

In the Matter of UNITED STATES RUBBER COMPANY (MILAN PLANT,
FOOTWEAR DIVISION), EMPLOYER *and* UNITED RUBBER, CORK, LINO-
LEUM AND PLASTIC WORKERS OF AMERICA, CIO, PETITIONER

Case No. 32-RC-122

SUPPLEMENTAL DECISION AND DIRECTION

October 3, 1949

Pursuant to a Decision and Direction of Election¹ dated June 20, 1949, an election by secret ballot was held on July 19, 1949, under the direction and supervision of the Regional Director for the Fifteenth Region, among the employees of the Employer in the unit found appropriate. At the close of the election the parties were furnished a Tally of Ballots which showed that 411 valid ballots were cast. Of these, 169 were for and 163 were against the Petitioner, and 79 were challenged.

As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director investigated the challenges, and on August 31, 1949, issued and duly served upon the parties his Report on Election and Challenged Ballots. The Regional Director divided the challenges into four groups: (1) 67 persons, challenged by the Employer, who were laid off before the eligibility date and who had not been rehired or reinstated before the election; (2) 5 persons, challenged by the Employer, who were laid off before the eligibility date but who had been rehired or reinstated before the election; (3) 6 former supervisors, challenged by the Petitioner, who had been demoted to production workers before the eligibility date and who had not been restored to their supervisory positions at the time of the election; and (4) 1 person who had voluntarily quit after the eligibility date. The Regional Director recommended that the challenges to the ballots of the 67 persons in group (1), to one² of the 5 persons in group (2), and to the former employee in group (4), be sustained, and that the challenges to the ballots of the other 4 persons³ in group (2) and to the 6 persons in group (3) be over-

¹ Unpublished.

² Harry Manning.

³ Aaron Oakley, Paul Foust, Willie Kemp, and Harold Lynch.

ruled. On September 3, 1949, the Petitioner filed exceptions to that part of the Regional Director's report which recommended the sustaining of the challenges to the 67 persons in group (1) and to Harry Manning in group (2), and it also excepted to the recommendation to overrule the challenges to the 6 former supervisors in group (3). The Employer filed no exceptions to the report.

The laid-off employees. In our original decision in this case, we noted the fact that the Employer was in the process of laying off, for production reasons, approximately 145 of the employees in the appropriate unit. The Regional Director's investigation in connection with the challenged ballots disclosed that the Employer in the latter part of April and early in May 1949, for business reasons, had closed down one of its production lines.⁴ The employees selected for the resultant lay-off were notified, by a posted announcement in the plant, by separation slips, and by oral statements of representatives of the Employer, that the lay-offs were permanent and that they should look for other jobs. The Regional Director concluded the evidence was clear that these laid-off employees had no reasonable expectation of reemployment in the near future, and he, therefore, recommended that the challenges to the ballots of the employees in this category be sustained.

In its exceptions, the Petitioner relies solely on a memorandum brief, with affidavits attached, filed before our original decision in this case. In that brief, the Petitioner pointed to the fact that the posted announcement of the lay-off indicated that the laid-off employees would be given preference for new jobs if any became available. The Petitioner also alleged that other evidence indicated that this was to be the Employer's policy. There were submitted affidavits of seven laid-off employees, in which these persons stated they understood that the lay-offs were to be temporary and that representatives of the Employer had told them they would probably be called back to work by the end of the summer.

We do not think that the Petitioner's exceptions as to the voting eligibility of the laid-off employees raise a substantial issue of fact. There is no dispute that the Employer curtailed its operations; and the posted notice definitely informed the laid-off employees that the lay-off was permanent. In view of the unequivocal written notice of lay-off posted by the Employer, together with the other facts in this case, the affidavits of a few of the laid-off employees, even if credited, that they "understood" the lay-off was temporary and that some of them were told by agents of the Employer that the lay-off was temporary, do not persuade us that the lay-offs were temporary rather than

⁴ The Employer operated 4 production lines, with approximately 150 employees on each line.

permanent. There is, furthermore, no merit in the Petitioner's contention that the character of the notice is affected by an indication therein that a preference would be given these employees in case of rehiring. On the contrary, such a preference is immaterial as it is common industrial practice in lay-offs and does not affect the permanency thereof. The question is whether these employees, at the time of the election, had any reasonable expectancy of further employment with the Employer in the near future, and we agree with the Regional Director that they did not. We find, therefore, that the lay-off of the 67 employees in group (1) was permanent and that they were not eligible to vote in the election. Accordingly, we sustain the challenges to these ballots.

Harry Manning was one of the group laid off for production reasons. On July 7, 1949, he was recalled on a temporary basis to replace an employee on leave of absence. On August 12, 1949, upon the return of that employee, Manning was again permanently laid off. The Petitioner does not deny these facts, but, as above, contends that Manning was not permanently laid off in the first place. As we have found those lay-offs to be permanent, and as Manning was obviously a temporary employee on the eligibility date, we sustain the challenge to his ballot.

The demoted supervisors. As a result of the cut-back in production the Employer demoted six supervisors⁵ to ordinary production jobs. This demotion took place about a month before the eligibility date. The six persons are admittedly rank and file employees at the present time. The Regional Director concluded that the demotions, having been caused by the same business conditions that necessitated the lay-offs, were permanent, that these six persons had no reasonable expectancy of being restored to supervisory positions in the near future, and that, therefore, they were eligible voters. The Petitioner does not dispute the above facts, but contends, as in the case of the lay-offs, that the demotions are temporary. We find, for the reasons given above with respect to the lay-offs, that these six persons are not supervisors and are eligible to vote; accordingly, we overrule the challenges to their ballots.

As no exceptions have been filed by any of the parties to the Regional Director's recommendations that the challenges to the ballots of four of the employees⁶ in group (2) be overruled and that the challenge to the ballot of the former employee in group (4) be sustained, we hereby adopt the recommendations.

⁵ Opal Appleton, Frances Bowden, Margie Jackson, Mary McNabb, Olene Newman, and Cora E. Volner.

⁶ See footnote 3, *supra*.

As we have found that the four employees in group (2) and the six employees in group (3) are eligible to vote, and as these ballots are sufficient in number to affect the results of the election, we shall direct that their ballots be opened and counted.

DIRECTION

It is hereby directed that the Regional Director for the Fifteenth Region, within ten (10) days from the date of this Direction, open and count the ballots cast by Aaron Oakley, Paul Foust, Willie Kemp, Harold Lynch, Opal Appelton, Frances Bowden, Margie Jackson, Mary McNabb, Olene Newman, and Cora E. Volner, and thereafter prepare and serve upon the parties to this proceeding a Supplemental Tally of Ballots, including therein the count of the said challenged ballots.

CHAIRMAN HERZOG and MEMBER HOUSTON took no part in the consideration of the above Supplemental Decision and Direction.