

Air Reduction Corporation to engage in a concerted refusal in their course of their employment to perform services affecting the Company with an object of forcing or requiring the Company to assign work to members of Respondent organizations rather than to its own employees, Respondents have engaged in and are engaging in unfair labor practices within the meaning of Section 8(b)(4)(D) of the Act.

3. The Respondents have not complied with the decision and determination of dispute previously issued by the Board in this controversy.

4. The implementation of the procedural steps and the chronology thereof taken with respect to this controversy does not provide a basis for depriving the Board of its power of jurisdiction to issue an order in this proceeding.

5. Respondent International is responsible for the picketing which formed a part of the unfair labor practices act violative of Section 8(b)(4)(D) of the Act.

6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

[Recommendations omitted from publication.]

**H & M Knitting Mills, Inc., Petitioner and International Ladies
Garment Workers' Union, AFL-CIO. Case No. 2-RM-1042.
July 29, 1960**

SUPPLEMENTAL DECISION AND DIRECTION

Pursuant to a Decision and Direction of Election issued by the Board on November 19, 1959, an election by secret ballot was conducted on December 11, 1959, under the direction and supervision of the Regional Director for the Second Region, among the employees in the appropriate unit. After the election, the parties were furnished with a tally of ballots which showed that of 111 ballots cast, 33 valid ballots were cast against the Union and 78 ballots were challenged.

The Regional Director investigated the challenges and on January 29, 1960, issued his report on challenged ballots, in which he recommended that the challenges to the ballots of Laura Brighton and Vera Clark be sustained, that the challenges to the ballots of Robert Edwards and Verna Brown be overruled, and as to the remaining 74 challenged ballots involving the eligibility of economic strikers and their replacements, he made findings of fact but no recommendations. Thereafter, the Employer filed timely exceptions to the report.

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

The Regional Director found that on March 4, 1959, employees of the Employer instituted a strike against the Employer to compel it to recognize the Union. It also appears that the strike was in progress at the time of the election on December 11, 1959. Of the 78 ballots challenged at the election, 46 were cast by alleged strikers, 30 by alleged replacements, and 2 by alleged supervisors.¹

¹The Regional Director recommended that the challenges to the ballots of Laura Brighton and Vera Clark be sustained on the ground that they were replacements hired

We find that the strike herein was an economic one.² In our decision in *W. Wilton Wood, Inc.*, 127 NLRB 1675; we held that in the amended Section 9(c) (3) of the Act, Congress provided that economic strikers who retained their status as such on the eligibility and election dates—even though replaced—were eligible to vote in any election conducted within 12 months of the commencement of the strike. We also held that permanent replacements were eligible voters if employed on the eligibility and election dates.

The Regional Director's findings herein clearly indicate that 27 of the challenged voters, listed in Appendix A attached hereto, were economic strikers on the eligibility and election dates. They also establish that another 28 of the challenged voters, listed in Appendix B attached hereto, were hired during the strike either as permanent replacements or as permanent new employees and were so employed on the eligibility and election dates. These 55 persons were therefore eligible voters and the challenges to their ballots are hereby overruled.

Among others, the seven employees listed in Appendix C attached hereto were challenged by the Employer on the ground that they were not employed at the time the strike began. The investigation shows that on various dates before the strike, these employees were laid off for lack of work with the understanding that they would be recalled when business improved. Although they had not been recalled prior to the strike, there is a history in the plant of frequent layoffs for lack of work and subsequent recall of employees. It appears that shortly after the strike began these laid-off employees were requested by Employer to return to work. They failed to do so. In these circumstances, we find that they elected to join the strike and are eligible to vote as economic strikers. Accordingly, we hereby overrule the challenges to their ballots.

As it appears that striker Frank Sielicki has admittedly obtained other permanent employment, the challenge to his ballot is hereby sustained.

Striker Donald Young was challenged by the Employer on the ground that during the strike, he was convicted of assault on the picket line. However, subsequent to his conviction and prior to the election, the Employer took no affirmative action to discharge him, but on the contrary invited him to return to work which he failed to do. In these circumstances we find, under our holding in *Union Manufacturing Company* (101 NLRB 1028) which was reaffirmed in *W. Wilton Wood*, that he is an eligible striker and overrule the challenge to his ballot.

after the eligibility date and that the challenges to the ballots of Robert Edwards and Verna Brown be overruled on the ground that they were not supervisors as alleged. As no exceptions were filed to these recommendations, they are adopted *pro forma*.

