The foregoing does not establish such diverse interests on the part of the retail department employees to warrant, as the Employer urges, their exclusion from the unit. Nor do we find any other basis for excluding the retail employees from the historical bargaining unit, especially in view of the fact that no union before us seeks to represent these employees separately.

Accordingly, we find that all production and maintenance employees and all employees in the retail sales department of the Employer at its Spokane, Washington, plant, excluding office and clerical employees, guards,[4] professional employees, and supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

[4] We find that the armed and deputized watchman who devotes 33⅓ percent of his time to production work is a guard, and we therefore exclude him. *Scott & Williams, Inc.*, 92 NLRB No. 153.

WILEY MFG., INC. *and* LOCAL 154, UNITED FURNITURE WORKERS OF AMERICA, CIO, PETITIONER. *Case No. 1–RC–1674. April 19, 1951*

Supplemental Decision and Certification of Representatives

Pursuant to a Decision and Direction of Election,[1] issued on November 10, 1950, in the above proceeding, an election by secret ballot was conducted on December 1, 1950, under the direction and supervision of the Regional Director for the First Region. At the conclusion of the election, the parties were furnished with a tally of ballots which shows that, of 56 eligible voters, 51 cast ballots, of which 26 were for the Petitioner, 23 were against the Petitioner, and 2 were challenged. No other labor organization was on the ballot.

On December 7, 1950, the Employer filed objections to conduct affecting the results of the election, alleging, *inter alia*, (a) that it was aggrieved by the refusal of the Board agent conducting the election to permit Mrs. Wiley to act as an observer, and (b) that the Petitioner engaged in conduct which was violative of the Act.

After an investigation, the Regional Director, on January 12, 1951, issued his report on objections in which he found that all the objections raised by the Employer were without merit. The Regional Director accordingly recommended that the objections be overruled. Thereafter the Employer filed exceptions to so much of the Regional Director's report as dealt with the two objections set forth above. The

[1] 92 NLRB 40.

exceptions contained no reference to the Regional Director's findings concerning various other objections which the Employer had voiced.

Objection (*a*) : It appears that the Employer appointed Mrs. Wiley to act as its observer at the election. In the Board's Decision herein, the Board noted that Mrs. Wiley was the wife of the Employer's president and on the basis of this circumstance, it excluded her from the bargaining unit. When Mrs. Wiley appeared at the polls, the Board agent advised her that she could not act as an observer and suggested that an office employee serve in her stead. Mrs. Wiley agreed and a selection was made. The office employee remained at her post as an observer for about 15 minutes,[2] when Mr. Wiley, the Employer's president, came to the polls and directed the office employee to leave. He then advised the Board agent that he was "withdrawing from the election" and left the premises.

In its exceptions, the Employer contends that the Board agent's objection to Mrs. Wiley as an observer was improper and resulted in prejudice to the Employer. We find no merit to this contention.

The Board has frequently stated that an Employer does not have an absolute right to appoint observers in a Board-conducted election.[3] Board Rules permit parties to be represented at an election by observers of their own selection, but subject to such limitations as the Regional Director may prescribe.[4] In the instant case, Mrs. Wiley was the wife of the Employer's president, a fact noted by the Board in its Decision. Because of her close relationship to management, albeit by marriage, we are unable to find that the Board agent's action in disqualifying Mrs. Wiley as an observer was arbitrary and capricious.[5]

Objection (*b*) : The Employer failed to furnish any substantiating evidence for this objection when it was initially made. The Employer merely alleged that "the Union's pre-election campaign violated the NLRB rules and regulations and the N. L. R. A." On December 7, 1950, a Board representative wrote the Employer that he was investigating the Employer's objections, and referring expressly to the afore-mentioned objection, requested the Employer to "outline briefly the facts and circumstances underlying these allegations so that I may be able to investigate them." He further stated that the "information should include names and addresses of witnesses, copies of documents . . . or any other evidence by means of which you pro-

[2] The election was conducted from 3 · 15 p m to 4 · 00 p. m.

[3] *Burrows and Sanborn*, 84 NLRB 304 and cases cited therein.

[4] Rules and Regulations—Series 6, Section 102 61.

