

money equal to the amount she would normally have earned as wages from September 5, 1952, to the date of offer of reinstatement, less her net earnings during that period. Back pay shall be computed on a quarterly basis in the manner established by the Board in F. W. Woolworth Company, 90 NLRB 289. It will also be recommended that Respondents upon reasonable request make all pertinent records available to the Board or its agents for the computation of the amount of back pay due.

Because of Respondents' demonstration of their willingness to resort to unlawful methods to counteract a supposed attempt by employees to achieve self-organization, it will be recommended that Respondents cease and desist from infringing in any manner upon rights guaranteed employees in Section 7 of the Act.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

CONCLUSIONS OF LAW

1 Los Angeles Dress Joint Board, International Ladies Garment Workers Union, is a labor organization within the meaning of Section 2 (5) of the Act.

2. By discriminating in regard to the hire and tenure of Antoinette Ullo because of her supposed activities in behalf of the Union, the Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (3) of the Act.

3. By such discrimination and by instructing its forelady to be on the alert for applicants for employment who are members of the Union, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8 (a) (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

[Recommendations omitted from publication.]

ACTIVE SPORTSWEAR CO., INC. *and* MARY LYONS, Petitioner *and* LOCAL 75, INTERNATIONAL LADIES' GARMENT WORKERS' UNION, AFL. Case No. 1-RD-123. May 19, 1953

SUPPLEMENTAL DECISION, ORDER, AND SECOND DIRECTION OF ELECTION

On March 3, 1953, under the direction and supervision of the Regional Director for the First Region, an election by secret ballot was conducted pursuant to a Decision and Direction of Election issued in this matter on February 13, 1953.¹ The Direction of Election defined the eligibility period as "the payroll period immediately preceding the date of this Direction of Election," and the official election notice defined it as "the payroll period immediately preceding February 13, 1953." However, on the day of the election the Regional Director's agent erroneously advised that the payroll of February 13, 1953, should be used to determine the eligible voters. As a result of this change in payrolls an employee, ineligible to vote under the criteria established by the Board, became eligible and was permitted to vote. The tally of ballots furnished the parties at the conclusion of the election shows that of approximately 49 eligible voters, 22 voted for the Union, 22 against the Union, 3 cast void ballots, and 1 ballot was challenged. No party filed objections to the conduct of the election or conduct affecting the results of the election

¹ 102 NLRB 1396.

within the time permitted by Section 102.61 of the Rules and Regulations of the Board.

Thereafter, on March 12, 1953, the Regional Director issued and served upon the parties his report on the ballot challenged by the Employer and the Union recommending that it be opened and counted. On March 25, 1953, the Petitioner untimely filed² an "Exception to Challenged Ballot and Election." This document raised for the first time, along with other contentions, the question of the use of an erroneous payroll and the ineligible vote that was cast as a result thereof. Whereupon, the Regional Director further investigated the matter and on April 13, 1953, issued a supplemental report on challenged ballot, recommending that the election be set aside and the Board direct a new election so that "the integrity of the Board's processes would best be served." Thereafter, on April 23, 1953, the Union filed its exceptions to supplementary report on challenged ballot raising exceptions which, for the reason stated hereafter, the Board finds unnecessary to consider.

The Board is responsible for assuring properly conducted elections. Where, as here, an allegation of irregularity concerning an essential condition of an election is made, the Board will, on its own motion, consider such allegation.³ As one of the conditions of the election directed in this matter was that a certain payroll period be used to determine the eligibility of employees to vote, and as a different payroll period was used, an essential element of a properly conducted election was absent. Furthermore, the irregularity resulted in the inclusion of an ineligible ballot sufficient to affect the outcome of the election. The Board is therefore constrained to set the election aside and direct that a new election be held.

ORDER

IT IS HEREBY ORDERED that the election held on March 3, 1953, among employees of the Employer at its Worchester, Massachusetts, plant, be, and it hereby is, vacated and set aside.

[Text of Second Direction of Election omitted from publication.]

Chairman Herzog and Member Murdock took no part in the consideration of the above Supplemental Decision, Order, and Second Direction of Election.

²Section 102.61 of the Rules and Regulations of the Board directs that exceptions to the Regional Director's report be filed with the Board in Washington, D. C., within ten (10) days after the issuance of that report.

³Cf. Edward J. Schlachter Meat Co., Inc., 100 NLRB 1295, and cases cited therein; General Shoe Corporation, 77 NLRB 124.