² See *Bright Foods*, 126 NLRB 553.

The Employer challenged Frank Fuller on the ground that he had quit his employment. The investigation shows that although he was working on the day of the strike (March 4), about 2 weeks previously he had told the Employer that he intended to quit his job shortly in order to open a gasoline station. He went out on strike and 11 days later signed a 9-month lease on a gasoline station. At that time, he expected to continue the business indefinitely if it proved successful. It did not and he gave up the business on November 20. He now desires to return to work for the Employer upon settlement of the strike. For the purposes of the amended Section 9(c)(3), the Board has decided that self-employment during an economic strike, standing alone, does not establish that the striker has abandoned his job with the struck employer. However, in the circumstances of this case, we are satisfied that Fuller's self-employment during the strike constituted an abandonment of his employment with the Employer. Accordingly, we sustain the challenge to his ballot.³

As we have overruled the challenges to 65 ballots, we shall direct that they be opened and counted. There remains unresolved the challenged ballots of the nine persons listed in Appendix D, which we will later consider only in the event that they are sufficient in number to affect the results of the election.

[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 Robert Edwards, Verna Brown, and the employees listed in Appendixes A, B, and C; and serve upon the parties a revised tally of ballots.]

³ Member Jenkins disagrees with the conclusion that Fuller's self-employment during the strike constituted an abandonment of his employment with the Employer. Fuller continued to work until he went out on strike. That he stated 2 weeks before the strike that he intended to quit does no alter the undenied fact that he was employed on the date the strike commenced and joined in the strike. Thereafter, he was self-employed, having leased a gasoline station on a short-term lease. But the Employer wrote him three letters during the interim requesting that he return to work and it is clear from the investigation he desires to return to work for the Employer when the strike is settled. In these circumstances, Member Jenkins is of the opinion that the facts fail to establish such a clear and unequivocal intent on the part of Fuller to abandon his job so as to deprive him of the right to vote. He would therefore overrule the challenge to his ballot and find him eligible.

APPENDIX A

Lena Alger	Lyda Belle Hicks	Eleanor Taggart
Doris Barletto	Winifred Roa	Robert Fell
Amos Belcher	Wilhelmena Toussaint	Leo Brozdowski
Dorothy Brown	Ella Van Gordon	Anne Belcher
Vera Buddenhagen	Herma Wrage	Agnes Britt
Helen Case	Genevieve Eagan	Rosalina Fine
Thomas Chant	Lorena O'Neill	Edith Hoffman
Helen Costic	Annabel Yale	Edward Nieman
Earl Doty	Freda Lertora	Elda Schleer

APPENDIX B

Alicia Bonano	June Shanks	Deanna Sexton
Peggy Snyder	Rose Reinwald	Elsie Merker
Harold Collette	Ruth Riley	Andrew Witkowski
Catherine Demarco	Jeniva E. Conklin	George R. Mallinson
Marie Roosa	Jeniva I. Conklin	Carol Baisley
Gladys Roeder	Beverly Horton	Douglas Martin
Walter Acton	Myrtle Laubscher	Russell D. Corwin
Helen O'Fee	Wilda Valentine	Dorothy Merker
Philip Gould	Lee Biccum	William Dicks
	Kenneth Mallinson	

APPENDIX C

Lena Kent	George Schembry	Harold Chichester
Maude Rooney	Anna Arbutowich	Helen Oliver
	John Pedlock	

APPENDIX D

Elva Porter	Iveta Kelly	Idella Hornbeck
George Denes	Martha Kent	Helen De Groat
Ursula Kraft	Helene Uhlig	Maude C. Higby

Atlanta Biltmore Hotel Corporation and Hotel & Restaurant Employees and Bartenders International Union, AFL-CIO.
Case No. 10-CA-4222. July 29, 1960

DECISION AND ORDER

On April 1, 1960, Trial Examiner Phil Saunders 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 the Respondent cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the Respondent filed exceptions to the Intermediate Report and a supporting brief.

The Board¹ 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 Inter-

¹ 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 [Chairman Leedom and Members Bean and Fanning].