

Accordingly, as we have overruled the challenges to 13 ballots, as identified below, we shall direct that they be opened and counted.

[The Board directed that the Regional Director for the Eighth Region shall, within 10 days from the date of this Direction, open and count the ballots of Dessie Bushong, Theresa Buck, Donna Jean Myers, Mary Myers, Muriel J. Davidson, Bettie J. Boone, Zella McClung, Virginia Fornash, Willie Sayer, Edwin Becker, Ray Snow, Leroy Snor, and Robert Webster, and serve upon the parties a revised tally of ballots.]

CHAIRMAN LEEDOM took no part in the consideration of the above Decision and Direction.

The Martin Bros. Container & Timber Products Corp., Petitioner and Industrial Carpenters, Local 530, United Brotherhood of Carpenters & Joiners of America, AFL-CIO. *Case No. 21-RM-591. June 10, 1960*

DECISION AND DIRECTION

Pursuant to a stipulation for certification upon consent election in the above-entitled matter, an election by secret ballot was conducted on December 11, 1959, under the direction and supervision of the Regional Director for the Twenty-first Region, among the employees in the agreed unit. Upon the conclusion of the balloting, the parties were furnished with a tally of ballots, which showed that, of approximately 88 eligible voters, 8 cast valid ballots against the Union, and none for. There were 46 challenged ballots and 1 ballot was void. Thereafter, the Union filed timely objections to the conduct of the election.

After an investigation conducted pursuant to the Board's Rules and Regulations, the Regional Director on February 17, 1960, issued his report on objections and challenged ballots, in which he found that the objections raised no material and substantial issues affecting the election and recommended that they be overruled. He also made factual findings with respect to the challenges but made no recommendations with respect to their disposition. Thereafter, the Petitioner-Employer filed timely exceptions to the report. No exceptions were filed by the Union.

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 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 employees of the Employer at its Whittier, California, plant, including helpers, nailers (machine and hand), warebound machine operators, cleat and board layers, end inserters, wire winders, machine setup men, sample men, hyster operators, laborers (all types), cull repairmen, printing machine operators, rework saw operators, production saw feeders, production saw operators, boring machine operators, forklift operators, and mechanics (all types), but excluding all office clerical employees, truckdrivers, watchmen, guards, and supervisors as defined in the Act.

5. The Employer excepts to the report on the ground that it fails to apprise the Board of certain relevant facts and issues concerning the challenges.¹ It contends that the eligibility of economic strikers to vote in the election should be governed by the provisions of Section 9(c) (3) of the Act prior to its amendment, and that, in any event, the strikers whose ballots it challenged herein are ineligible to vote because the strike was not in progress at the time of the election.

There were 18 alleged strikers challenged by the Employer, and 24 alleged replacements challenged by the Union. The Board agent also challenged one ballot on the ground that the voter was alleged to be a permanent replacement and three ballots on the ground that the voters were not employed on the eligibility date. The Regional Director made findings with respect to the challenges, as hereinafter set forth.

The Union commenced an economic strike at the Employer's plant on July 27, 1959, after an impasse had been reached in negotiations for a contract covering the employees in the unit stipulated herein. Picketing was instituted at the plant and continued until November 11, 1959. There has been no picketing since that date, and there is no evidence that subsequent thereto the Union engaged in any other activities in support of the strike. While the picketing was in progress, the Employer began to hire replacements for strikers, and as replacements were hired, the replaced strikers were so notified by letter. As of November 29, 1959, the eligibility date for the election, all but 10 vacancies had been filled, and the remaining 10 were filled by the election date.² The 18 persons whose ballots were challenged by the Employer, and June Thornton whose ballot was challenged

¹ As the Employer did not except to the Regional Director's recommendation that the objections be overruled, the recommendation is adopted *pro forma*

² However, the Regional Director also found that June Thornton, whose ballot was challenged by the Union as an alleged replacement, was a striker for whom no replacement was hired up to the date of the election.

by the Union, participated in the strike. The report does not indicate whether or not any of them requested reinstatement to their prestrike jobs after picketing was discontinued.

Upon the basis of the foregoing,³ we conclude that the strike was terminated or abandoned by the Union on November 11, 1959. We therefore agree with the Employer's second contention that, even under the amended provisions of the Act, the 18 persons challenged by the Employer were ineligible to vote because prior to the election the strike had ended and replacements for them had been hired. The amendment to Section 9(c)(3) provides as follows: "Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike." Thus, from a reading of these provisions alone, the intent of Congress appears to be clear that a qualification of the right of economic strikers to vote is that they be on strike at the time of the election.⁴ As the 18 voters in this category were ineligible, the challenges to their ballots are hereby sustained.

