

**Bowman-Lawrence, Inc. d/b/a Belt Supermarket and Mark A. Munsell, Petitioner and Retail Store Employees Union Local No. 782, affiliated with United Food and Commercial Workers, AFL-CIO. Case 17-RD-758**

February 10, 1982

**DECISION AND CERTIFICATION OF RESULTS OF ELECTION**

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Pursuant to authority granted it by the National Labor Relations Board under Section 3(b) of the National Labor Relations Act, as amended, a three-member panel has considered an objection and determinative challenges in an election held October 16, 1980,<sup>1</sup> and the Hearing Officer's report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the Hearing Officer's findings and recommendations, as modified below.<sup>2</sup>

1. The Hearing Officer overruled the Employer's challenge to the ballot of Linda Bowman, who had joined an economic strike against the Employer's predecessor, Belt Supermarket, Inc., herein called Belt, and had not been recalled by the Employer at the time of the hearing. The Hearing Officer found that, with respect to Bowman, the presumption of continued eligibility for an economic striker had not been rebutted. The Employer excepts contending, *inter alia*, that the challenge should be sustained since Bowman has abandoned her pre-strike job. We find merit in this exception.

Bowman began working for Sears, Roebuck and Company on August 25, 1980, at a facility in Kansas City, Missouri. She had applied for the position on July 1, 1980, stating that her reason for leaving her job with Belt was that she "moved to Raytown." Raytown is within the Kansas City, Missouri, metropolitan area and is located approximately 50 miles from the Employer's location in Saint Joseph, Missouri. At her interview with Sears, the interviewer noted on the application "on strike and moved with family" and "moved to Kansas City, two months looking."

Unlike the Hearing Officer we conclude that the above evidence is sufficient to rebut the presump-

tion of continued eligibility for Bowman as an economic striker. Bowman not only moved 50 miles away from St. Joseph but moved with her family. While the record is silent as to the nature of Bowman's family obligation or the reason for the move, the fact that she moved with her family coupled with the distance involved, indicates that the move was intended to be permanent. In this regard, since the move was made 2 months prior to her applying for the Sears job it is evident that the move was not made temporarily to enable her to take that job. In these circumstances, it is highly unlikely that she would commute daily 50 miles each way to return to her former position with the Employer. Therefore, we conclude that the evidence suffices to warrant a finding that she abandoned her job with Belt.<sup>3</sup> Accordingly we shall sustain the challenge to Bowman's ballot.<sup>4</sup>

2. The Hearing Officer also overruled the Employer's challenge to the ballot of Raymond Dilts. The Employer excepts contending that Dilts retired and thereby abandoned his job with Belt. We find merit in this exception.

The strike commenced on November 19, 1979. On that day Dilts stated he was going to retire. On November 27, 1979, Dilts applied for benefits under the Union's pension plan. The application form includes the statement, "I intend to retire from active employment within the bargaining unit covered by the Pension Plan . . . ." On December 6, 1979, Dilts was informed by the administrator of the plan that he would begin receiving monthly payments from the pension plan. The letter also included a statement that should he resume employment with an employer covered by the plan, no pension payments would be made until Dilts subsequently retired. At no time did Dilts cross the picket line. In April 1980 Dilts carried a picket sign at the Employer's facility.

Dilts' retirement status is inconsistent with continued interest in employment with the Employer. When an employee retires he severs his employment with his employer. Certainly in the absence of a strike a retired individual would not be regarded as an employee and would be ineligible to vote. Of course, in a strike situation there is the possibility that following the strike a retired employee may apply for reinstatement to active status and the Employer may decide to act favorably on the

<sup>1</sup> The election was conducted pursuant to a Regional Director's Decision and Direction of Election. The tally was 6 for and 17 against the Union; there were 12 challenged ballots.

<sup>2</sup> In the absence of exceptions thereto, the Board adopts, *pro forma*, the Hearing Officer's recommendation that the Union's objection be overruled in its entirety and that the challenges to the ballots of Emma Bathgate, Greg Black, Diane Hays, Tom Hinkley, Gary Hogan, Michael Kneib, Gary Lawrence, and Peggy McGinnes be overruled. In light of our findings below, however, these ballots are no longer determinative and, consequently, they shall not be opened and counted.

<sup>3</sup> See *Akron Engraving Company, Inc.*, 170 NLRB 232 (1968) (Perkins and McGuire).

<sup>4</sup> In view of this conclusion we find it unnecessary to pass on the Employer's contention that its challenge to her ballot should be sustained because she engaged in strike misconduct. Nor do we need to pass on the Hearing Officer's ruling in this connection that the issue of Bowman's strike misconduct cannot be litigated in a representation proceeding since it is potentially an unfair labor practice issue.

application. That possibility, however, simply places the retired employee in essentially the same position as any applicant for employment insofar as consideration of his status as an eligible voter is concerned. In other words, for that purpose he is to be treated as a new employee.

There is evidence, however, that several months into the strike, in April 1980, Dilts did participate in the picketing. Obviously this picketing indicates some interest in what is happening with respect to the strike and constitutes an expression of support for the striking employees. But that is not to say that it evinces an intention to return to work after the strike is ended. For whatever the reason, a retired employee, indeed everyone in the public at large, is free to support the strike in this manner. In any event, in the absence of evidence that Dilts had changed his mind about retirement, his picketing does not undermine our finding that by retiring Dilts had quit his active employment with the Employer and is therefore ineligible to vote.

Accordingly, we shall sustain the challenge to Dilts' ballot.

Since we are sustaining the challenges to the ballots of Bowman and Dilts and since the remaining challenged ballots are not sufficient in number to affect the results of the election,<sup>5</sup> we shall certify the results.

#### CERTIFICATION OF RESULTS OF ELECTION

It is hereby certified that a majority of the valid ballots have not been cast for Retail Store Employees Union Local No. 782, affiliated with United Food and Commercial Workers, AFL-CIO, and that said labor organization is not the exclusive representative of all the employees, in the unit herein involved, within the meaning of Section 9(a) of the National Labor Relations Act, as amended.

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<sup>5</sup> In view of our determination that the challenges to the ballots of Bowman and Dilts should be sustained we find it unnecessary to pass on the challenges to the ballots of Tim King and Richard Shelton since these ballots are not sufficient in number to affect the results of the election.