

In the Matter of E. B. & A. C. WHITING COMPANY and AMALGAMATED
CLOTHING WORKERS OF AMERICA, C. I. O.

Case No 1-R-1881

SUPPLEMENTAL DECISION
AND
DIRECTION

November 29, 1944

Pursuant to the Decision and Direction of Election issued by the National Labor Relations Board on July 14, 1944,¹ an election by secret ballot was conducted on August 1, 1944, under the direction and supervision of the Regional Director of the First Region (Boston, Massachusetts). Upon the conclusion of the election, a Tally of Ballots was furnished the parties in accordance with the Rules and Regulations of the Board.

The Tally shows that of the approximately 330 eligible voters 3 cast void ballots and 272 cast valid votes, of which 129 were for the Amalgamated Clothing Workers of America, C. I. O., herein called the Union, 116 were against the participating union, and 27 were challenged ballots.

In view of the fact that the challenged ballots were sufficient in number to affect the results of the election, the Regional Director investigated their validity and incorporated his findings and recommendations with respect to said ballots in his Consolidated Report on Challenges and Objections.² The Regional Director's report stated that the Union had challenged the ballots of 7 employees on the grounds that they were supervisory employees, and that the remaining 20 challenges by the Union were based on the fact that the employees whose ballots were thus challenged, including 1 alleged supervisor, are employed at the plant of the Tulatex Corporation. The Regional

¹ 57 N. L. R. B. 339.

² On August 4, 1944, the Union filed Objections to the election, alleging, *inter alia*, that the Company, on the day before the election, had announced to its employees the approval by the National War Labor Board of a wage increase. In *Matter of Shreve and Company*, 57 N. L. R. B. 1483, the Board held that a similar occurrence constituted interference by that Company in an election. However, we shall not at this time pass upon this objection, or any others, until the results of the election have been ascertained, inasmuch as the objections may become moot after the challenged ballots herein ruled valid have been counted.

59 N. L. R. B., No. 133.

Director recommended that 8 of the challenges be sustained but that the remaining 19 be overruled.

On October 4, 1944, the Board ordered that an appropriate hearing be held to receive evidence relating to the issues raised by the challenges. Said hearing was held at Burlington, Vermont, on November 3, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

Upon the entire record in the case the Board makes the following supplementary findings of fact:

I. SUPERVISORY EMPLOYEES

The Union challenged the ballots cast by eight of the Company's employees on the basis of their alleged supervisory status.³ The Company contends that these employees possess no supervisory authority and that, therefore, their ballots are valid. The employees are listed on the Company's pay roll as "assistant foremen," a classification which was excluded from the list of eligible voters furnished the Board by the Company and Textile Workers Union of America, C. I. O., in connection with an earlier election.⁴ Each of the employees testified that he possessed no authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or to effectively recommend such action. However, each admitted that to some extent he directs the work of employees in his department; that he substitutes for the foreman for about 3 weeks during each year when the latter is ill or on vacation; that on occasions employees will advise him of their intent to leave their work and the reason therefor; and that he is commonly known as an "assistant foreman." The record shows that several of these individuals also take charge of their departments each afternoon after the foreman leaves the plant. Further, Octave La Pointe admitted that on one occasion, during the absence of his foreman and while he was in charge of the department, he had advised the superintendent of a violation of the company rules on the part of one of the employees and had told the superintendent that the latter would "have trouble" with that employee; that the superintendent had thereupon instructed La Pointe to give said employee his pay at the end of the day, thus effecting the latter's discharge. Similarly, Armand Moisan admitted that, in at least one instance, he had recommended to

³ These men were identified as Octave La Pointe, Armand Moisan, William H. Durant, Leon Girard, Peter Terry, Edward Medlar, Wilfred Ross, and Leo Halo.

⁴ *Matter of E. B. & A. C. Whiting Company*, 54 N. L. R. B. 335.

the personnel office that it employ an applicant for a job who had first applied to him; and that on another occasion the foreman had requested him to advise an employee that she had been discharged. In view of the foregoing, we are of the opinion that the ordinary employees are bound to infer, reasonably, that the individuals in question are representatives of management. Accordingly, we find that the said employees are supervisory employees, who as such are excluded from the appropriate bargaining unit, and that their votes cast in the election herein are invalid.

II. EMPLOYEES AT THE TULATEX CORPORATION PLANT

The remaining 19 of the 27 challenged ballots were cast by employees of the Company who work in a building owned by the Tulatex Corporation, which apparently is a subsidiary or affiliate of the Company, because the Company does not have sufficient space in its own plant buildings to house the operation performed by these employees. At the hearing on November 3, 1944, the Union in effect withdrew its challenges with respect to these 19 ballots. Accordingly, we find that these challenged ballots are valid, and shall direct that they be opened and counted.

DIRECTION

By virtue of and pursuant to the power vested in the National Labor Relations Board by Section 9 (c) of the National Labor Relations Act, and pursuant to Article III, Sections 9 and 10, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with E. B. & A. C. Whiting Company, Burlington, Vermont, the Regional Director for the First Region shall, pursuant to Article III, Section 10, of said Rules and Regulations, within ten (10) days from the date of this Direction, open and count the challenged ballots of Henry J. Allard, Frances Benway, Clara E. Bessette, Joseph Bessette, Elodie Brissette, Barbara Bleau, Gordon Russell, Edith Champney, Eliza Contois, Loretta B. Creller, Camille Dubois, George Tuxbury, Esther Gauthier, Lucien Gentes, Margaret Godbout, Joyce Lavallette, Theresa Manseau, Augustine R. Meunier, and Florence Rainville, and shall thereafter prepare and cause to be served upon the parties a Supplemental Election Report embodying his findings therein and his recommendations as to the results of the secret ballot.