

R. H. McCLURE, D/B/A BRISTOL LINCOLN-MERCURY SALES, PETITIONER
and INTERNATIONAL ASSOCIATION OF MACHINISTS, DISTRICT LODGE
No. 176, AFL. *Case No. 5-RM-237. August 1, 1952*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Henry L. Segal, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Houston, Murdock, and Styles].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The parties stipulated and we find that a unit of all auto mechanics, body and fender men, painters, helpers, wash and grease men, janitor, and parts department employees at the Employer's Bristol, Virginia, plant, excluding executives, technical, professional, office and clerical employees, watchmen, guards, and supervisors as defined in the Act; is appropriate for purposes of collective bargaining within the meaning of Section 9 (b) of the Act.¹

5. The determination of representatives:

A strike has been in progress at the Employer's plant since June 18, 1951. Of the 17 employees then on the Employer's payroll, 15 participated in the strike, 1 resigned, and 1 continued to work. The Union contends that only strikers should be eligible to vote if an election is directed. The Employer contends that all the strikers have been permanently replaced and that therefore only the employees currently on its payroll should be eligible to vote.

On June 18, 1951, the same day the strike was begun, the Employer sent to each of the strikers a letter requesting their return to work by June 21, 1951, or the Employer would undertake permanently to replace them. Thereafter, from July 13, 1951, to March 25, 1952, further letters were sent by the Employer to the individual strikers notifying

¹ The unit is substantially the same as that found appropriate by the Board in its unreported Decision and Direction of Election involving the Employer's employees in Case No. 5-RC-756 issued on February 27, 1951.

them that "it has been necessary for me to fill your job with a permanent replacement," and that they should call at the plant to pick up their personal belongings. All but two of the strikers responded by removing their tools from the plant.

As of May 31, 1952, the Employer's payroll showed that the jobs in question were filled by a complement of 12 employees. Testimony presented by the Employer, which was uncontroverted, indicated that (a) employees hired in the jobs of the strikers were intended as permanent replacements, and were so informed, (b) there were no vacancies in any of these jobs, and (c) the currently reduced payroll of only 12 employees merely reflected the extent of the Employer's business.

The Union filed unfair labor practice charges with the Board on June 25, 1951, which were dismissed by the Regional Director; and it again filed charges on May 1, 1952, which were dismissed by the Regional Director and are now pending before the General Counsel on appeal by the Union.² As no complaint has been issued by the General Counsel, we must find that employees participating in the strike are economic strikers.³ They are therefore ineligible to vote as it appears on the basis of the present record that they have been permanently replaced and that vacancies in their jobs do not exist.⁴

[Text of Direction of Election omitted from publication in this volume]

² The Union's motion to dismiss pending disposition of the appeal is denied.

³ *Times Square Stores Corporation*, 79 NLRB 361; *Big Run Coal & Clay Company*, 98 NLRB 1351.

⁴ See, e. g., *E. J. Kelley Company*, 98 NLRB 486; *Hamilton Foundry & Machine Company*, 94 NLRB 51.

CORNING GLASS WORKS *and* FEDERATION OF GLASS, CERAMIC & SILICA SAND WORKERS OF AMERICA, CIO AND AMERICAN FLINT GLASS WORKERS' UNION OF NORTH AMERICA, AFL, AND ITS LOCAL No. 1007, PARTIES TO THE CONTRACT. *Case No. 1-CA-977. August 5, 1952*

Decision and Order

On December 29, 1951, Trial Examiner Lloyd Buchanan issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practice alleged in the complaint, and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and the CIO filed exceptions; the General Counsel also filed a supporting brief. The Respondent and the AFL filed briefs in support of the Intermediate Report.