[5] *Burrows and Sanborn*, cited *supra; Harry Manaster & Bros*, 61 NLRB 1373 We regard as frivolous the Employer's contention that the Regional Director should have conducted an investigation to determine for what reason the Board agent disqualified Mrs Wiley.

pose to prove the facts underlying the . . . above mentioned contentions."

On December 14, the Employer replied to this letter stating, in part, that "it is our position that during the course of the campaign the Union made threats to employees that if the Union won the election, employees who were not members of the Union would not be taken into the Union and/or would lose their jobs with the company."

In its letter, the Employer also declared that it was relying on certain leaflets distributed by the Petitioner on named dates during the preelection period for support of its case against the Petitioner, adding that it regarded them improper because (1) they promised security against wage cuts and layoffs, paid vacations, and holidays, and (2) attributed to the Employer a desire to cut wages and lay off employees without regard to seniority.

In his report on objections, the Regional Director noted the allegation of the Employer in its letter with respect to the Petitioner's conduct but rejected it as lacking in merit because no specific evidence was offered to substantiate it. As to the leaflets referred to in the letter, the Regional Director found that they were privileged.

In its exceptions, the Employer contends that the Regional Director (1) should have made a more thorough investigation of the Employer's claims regarding the Petitioner's activities, and (2) erred in his findings concerning the leaflets.

As to the Employer's first contention, the Board has indicated in earlier cases that it can attach no validity to objections based on alleged interference with elections where, absent manifest interference, the objecting party takes no steps to substantiate its allegations or otherwise assist the Board in its investigation of the objections.[6] Here the Board representative, investigating the Employer's objections, specifically requested the Employer to furnish proof of its claims and to list the names and addresses of witnesses on whom it was relying. The Employer ignored this request. Under the circumstances, we do not believe that it was incumbent on the Regional Director to pursue the matter further.

As to the Employer's contentions regarding the leaflets, we have examined them and particularly the sections to which the Employer has called attention, and like the Regional Director find that they are campaign propaganda privileged under Section 8 (c) of the Act.

Upon the basis of the foregoing, we find that the exceptions of the Employer raise no material or substantial issues. We therefore adopt the Regional Director's report and in accordance therewith, we hereby overrule the objections. As the tally shows that the Petitioner has secured a majority of the valid votes cast in the election, we shall

[6] *Eagle Overall Supply Co., Inc.*, 81 NLRB 348; *Stonewall Cotton Mills*, 78 NLRB 28.

certify it as the bargaining representative of the employees in the appropriate unit.

Certification of Representatives

IT IS HEREBY CERTIFIED that Local 154, United Furniture Workers of America, CIO has been designated and selected by a majority of the employees of the above-named Employer, in the unit heretofore found appropriate, as their representative for the purposes of collective bargaining and that pursuant to Section 9 (a) of the Act, as amended, the said organization is the exclusive representative of all the employees in such unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

MEMBERS HOUSTON and REYNOLDS took no part in the consideration of the above Supplemental Decision and Certification of Representatives.

SOMERVILLE BUICK, INC.[1] *and* LOCAL 841, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. L., AND LODGE 1898 OF DISTRICT 38 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS. *Case No. 1-CA-693. April 20, 1951*

Decision and Order

On January 25, 1951, Trial Examiner C. W. Whittemore 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 it 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 brief in support of its exceptions.

The Board [2] 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.[3] The Board has considered the

[1] The complaint and other formal papers were amended at the hearing to show the correct name of the Respondent

[2] Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Reynolds and Murdock].

[3] We find no merit in the Respondent's contention that the Trial Examiner erred by denying the Respondent's motion for a continuance of the hearing for 1 week. The Respondent does not show that it was prejudiced in any manner by the Trial Examiner's denial of its motion and it does not appear that there has been any abuse of discretion on the part of the Trial Examiner. *A. J. Siris Products Corporation of Virginia*, 90 NLRB 132, enforced, *N. L. R. B.* v. *A. J. Siris Products Corporation of Virginia*, 186 F. 2d 502 (C. A. 4, 1951). We also find no merit in the Respondent's contention that the Trial Examiner failed to consider the Respondent's brief.