

As the Petition was filed on January 30, 1959, within the certification year, ABC's motion to dismiss the petition is hereby granted.⁵

[The Board dismissed the petition.]

CHAIRMAN LEEDOM and MEMBER RODGERS took no part in the consideration of the above Decision and Order.

⁵ *Centr-O-Cast, supra*; and *Westinghouse Electric Corporation (Sunnyvale Plant)*, 114 NLRB 1515.

Wyman-Gordon Company (Ingalls-Shepard Division) and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO, Petitioner. *Case No. 13-RC-6265. May 1, 1959*

DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a stipulation for certification upon consent election, an election by secret ballot was conducted by the Regional Director on December 2, 1958, among the employees in the unit described below. After the election, the parties were furnished with a tally of ballots which showed that, of 383 valid votes counted, 185 were for the Petitioner, 192 for the Intervenor, Employees Independent Union, and 6 against the participating labor organizations. There were 19 challenged ballots.

After an investigation, the Regional Director on February 18, 1959, issued his report on challenged ballots, in which he recommended that the challenges to the 19 ballots be overruled and that the ballots be opened and counted. The Intervenor filed timely exceptions to the Regional Director's report. The Employer filed no exceptions.

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 Rodgers, Bean, and Fanning].

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 organizations involved claim 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 following employees, as stipulated by the parties, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All forge department employees at the Employer's Harvey, Illinois, plant, including hammermen, die oilers, furnace operators, upset operators, dammerel twisting machine operators, dammerel helpers, forge shop laborers, forging press operators, oil carriers, manipulator operators, die setters, die setter leaders, die setter helpers, yard men, control and visual inspectors, lathe index men, lathe inspectors, lead cast layout inspectors, tumbler repairmen, lead cast inspector leader, pickle control inspectors, inspector helpers, oil control man, tong press operators, forge shop truckers, forge shop helpers, tool and detail men, blacksmiths and blacksmith's helpers, but excluding all other employees, office clerical employees, guards, and supervisors as defined in the Act.

5. In its exceptions, the Intervenor contends that the Regional Director incorrectly applied the test as to eligibility of laid-off employees. We agree.

The Regional Director found that 18 of the 19 challenged voters were laid off on September 13, 1957, and the remaining 1 on March 30, 1956; that the seniority dates of such voters varried from 1952 to 1948; that under the Intervenor's contract with the Employer, seniority continues for 3 years after layoff; that the Employer has a normal upswing in business in October of each year; that on November 16, 1958, a strike commenced at plants of International Harvester Co., reputedly a big customer of the Employer; and that as a result of improved business conditions stemming from the International Harvester strike, which ended January 16, 1959, the Employer in late January and early February recalled 17 of the challengees and 14 returned to work in classifications within the unit. The eligibility date for the election was November 7, 1958, and, as above-indicated, the election date was December 2. The Regional Director, in concluding that the challenged voters had a reasonable expectation of reemployment at the time of eligibility and the election, relied on the fact that nearly all of them were rehired within 2 months of the election because of the increased business resulting from the International Harvester strike. However, it is clear that on November 7, the eligibility date, it was not known that a strike would occur at International Harvester affecting the Employer's prospects for increased business. Indeed, on the eligibility date, the Employer stated that it saw no possibility that additional men would be hired in the foreseeable future. We find, therefore, notwithstanding the fact that most of them were actually recalled after the election, that *on the eligibility date* the challenged voters did *not* have a reasonable expectation of reemployment.¹ Hence, they were inel-

¹ See *Gerber Plastic Company*, 110 NLRB 269. The case of *Wells Aluminum Corporation*, 121 NLRB 1010, is factually distinguishable.

igible to vote in the election held on December 2.² We therefore reject the Regional Director's recommendations and hereby sustain the challenges. Accordingly, as the Intervenor obtained a majority of the valid ballots cast, we shall certify it as the exclusive collective-bargaining representative of all employees in the appropriate unit.

[The Board certified Employees Independent Union as the collective-bargaining representative of the employees at the Harvey, Illinois, plant of Wyman-Gordon Company (Ingalls-Shepard Division), in the unit herein found appropriate.]

² *Gerber Plastic Company, supra.*

Vogue Lingerie, Inc. and International Ladies' Garment Workers' Union, Local 225. Case No. 4-CA-1610. May 5, 1959

DECISION AND ORDER

On October 16, 1958, Trial Examiner Lee J. Best 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 engaged in certain other unfair labor practices alleged in the complaint. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, insofar as they are consistent with this decision.

1. Contrary to the Trial Examiner, we find that the Respondent violated the Act by discharging Sylvia Robison on August 21, 1957, because the Union filed an unfair labor practice charge on her behalf.

Robison was first discharged by the Respondent on August 7, 1957, for alleged economic reasons. On August 19, 1957, the Union filed a charge on her behalf, alleging that Robison was discharged for engaging in union activities. On August 20, 1957, Union Organizer Wollk, who authorized the filing of the charge, met with Plant Manager Greenberg to discuss Robison's discharge. Wollk contended that Robison was unlawfully discharged and threatened to file unfair labor practice charges against the Respondent, if she were not rein-