

within the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Direction of Election.

**Aiello Dairy Farms Co., Petitioner and Retail Food Clerks Union,  
Local 1500, AFL. Case No. 2-RM-691. November 18, 1955.**

### SUPPLEMENTAL DECISION AND DIRECTION

On October 7, 1955, pursuant to a Decision and Direction of Election,<sup>1</sup> an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Second Region among the employees in the unit found appropriate. Upon completion of the election, the parties were furnished a tally of ballots which showed that of the 7 ballots cast, 6 were challenged.

In accordance with the Board's Rules and Regulations, the Regional Director investigated the challenges and on October 20, 1955, issued and duly served upon the parties a report on challenges. Thereafter, on October 31, 1955, the Union filed timely exceptions to the Regional Director's report.

Upon the basis of the entire record in this case, the Board makes the following:

#### Findings

The Employer challenged employees De Ninno, Guistiniana, and Del Prete; the Union challenged employees Beltrone, Benemerito, and Caiola. The Regional Director's investigation revealed that the 3 former employees went on strike before the Decision and Direction of Election was issued in this proceeding and that the Employer permanently replaced them with the latter 3 employees, challenged by the Union.

The Union contends, principally, that the strikers were unfair labor practice strikers because they walked out to protest the Employer's unlawful refusal to bargain with the Union. Therefore, the Union claims, they may not be lawfully replaced and they, but not their replacements, were eligible to vote. The Union made the discharge of the strikers the subject of an unfair labor practice charge (2-CA-4566). After investigation the Regional Director dismissed this charge. In his report on challenges, therefore, he concluded that

<sup>1</sup> Not reported in printed volumes of Board Decisions and Orders.

the strikers were engaged in an economic strike and were therefore subject to replacement. Accordingly, he recommended that the Union's challenges be overruled and that the Employer's challenges be sustained. On November 4, 1955, after the issuance of the report on challenges, the General Counsel affirmed the Regional Director's dismissal of the unfair labor practice charge.

The dismissal of the unfair labor practice charge by the General Counsel establishes conclusively, for the purpose of ruling on these challenges, that the unfair labor practices charged by the Union are without foundation.<sup>2</sup> Accordingly, we adopt the Regional Director's finding that the strikers were economic strikers.

In its exceptions the Union also contends that the employment of the strikers has not, in fact, been terminated by the Employer and that no determination has been made that their replacements have been employed permanently. The Union asks that a hearing be directed to determine the status of the challenged voters at the time of the election. The Regional Director found that the Employer hired employees challenged by the Union "as permanent replacements for the striking employees." As the Union has submitted no evidence in support of these contentions, we find they raise no material issues as to the factual findings contained in the report on objections.<sup>3</sup>

For the above reasons, we shall adopt the Regional Director's recommendation. The challenges to the ballots of employees Beltrone, Benemerito, and Caiola are overruled; the challenges to the ballots of employees Guistiniana, De Ninno, and Del Prete are sustained.

[The Board directed that the Regional Director for the Second Region shall, within 10 days from the date of this Direction, open and count the ballots of Peter Beltrone, Antoinette Benemerito, and Joseph Caiola and serve upon the parties a supplemental tally of ballots.]

MEMBER MURDOCK took no part in the consideration of the above Supplemental Decision and Direction.

<sup>2</sup> *Colonial Provision Company, Inc.*, 112 NLRB 1056

<sup>3</sup> *C. C. Anderson Stores Company*, 104 NLRB 218.

**Poultry Producers Association and Teamsters and Butchers Joint Organizing Committee, AFL, Petitioner.** *Case No. 8-RC-2530. November 21, 1955*

#### DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before John Vincek, hearing officer.