

In the Matter of SOLAR ELECTRIC CORPORATION, EMPLOYER *and* AGNES  
I. FLASHER, PETITIONER

*Case No. 6-RD-2*

SUPPLEMENTAL DECISION

AND

DIRECTION

*October 28, 1948*

On April 29, 1948, the Board issued a Decision and Direction of Election in the above-entitled proceeding.<sup>1</sup> At that time a strike was in progress at the Employer's plant and a number of new employees had been hired to replace strikers. The Decision and Direction of Election contained the following language with respect to the eligibility of the strikers and the replacements to vote in the election:

All persons hired since September 3, 1947, the date of the strike, and all strikers shall be deemed presumptively eligible to vote, subject to challenge. The challenged ballots shall not be counted unless they affect the result of the election, in which case the question as to which of these ballots shall be opened and counted will await a further investigation concerning the employment status of the affected individuals.

On May 27, 1948, pursuant to the Decision and Direction of Election, a decertification election by secret ballot was conducted under the direction and supervision of the Regional Director for the Sixth Region, among the employees of the Employer in the unit found appropriate. At the close of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board. The Tally of Ballots shows that there were approximately 108 eligible voters, and that 55 ballots were cast, of which 1 was for the Union, 21 against the Union, and 33 were challenged. As the challenged ballots were sufficient in number to affect the results of the election, a further hearing was held to adduce evidence with respect to the issues raised by the challenges.

Upon the entire record in the case, the Board makes the following:

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<sup>1</sup> 77 N. L. R. B. 414.

## SUPPLEMENTAL FINDINGS OF FACT

Of the challenged ballots, 26 were cast by replacement workers, 6 were cast by strikers, and 1 was cast by a person who was neither a replacement nor a striker. All the ballots were challenged by the Board agent.

It appears that the strike which occurred at the Employer's plant on September 3, 1947, was occasioned by an impasse in the negotiations for a new contract between the Union and the Employer. It was, therefore, "an economic strike." Operations at the plant virtually ceased after the strike got under way and were not resumed until January 2, 1948. Picketing at the plant, however, continued until April 12, 1948. Sometime in January, the Employer sent registered letters to all the strikers inviting them to return to work. Less than half the strikers accepted this offer and were reinstated. The Employer thereafter began to recruit new employees to replace those employees who remained on strike. By the time of the election, the Employer had a full complement of employees, having filled the positions of all the strikers.

1. *The ballots of the replacement workers:*

The 26 replacement workers whose ballots were challenged are listed in "Appendix A." These individuals were all hired after the strike commenced to fill strikers' positions. At the time of the election, 23 of the replacements were working at the plant. The other 3 replacements, *Josephine Briggs*, *Mary Dunham*, and *Katherine Egger*, were laid off on March 27, 1948, when the Employer temporarily discontinued the night shift. According to a representative of the Employer, each of these 3 individuals will be reemployed when the night shift is resumed.

Even before the Act was amended in 1947, the Board followed the practice of permitting employees who have replaced economic strikers to participate in the election of a bargaining representative.<sup>2</sup> As all the replacements with the exception of *Josephine Briggs*, *Mary Dunham*, and *Katherine Egger*, were employed at the time of the election, we find that they were eligible to vote.<sup>3</sup> With respect to *Briggs*, *Dunham*, and *Egger*, because of the temporary nature of their lay-off, we find that they also were eligible to vote in the election.<sup>4</sup> Accordingly, we shall overrule the challenges to the ballots of the 26 replace-

<sup>2</sup> *Matter of Horton's Laundry, Inc.*, 72 N. L. R. B. 1129, 1133; *Matter of Higgins Industries, Inc.*, 65 N. L. R. B. 50; *Matter of Lloyd Hollister, Inc.*, 68 N. L. R. B. 733

<sup>3</sup> The record shows that Dorothy Rounds, one of the replacements in question, quit on June 7, 1948. However, on the date of the election she was an eligible voter.

<sup>4</sup> *Matter of Glenn L. Martin*, 74 N. L. R. B. 546; *Matter of Mountain Ice and Fuel Corporation*, 71 N. L. R. B. 180.

ments who are listed in "Appendix A" and direct that their ballots be opened and counted.

2. *The ballots of the strikers:*

*Kathryn Allinger, Lillian Burkett, Verneta Pierce, Minnie Townley, and Robert Townley* were among the strikers whom the Employer replaced. At no time since the strike began have any of these five individuals requested reinstatement. Section 9 (c) (3) of the Act, as amended, provides that "Employees on strike who are not entitled to reinstatement shall not be eligible to vote." The record shows, and we find, that the strikers in question were permanently replaced before the election. Therefore, under well-established principles, they had no right to their jobs.<sup>5</sup> Accordingly, we find that *Kathryn Allinger, Lillian Burkett, Verneta Pierce, Minnie Townley, and Robert Townley* were not eligible voters, and we shall sustain the challenges to their ballots.

*Josephine DeMarco* was a participant in the strike, but during the time it was in progress she became ill. When she received the Employer's offer of reemployment, she telephoned the plant to request that her job be held for her until she recovered from her illness. This request was granted. At the time of the hearing, the Employer was still holding her position open for her. In view of the foregoing, we find that *DeMarco* was on sick leave status on the date of the election, and that she was therefore an eligible voter.<sup>6</sup> Accordingly, we shall overrule the challenge to her ballot and direct that it be opened and counted.

3. *The ballot of the non-striker:*

*Clarence Zerbe* sustained a serious injury to his arm or shoulder before the inception of the strike and since that time, has been on sick leave. According to a representative of the Employer, *Zerbe* has been rated 55 or 60 percent disabled. Because of his disability, *Zerbe* will be unable to work more than 2 or 3 days a week. Although the Employer does not have an opening for him at present, *Zerbe* will be recalled when a job suitable for him becomes available. At the hearing, the Employer took the position that *Zerbe's* ballot should be counted. In view of these circumstances, and the entire record in the case, we find that *Zerbe* was an eligible voter on the date of the election. We shall therefore overrule the challenge to his ballot and direct that it be opened and counted.

<sup>5</sup> *N. L. R. B. v. Mackay Radio & Telegraph Co.*, 304 U. S. 333; *Matter of Kroger Grocery & Bakery Co.*, 27 N. L. R. B. 250; *Matter of Mooremack Gulf Lines, Inc.*, 28 N. L. R. B. 869.

<sup>6</sup> *Matter of Standard-Coosa-Thatcher Company*, 74 N. L. R. B. 1401.

## DIRECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, the Regional Director for the Sixth Region shall, pursuant to the Rules and Regulations of the Board, within ten (10) days from the date of this Direction, open and count the ballots of the employees listed in "Appendix A," and of *Josephine DeMarco* and *Clarence Zerbe*, and thereafter prepare and cause to be served upon the parties a Supplemental Tally of Ballots, including therein the count of said challenged ballots.

## APPENDIX A

Gloria Angelotti	Sadie Harkins	Dorothy Rounds
Gladys Anderson	Hazel Fehlman	Evelyn Rounds
Josephine Briggs	Elinor Kane	Rose Salapek
Marie Covell	Minnie Kimberlin	Pearl Shine
Patricia Dalrymple	Joan Mangini	Ruth Thomas
Mary Dunham	Frances Olander	Anne Tomassoni
Katherine Egger	Betty Pascuzzi	Mary Watt
Paul English	Orlo Rieder	Raymond Yeagle
Leo Farrell	Dorothy Roberts	