or modification of several specific terms and conditions of employment of the Smelter Division employees. Article III, clause C of the 1949 contract, which we have found covered the Smelter Division employees as of July 20, permitted, among other things, "interim negotiations on a specific proposal for modification." We have frequently held that negotiations for modifications pursuant to such a clause do not remove a contract as a bar to an immediate election, where the parties do not attempt "to renew or extend the term of the contract." [3] Here, negotiation of a change in the termination date of the contract was not proposed.

Upon the basis of the entire record in this case, we shall, therefore, dismiss the petition.

Order

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

[3] *S. & W. Fine Foods, Inc.*, 74 NLRB 1316, 1319, and cases cited.

F. W. WOOLWORTH CO. *and* RETAIL CLERKS' INTERNATIONAL ASSOCIATION, LOCAL UNION NO. 324, PETITIONER. *Case No. 21-UA-3298. March 27, 1951.*

Decision and Order

On November 30, 1950, pursuant to Section 9 (e) (1) of the Act, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Twenty-first Region to determine whether the employees at the Employer's Compton, California, store wished to authorize Retail Clerks' International Association, Local Union No. 324, herein called the Petitioner, to enter into an agreement with the Employer which requires membership in the Union as a condition of continued employment. At the close of the election a tally of ballots was furnished the parties. The tally shows that there were 50 eligible voters, and that there were 15 votes cast. Of these 15 votes, 13 were cast in favor of authorizing the Petitioner and the Employer to enter into a union-security agreement, and 2 votes were cast against the proposition. Thus the Petitioner did not receive a majority of the eligible votes, which is required for a 9 (e) election.

Thereafter, the Petitioner filed timely objections to conduct affecting the results of the election. The Petitioner alleged, *inter alia*, that the Employer's store manager called most of his employees into his office on the day before the election, and informed them that the Employer would never agree to a union-security provision in the contract.

On January 26, 1951, after an investigation, the Regional Director issued, and duly served upon the parties, his report on objections, in which he found that the objections did not raise substantial and material issues, and recommended that all the objections be dismissed. Thereafter, the Petitioner filed timely exceptions to the Regional Director's report on objections.

The Regional Director's investigation disclosed that the employees met with the Employer's store manager and the Employer's labor relations consultant in two groups in the employees' lounge the day before the election, and were advised that the Employer would not agree to a union-shop provision in any contract. The store manager stated that he "repeatedly told his employees when the subject was raised that he was unwilling to be a party to any arrangement whereby his employees would be required to join the Union as a condition of holding a position in the store." The manager also posted the following notice in the store the day before the election:

> SPECIAL NOTICE. To my Employees: I can say without qualifications that this store will not sign or enter into any agreement, oral or written, with a Union requiring you to join the Union. Further, I will not enter into or sign any agreement with any Union requiring you to pay dues, assessments, fines or money for any reason whatsoever. If someone has told you or tells you anything to the contrary, he is mistaken or is misrepresenting the facts. You are now free of such things and I trust that you shall remain so.

The Regional Director found that because the Employer is not required to agree to a union-shop contract provision, this objection does not raise any material or substantial issue and recommended that the Board overrule it.

The Petitioner, in its exceptions, contends that a free and fair election could not be held in the face of such conduct on the part of the Employer. In support of its position, the Petitioner points to the small number of votes cast in this election as contrasted with the number of eligible employees who voted in the earlier representation election.[1]

We do not agree with the Regional Director's conclusion that the Petitioner's objection does not raise any material or substantial issue. As the very purpose of this union-authorization election was to determine whether the employees favored authorizing the Petitioner and the Employer "to make an agreement . . . requiring mem-

[1] On October 10, 1950, pursuant to a stipulation for certification upon consent election, an election was held among these same employees The tally of ballots for that representation election showed that there were approximately 38 eligible voters and that there were 35 votes cast.

bership in [the Petitioner] as a condition of employment," the Employer's conduct could very well have been the cause of the small number of votes cast at the union-authorization election. Thus, the employees, having been informed by the Employer, without qualification, that he would not agree to any union-security contract provisions, may have considered it a futile act to vote at the election.

We believe that the Employer, by the conduct set forth above, made improbable a free and untrammeled choice by the employees as to whether or not they wished the Petitioner to enter into an agreement with the Employer which requires membership in the Petitioner as a condition of continued employment. We therefore find that the Employer interfered with the election, and that the employees were prevented from exercising a free choice in the election.[2]

Accordingly, we shall sustain the Petitioner's objection in this respect, and shall set the election aside.[3] When the Regional Director advises the Board that the circumstances permit a free choice by the employees, we shall direct that a new election be held among the employees at the Employer's Compton, California, store.

Order

IT IS HEREBY ORDERED that the election held on November 30, 1950, among the employees of F. W. Woolworth Co., at its Compton, California, store, be, and it hereby is, set aside.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Order.

[2] Cf. *Metropolitan Life Insurance Company*, 90 NLRB 935, where the Board found that the employer's announcement that it would not bargain with the union because it was not in compliance with the Act, "was reasonably calculated to impress upon the employees the futility of voting for [the union]," and interfered with the election.

[3] As we regard the above-noted incident sufficient to warrant setting aside the election, we find it unnecessary to pass upon the other objections treated by the Regional Director.

(PEACE DALE MILLS) M. T. STEVENS & SONS COMPANY *and* DANIEL PUCELLA, PETITIONER *and* TEXTILE WORKERS UNION OF AMERICA, LOCAL 288, CIO. *Case No. 1–RD–77. March 27, 1951*

Decision and Direction of Election

Upon a decertification petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Joseph Lepie, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.