

All of the Employer's truckdrivers, warehousemen, and processing and miscellaneous employees employed at the Fayetteville, Tennessee, plant, including schedulers, but excluding the watchmen, loaders, and the maintenance employees, standards man, and shoe inspectors from the 63rd Avenue supply and processing terminal located at Nashville, Tennessee, office clerical employees, professional employees, guards, and supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Owens-Illinois Glass Company, Petitioner and American Flint Glass Workers' Union of North America, and its Local 700, AFL and Glass Bottle Blowers' Association of the United States and Canada, AFL, and its Local 59. *Case No. 8-RM-114. October 12, 1955*

SUPPLEMENTAL DECISION AND DIRECTION

Pursuant to a Decision and Direction of Election¹ in the above-entitled proceeding, dated April 15, 1955, an election by secret ballot was conducted on May 5, 1955, under the direction and supervision of the Regional Director for the Eighth Region, among the employees in the forming department of the Employer's Toledo, Ohio, plant. At the conclusion of the election, the parties² were furnished a tally of ballots. The tally showed that 84 ballots were cast for the Flints, 94 were cast for GBBA, and 44 were challenged. As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director investigated the issues raised by the challenges.

On June 15, 1955, the Regional Director issued his report on challenges. On June 24, 1955, Flints filed timely exceptions to the report. GBBA has filed no exceptions to the report.

In the report on challenges, the Regional Director divided the names of the challenged voters into three groups.³ He recommended that the challenges to the voters in groups 1 and 2 be overruled and that the challenges to group 3 be sustained.

¹ 112 NLRB 172.

² The Unions in the above caption are herein referred to as Flints and GBBA, respectively.

³ Group 1 consists of employees Burford, Grames, Grzeyorczyk, Lehman, McGee, and Shumante.

Group 2 consists of employees Carpenter, C. McCourt, M. McCourt, and Mingione.

Group 3 consists of employees Arnold, Blowers, Clendenin, Dixon, Dyer, Ellis, Gobell, Graces, Hardison, Hehl, Helmet, Hoxtell, Jones, Lee, Lemmon, A. Luna, B. Luna, Mack, Marguerat, Maxuchowski, Ocker, K. Shope, M. Shope, Sine, Swiczkowski, Thomasson, Thompson, Thurman, Thomaszewski, Villaneal, White, Wlodarski, Yates, and Aywicznski.

114 NLRB No. 59.

Challenged Ballots

Groups 1 and 2: The voters in group 1 consisted of six employees who had been laid off on April 2, 1955, but recalled before the election. The voters in group 2 consisted of four employees who had been laid off on March 25, 1955, and had also been recalled before the election. According to the Regional Director, the Employer stated that these employees had been laid off pending the rebuilding of a furnace supplying the tumbler lines on which they worked and that it was known at the time of the layoff that they would be recalled within a few weeks. Under these circumstances, the Regional Director found that all voters in groups 1 and 2 were temporarily laid-off employees on the eligibility date. He recommended that the challenges to their ballots be overruled and that their ballots be opened and counted. As no party has excepted to this recommendation, we shall adopt it.

Group 3: The 34 voters placed in group 3 consist, with 2 exceptions,⁴ of employees who were laid off during August and September 1954 and had not been recalled to their jobs by the date of the election. These employees were challenged by the Board agent because their names did not appear on the eligibility list.

The Regional Director found that the Employer attributed their layoffs to an excessive inventory of stemware, which required the closing down of 1 of its 3 stemware production lines; that the Employer stated that its inventory continued to increase despite the layoffs and at the time of the election there was no prospect of any improvement in business which would warrant restoration of the employees in group 3 to their former jobs in the bargaining unit;⁵ that, according to the Flints, the Employer had, however, retained the 34 employees on the forming department seniority list; that GBBA, contends, like the Employer, that the 34 employees have no reasonable expectation of recall.

In view of the foregoing, the Regional Director concluded that the 34 employees had no reasonable expectancy of reemployment in the bargaining unit and recommended that the challenges to their ballots be sustained.

In excepting to these findings and recommendations, Flints contends that the 34 employees have a reasonable expectancy of recall to positions in the bargaining unit and are merely temporarily laid off, citing the following, *inter alia*:

(1) Statements by the Employer at the representation hearing in August 1954 indicating that it intended to expand its operations in the forming department.

