NATIONAL LABOR RELATIONS BOARD *v.* P. LORILLARD CO.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 71. Argued December 18, 19, 1941.—Decided January 5, 1942.

Whether an employer should be required to bargain with a union previously selected as employees' bargaining representative or, in view of lapse of time and changed conditions, a new election should be held is a question for decision by the Board and not by the Circuit Court of Appeals. P. 513.

117 F. 2d 921, reversed.

CERTIORARI, 313 U. S. 557, to review a judgment entered on a petition of the National Labor Relations Board for enforcement of an order, 16 N. L. R. B. 684. The judgment sustained the order as made but introduced a modification requiring the Board to conduct an election as prayed by the respondent-employer in a petition for rehearing.

Mr. Richard H. Demuth, with whom *Solicitor General Fahy* and *Messrs. Archibald Cox, Robert B. Watts, Laurence A. Knapp,* and *Morris P. Glushien* were on the brief, for petitioner.

Mr. Homer Cummings, with whom *Messrs. William Stanley, Carl McFarland,* and *Wm. R. Perkins* were on the brief, for respondent.

PER CURIAM:

The Board found that the respondent, P. Lorillard Company, had committed an unfair labor practice within the meaning of § 8 (5) of the National Labor Relations Act, 49 Stat. 449, 453, by refusing to bargain collectively with Pioneer Tobacco Workers' Local Industrial Union No. 55, which was at the time the duly selected bargaining representative of a majority of Lorillard's employees. The Board affirmatively ordered Lorillard to bargain collec-

tively with Local No. 55. On the Board's petition for enforcement the court below sustained the Board's finding, but, expressing the belief that because of lapse of time and changed conditions the Local might no longer represent the majority of employees, modified the Board's order so as to require it to conduct an election to determine whether the Local had lost its majority due to a shift of employees to a rival independent association. The Board had considered the effect of a possible shift in membership, alleged to have occurred subsequent to Lorillard's unfair labor practice. But it had reached the conclusion that, in order to effectuate the policies of the Act, Lorillard must remedy the effect of its prior unlawful refusal to bargain by bargaining with the union shown to have had a majority on the date of Lorillard's refusal to bargain. This was for the Board to determine, and the court below was in error in modifying the Board's order in this respect. *Labor Board* v. *Bradford Dyeing Assn.*, 310 U. S. 318, 339–340; *I. A. of M.* v. *Labor Board*, 311 U. S. 72, 82. See also *Labor Board* v. *Falk Corp.*, 308 U. S. 453, 458–459. The judgment of the court below is reversed with directions to enforce the order of the Board.

Reversed.

The CHIEF JUSTICE and MR. JUSTICE ROBERTS took no part in the consideration or decision of this case.

UNITED STATES *v.* RAGEN.*

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

No. 54. Argued December 11, 1941.—Decided January 5, 1942.

1. The crime of willfully attempting to evade or defeat income taxes (Rev. Acts 1932, 1934, 1936, § 145), is committed where the members of a corporation, scheming to reduce or evade its income taxes, cause

*Together with No. 55, *United States* v. *Arnold W. Kruse*, and No. 56, *United States* v. *Lester A. Kruse*, also on writs of certiorari, 313 U. S. 557, to the Circuit Court of Appeals for the Seventh Circuit.