The Regional Director also found that 23 of the 24 persons whose ballots were challenged by the Union, and Elmer La Croix whose ballot was challenged by the Board agent, were replacements employed on the eligibility and election dates. As to the remaining three challenges made by the Board agent, the Regional Director found that Betty Duren was a striker who returned to work for the Employer and was on leave of absence on the eligibility date, and that Julio Gutierrez and Jose Sanchez were strikers who were rehired after the eligibility date.⁵

Upon the basis of these findings, we conclude that the aforesaid 24 replacements and the returned striker Betty Duren were eligible voters, and the challenges to their ballots are hereby overruled. However, as we are unable, upon the basis of the report, to determine the eligibility issues as to Thornton, Gutierrez, and Sanchez, we shall make no disposition of the challenges to their ballots unless it becomes necessary to do so after the opening and counting of ballots hereinafter directed.

³ On May 6, 1960, the Board issued and served upon the parties a notice to show cause why the Board should not conclude from the discontinuance of the picketing on November 11, 1959, that the strike terminated at such time and was not in progress on December 11, 1959, when the instant election was held. None of the parties responded to this notice.

⁴ If any ambiguity could be said to exist as to congressional intent in these provisions, it is removed by the legislative history of the amendment. During debate on the floor of the Senate, in discussing this portion of the Kennedy-Ervin bill, which in pertinent part is the same as that finally enacted, Senator Kennedy stated "Our purpose is to permit economic strikers to vote while there is a lawful strike in progress, . . ." 105 Congressional Record 5864, April 23, 1959.

⁵ At one point in the report, the Regional Director inadvertently referred to Gutierrez as a striker who voted without challenge.

Accordingly, we shall direct the Regional Director to open and count the ballots, as identified below, the challenges to which we have overruled.

[The Board directed that the Regional Director for the Twenty-first Region shall, within the 10 days from the date of this Direction, open and count the ballots of Baldo Arizola, Jr., Ysmael Barraza, Eleanor Boureois (or Bourgeois), Alfredo Castaneda, Ernest Couch, Francisco Cristina, Jesse Escontrias, Isabell Esposito, Tom Farley, Stephen Fitzer, Jesse Fonseca, John Forrest, Wesley Hand, Larry Kieft, Paul Lozano, Harvey McBrayer, Lucille Moyer, Bob Ochoa, Ken Stepp, Etta Thomas, Paul Trejo, Bertha Trotter, Mary Van Vorce, Elmer La Croix, and Betty Duren; and serve upon the parties a revised tally of ballots, including therein the count of the above ballots. In the event that the ballots of June Thornton, Julio Gutierrez, and Jose Sanchez could affect the results shown by the tally as so revised, the Regional Director shall conduct a supplemental investigation with respect to such three challenged ballots and issue a report thereon; if they could not affect the results, he shall take such further steps as may be necessary in accordance with the Board's Rules and Regulations.]

CHAIRMAN LEEDOM took no part in the consideration of the above Decision and Direction.

Houston Sash & Door Company, Inc.¹ and District 50, United Mine Workers of America, Petitioner. *Case No. 23-RC-1504.*
June 10, 1960

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 C. L. Stephens, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

¹ The Employer's name appears as amended at the hearing.

² The Employer moves to dismiss or remand this proceeding because the hearing officer ruled irrelevant the Employer's attempt in cross-examination of the Petitioner's agent, to inquire into the internal structure and affairs of the Petitioner as part of its general attempt to challenge the Petitioner's status as a labor organization and performance of its bargaining functions. We deny these motions because (1) the line of inquiry sought to be pursued by the Employer extended beyond the purview of the matters properly litigable in this proceeding; (2) the record contains sufficient evidence upon which the Board may make a determination of the Petitioner's status; and (3) the hearing officer's restrictions on the right of cross-examination did not, in any event, constitute a violation of the procedural rights afforded the Employer in a proceeding of this nature. See *O. E. McIntyre, Inc.*, 118 NLRB 1290; cf. *Silvino Giannasca, d/b/a Imperial Reed & Rattan Furniture Co.*, 117 NLRB 495; *Awning Research Institute*, 116 NLRB 505; *Royal Jet, Incorporated*, 113 NLRB 1064.