

Helen Rose Co., Petitioner and International Ladies' Garment Workers' Union, AFL-CIO; Cloak Joint Board, Los Angeles Dress & Sportswear Joint Board. *Case No. 21-RM-565. June 30, 1960*

SUPPLEMENTAL DECISION AND DIRECTION

Pursuant to a Decision and Direction of Election issued by the Board on November 19, 1959,¹ an election by secret ballot was conducted on December 15, 1959, under the direction and supervision of the Regional Director for the Twenty-first Region, among the employees in the appropriate unit. After the election the parties herein were furnished with a tally of ballots which showed that of 64 ballots cast, 19 valid ballots were cast against the Unions and 45 were challenged.

The Regional Director investigated the challenges and on February 11, 1960, issued his report on challenged ballots in which he recommended that 16 challenges be sustained, that 8 others be overruled, and as to the remaining 21 involving persons alleged to be replaced economic strikers and replacements, he made findings of fact but no recommendations. Thereafter, the Unions filed exceptions to the Regional Director's report.

The Board has considered the Regional Director's report on challenged ballots, the Unions' exceptions, and the entire record in the case, and makes the following findings:²

The Regional Director found that an economic strike against the Employer commenced on July 23, 1959, and that picketing in support thereof was in progress at the time of the election.

In *W. Wilton Wood, Inc.*, 127 NLRB 1675, the Board, construing the new provision in Section 9(c)(3) of the Act, held that even though replaced, economic strikers who retained their status as such on the election date were eligible to vote in an election conducted within 12 months of the commencement of the strike. The Board also

¹ Unpublished

² The Regional Director recommended that the challenges to the ballots of 16 alleged economic strikers be sustained upon the basis that the suitmaking operations in which they were engaged for the Employer were discontinued for economic reasons. The Unions excepted to this. However, as stated below, we need not reach the issues raised as to these challenges at the present time.

The Unions excepted to the Regional Director's failure to recommend that the challenge to the ballot of Shirley Kahn be sustained in the light of his finding that she was employed almost wholly as a replacement for a purchasing agent, an agreed exclusion from the unit. Upon the basis of such finding, we conclude that Kahn was outside the unit, and we hereby sustain the challenge to her ballot.

As no exceptions were filed to the Regional Director's recommendations that the challenges to the ballots of Anne Cayzer, Eureka Kitterman, Shizue Nakashima, Pauline Nihei, Katherine Renna, Mollie Wexler, Emule Tardiff, and Maya Kadlec be overruled, such recommendations are adopted *pro forma*.

held that permanent replacements for economic strikers were eligible to vote.

In the instant case, the Regional Director's findings clearly indicate that six of the challenged ballots were cast by replaced economic strikers who retained their status as such on the election date.³ These strikers, therefore, were eligible to vote under Section 9(c)(3) and the challenges to their ballots are hereby overruled. We also conclude, upon the basis of the findings in the report, that Frank Aquilar, Tallulah Dresser, Sandra Inouye, Winston Murrey, Aurora Velez, Doris Yoshimoto, and Shizuko Yorimitsu were hired as permanent striker replacements or as new permanent employees during the strike and were employed on the eligibility and election dates, and that Tillie Hunter was hired as a permanent replacement and was on leave of absence on such dates.⁴ They are therefore eligible voters under our holding in the *Wilton Wood* case, and the challenges to their ballots are hereby overruled.

As to Inez Waldrop, who was challenged as an alleged economic striker, the Regional Director found that she joined the strike and although apparently not replaced, she was employed elsewhere on a permanent basis before the election. Waldrop indicated a desire to return to work for the Employer, but only on the condition that it is a "union shop." However, in the circumstances, we find that she accepted permanent employment elsewhere and thereby ceased to be a striker. She is therefore ineligible to vote and the challenge to her ballot is hereby sustained.

There are five other alleged economic strikers whose ballots were challenged, Helen Kim, Charlotte Shapiro, Max Tuberman, Lena Weiner, and Helen Wheeler, as to whose status on the election date some issues exist. However, we shall not at this time consider the challenges to these 5 ballots or to the 16 ballots of strikers whose jobs were allegedly eliminated. As we have overruled the challenges to 22 ballots, we shall direct that they be opened and counted. We shall consider the 21 unresolved challenges only in the event that they are sufficient in number to affect the results of the election according to the revised tally of ballots, including the count of the opened ballots.

[The Board directed that the Regional Director for the Twenty-first Region shall, within 10 days from the date of this Direction, open and count the ballots of Lupe Aguirre, Nellie Berg, Mollie Frank,

³ These ballots were cast by Lupe Aguirre, Nellie Berg, Mollie Frank, Mary Sherbak, Harry Silver, and Max Temares.

⁴ We find no merit in the Unions' exceptions to the findings in the report relating to Hunter and Velez specifically, or to all of the alleged replacements generally, and we deny the request for a hearing as the exceptions do not raise any material issues of fact which would affect our conclusions as to these challenged ballots

Mary Sherbak, Harry Silver, Max Temares, Mollie Wexler, Frank Aquilar, Anne Cayzer, Tallulah Dresser, Tillie Hunter, Sandra Inouye, Eureka Kitterman, Winston Murrey, Shizue Nakashima, Pauline Nihei, Katherine Renna, Aurora Velez, Doris Yoshimoto, Shizuko Yorimitsu, Emilie Tardiff, and Maya Kadlec; and serve upon the parties a revised tally of ballots, including therein the count of the above ballots. In the event the unresolved challenges are sufficient in number to affect the results of the election as shown by the revised tally, the Regional Director shall so inform the Board. If they are insufficient in number to affect the results so shown, the Regional Director shall take such further steps as may be necessary in accordance with the Board's Rules and Regulations.]

