

**Siemens Manufacturing Company and C. Bear, Inc., d/b/a ADIA Personnel Services, Inc. and Sheet Metal Workers International Association, Local No. 459, AFL-CIO, Petitioner.** Case 14-RC-11516

January 31, 1997

**ORDER, DECISION ON REVIEW, AND  
DIRECTION OF SECOND ELECTION**

BY CHAIRMAN GOULD AND MEMBERS BROWNING  
AND FOX

The Board has delegated authority in this proceeding to a three-member panel, which has considered Petitioner's request for review of the Regional Director's Supplemental Decision on Challenged Ballots and Objections, Orders Approving Stipulation and Withdrawal of Objection, and Order Directing Opening and Counting of Ballots (pertinent portions of which are attached as an appendix). The request for review is granted solely with respect to Petitioner's Objection 8, alleging that the election should be overturned because the Employer threatened to revoke annual raises and bonuses if the employees voted to be represented by the Union. In all other respects, the request for review is denied.<sup>1</sup>

On review, the Board reverses the Regional Director and sustains Objection 8. Employer President John Siemens admits that in a May 23, 1995 speech, he read from a text, stating:

Siemens has voluntarily increased wages every year. Over the last five years the average wage increases have ranged from 3.4% to 6.8%. In each instance you earned those increases based upon your merit. . . . Siemens has paid you a bonus every year that I can remember. Bonuses have varied with the profitability of the company. Those of you had been with the company a year received \$175 net last year.

Later in the speech Siemens stated that,

If the Union wins . . . [d]uring that [first] year, everything including wages, is frozen until we reach an agreement at the negotiating table.

By the above statements, the Employer has outlined in detail the previously granted, regular merit wage increases and annual cash bonuses and linked their being "frozen" to employees' choosing union representation. Siemens did not make it clear that wages and bonuses were subject to negotiations with the Union or frame them in terms of a prediction concerning the outcome of bargaining. Rather, his statements indicate that he would unilaterally change his past practice of granting

the raises and bonuses by freezing them. Such statements are objectionable. See, e.g., *W. F. Hall Printing Co.*, 239 NLRB 51 (1978). We view these statements as having more than a minimal impact on employees, as they were made by the president of Employer in a captive audience speech on the day before the election, which ended in an extremely close vote. Accordingly, we find that Siemens' admitted statements at the meeting constitute objectionable conduct warranting overturning the election.<sup>2</sup>

Accordingly, the election is set aside, and the case is remanded to the Regional Director for the purpose of conducting a second election.

[Direction of Second Election omitted from publication.]

APPENDIX

REGIONAL DIRECTOR'S SUPPLEMENTAL  
DECISION ON CHALLENGED BALLOTS  
AND OBJECTIONS, ORDERS APPROVING  
STIPULATION AND WITHDRAWAL OF  
OBJECTION, AND ORDER DIRECTING  
OPENING AND COUNTING OF BALLOTS

**Objections 6 and 8**

Objections 6 and 8 are considered jointly since they allege similar and related conduct. In its sixth and eighth numbered objections, the Petitioner alleges that during a captive audience pre-election speech, Employer Siemens threatened that a strike would occur if the employees selected the Union as their representative. In its eighth numbered objection, the Petitioner alleges that Siemens threatened to revoke annual raises and bonuses if the Union were selected. The Employer denies engaging in this activity or in any activity that would warrant the setting aside of the election.

<sup>2</sup>We note that the General Counsel dismissed a charge alleging that by this same conduct the Employer violated Sec. 8(a)(1) of the Act. However, where it is not necessary to conclude that an employer committed an unfair labor practice in order to find conduct objectionable, the fact that an unfair labor practice charge concerning the same conduct has been dismissed does not require the pro forma overruling of the objection because "the effect of preelection conduct on an election is not tested by the same criteria as conduct alleged by a complaint to violate the Act." See *Texas Meat Packers*, 130 NLRB 279, 280 (1961). While the General Counsel has unlimited discretion under Sec. 3(d) as to what complaints will issue, the Board retains total discretion under Sec. 9(c) regarding representation proceedings and, in determining whether certain conduct is objectionable, will defer to the General Counsel's dismissal of the unfair labor practice allegations where "the conduct which is alleged to have interfered with the election could only be held to be such interference upon an initial finding that an unfair labor practice was committed." *Id.* Therefore, it is properly within the Board's authority to consider, in the context of an objection, conduct which has been dismissed as an 8(a)(1) allegation where the conduct may be found objectionable without determining that it is a unfair labor practice. The alleged objectionable conduct that we find here is not dependent on any unfair labor practice finding.

<sup>1</sup>Because we sustain Objection 8, *infra*, we find it unnecessary to pass on whether the Regional Director erred in overruling the remaining objections.

In support of these objections, the Petitioner presented two employee witnesses who state, in sworn statements, that Siemens conducted speeches at meetings during working time on May 19 and 23, and three witnesses who state, in sworn statements, that the Employees distributed or mailed letters to the Siemens' and ADIA employees.

The first witness states that Siemens' President John Siemens stated in a speech, which was read from a script, "the Union will pull you out on strike." The witness could not recall more of the speech, or quote the Employer's speeches verbatim, but states that the context of the Employer's speeches were the same as that in the letters distributed among employees at Siemens. [Footnote omitted.]

A careful examination of Exhibit 4 reveals no express or implied threat that a strike would be inevitable; that annual raises and bonuses would be revoked if the Petitioner were selected in the election; or that

the Employer could, or would not, bargain in good faith with the Petitioner if it were selected in the election.

The undersigned concludes that the statements contained in President Siemens' May 19 and 23 speeches as they appear in Exhibit 4, and as the witnesses report them to be, do not exceed the bounds of permissible campaign propaganda and do not provide a basis upon which the election may be set aside. *Clintonville Shoe Co.*, 272 NLRB 609 (1984), and *Agri-International, Inc.*, 271 NLRB 925 (1984). where the Employer does not state that a strike was inevitable nor threaten that it would not bargain in good faith, merely impressing upon employees the possibility of strikes is held to be within the bounds of permissible campaign rhetoric and not unlawful. *Establishment Industries*, 284 NLRB 121, 127 (1987).

Accordingly, Objections 6 and 8 are overruled.