⁴ These are Dyer and Ellis, discussed below.

⁵ A substantial number of them have been transferred to jobs outside the forming department. Six of them have been recalled to jobs in the forming department for periods ranging from 1 day to 2½ months. The latest such period ended in March 1955.

(2) That on the basis of the Employer's own figures, the increase in the stemware inventory since August 1954 has been relatively slight.

(3) That there have been frequent shutdowns of stemware units in the past, all of which have been temporary, and in each case most of the employees laid off as a result of the shutdown were recalled.

(4) That, since the election, the Employer has recalled to the forming department 2 of the 34 voters, Dyer and Ellis.

(5) That the Employer has retained all of the laid-off employees involved on the seniority list for the forming department.

We shall deal with these points *seriatim*.

(1) and (2) Review of the record of the representation hearing fails to disclose any statement by the Employer that it was currently contemplating any expansion of the forming department. Moreover, Flints does not deny that the layoffs in August and September were due to an excessive inventory of stemware, nor does it contend that, following the layoffs, there has been any decline in that inventory.⁶

(3) The previous shutdowns of stemware units cited by the Flints were concededly for the purpose of making repairs on the units and not because of business conditions. Accordingly, the fact that such shutdowns resulted for the most part in temporary layoffs does not warrant the inference that the bulk of the instant layoffs will also be temporary.

(4) Flints' brief asserts that Dyer and Ellis, who are included in the group of 34 challenged voters were originally hired in the forming department in 1950, that Dyer entered military service in 1951, and Ellis in 1952, that, after their discharge from service, they both returned to work for the Employer shortly before the election, but in a different department; and that they both were recalled to the forming department within a few weeks after the election, and assigned to work on 1 of the 2 existing stemware units still in operation. The fact that they were eventually recalled to the forming department does not warrant an inference that the remaining 32 employees will be similarly recalled, particularly in the face of Flints' apparent concession that the same business conditions—excessive inventory—which prompted their layoff still prevails.

(5) The fact that the laid-off employees involved have been retained on the seniority list of the forming department signifies only that they will be entitled to preference in filling any vacancies due to turnover or expansion. However, no showing has been made as to the probable rate of turnover and Flints has not submitted any factual data to rebut the Employer's assertions that there is no prospect of any improvement in business conditions. In these circumstances, we cannot find that there is any reasonable prospect that these employees

⁶ As noted above, Flints assert merely that the increase in inventory reported by the Employer is relatively slight.

will have any occasion to exercise their seniority rights.⁷ As it appears that there is no reasonable prospect of reemployment of these voters in the forming department, we find in agreement with the Regional Director, that the employees in group 3 were permanently laid off on the eligibility date, and were therefore not eligible to vote.

The Board has considered the Regional Director's report on challenged ballots and the exceptions thereto and hereby adopts the findings and recommendations of the Regional Director that the challenges to the ballots of the employees in groups 1 and 2 be overruled and the ballots be opened and counted, and that the challenges to the ballots to the persons listed in group 3 be sustained.

[The Board directed that the Regional Director for the Eighth Region shall, within ten (10) days from the date of this Direction, open and count the ballots of Sam Burford, F. Grames, S. Grzyorzcyk, B. Lehman, J. McGee, C. Shumate, E. Carpenter, Cecil McCourt, M. McCourt, and Carl Mingione and serve upon the parties a supplemental tally of ballots.]

ACTING CHAIRMAN RODGERS took no part in the consideration of the above Supplemental Decision and Direction.

⁷In its brief, Flints cites a number of cases in support of its contention that the retention of seniority rights requires a finding that these employees are temporarily rather than permanently laid off. In each case cited, however, there are other factors present, in addition to retention of seniority status, indicating the temporary nature of the layoff. In the instant case, none of these additional factors is present. The mere fact that laid-off employees have continued seniority rights does not entitle them to vote, but rather the test is whether there exists a reasonable expectancy of employment in the near future. *Higgins, Inc.*, 111 NLRB 797, and cases cited therein.

**Associated Machines, Inc. and United Steelworkers of America,
C. I. O. and Independent Machine Workers Union of Lancaster,
Ohio, Party to the Contract. Case No. 9-CA-843. October 13,
1955**

DECISION AND ORDER

On March 24, 1955, Trial Examiner Herbert Silberman issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not violated the Act in certain other respects.