresentation may reasonably be expected to have a significant effect on the results of the election. Accordingly, I recommend that this Objection be sustained.

#### Conclusion<sup>6</sup>

The undersigned has carefully considered the foregoing and on the basis of the conduct described above, the undersigned recommends that the Objection be sustained, the election be set aside and a second election be conducted.

<sup>6</sup> Under the provisions of Section 102.69 of the Board's Rules and Regulations, exceptions to this Report may be filed with the Board in Washington, D.C. Pursuant to Section 102.69(g), affidavits and other documents which a party has submitted timely to the Regional Director in support of Objections are not a part of the record unless included in the Regional Director's Report or appended to the exceptions or opposition thereto which a party submits to the Board. Exceptions must be received by the Board in Washington by May 4, 1981.