

clerical employees, guards, professional employees, and supervisors,⁵ 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.]

⁵ We exclude as a supervisor Raymond Baer who, according to the record, is employed a substantial part of the time on outside work, and has authority, while so employed, to hire, discharge, and discipline other employees

ACME STAPLE COMPANY *and* INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, LOCAL 134, CIO, PETITIONER. *Case No. 4-RU-975. May 1, 1951*

Decision, Direction, and Order

On January 29, 1951, an election was conducted under the supervision of the Regional Director of the Fourth Region of the National Labor Relations Board pursuant to the provisions of a stipulation for certification upon consent election, dated January 17, 1951. The ballot provided for a choice among the Petitioner, United Staple Employees Association (hereinafter called the Association), and neither labor organization. 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 76 ballots cast, 36 were for the Petitioner, 35 were for the Association, none were against both participating labor organizations, and 5 were challenged.

As the challenged ballots were sufficient in number to affect the results of the election, the Regional Director, pursuant to the Board's Rules and Regulations, conducted an investigation and, on March 5, 1951, issued and served upon the parties a report on challenged ballots. In his report the Regional Director recommended that the five challenges be overruled and the ballots be opened and counted. Thereafter, the Petitioner filed timely exceptions to the Regional Director's recommendations with respect to the ballots of Harry E. Henry, Catherine Ruff, Howard Edwards, and John Sorbicki. The Employer and the Association filed briefs in support of the Regional Director's recommendations.

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 Murdock and Styles].

Viola Sharpley.—As no exceptions to the report on challenges have been filed with respect to the challenged ballot of Viola Sharpley, we hereby adopt the Regional Director's recommendation that the challenge to her ballot be overruled.

Harry E. Henry and Catherine Ruff.—The Petitioner contends that both of these individuals are engaged in quality control and therefore are not entitled to vote. The facts are not in dispute. Henry is the only inspector in the machine shop. He inspects all staple machines produced in the shop and when necessary he may make minor adjustments on the staple machines or he may return the machines to the assemblers for correction. He inspects and makes repairs on used machines that are returned to the plant. He is hourly rated, receiving about 6 cents an hour more than the machine assemblers; he works the same hours under the same working conditions and at a bench in the same area as the other employees. He has no supervisory duties.

Catherine Ruff circulates among the staple forming machines and both visually and by the use of gauges inspects the staples being produced and the boxes of staples which have been packed. If she finds defective staples she reports the condition to the machine operator or the maintenance man. Anything more serious is reported directly to the assistant superintendent. During noon hour and rest periods she operates a staple forming machine. She is hourly rated and receives approximately 30 cents per hour more than the operators. She has no supervisory authority.

The Petitioner claims that the decisions of these individuals, which decisions they have the power to enforce, affect the incentive earnings of the operators and therefore they should not be entitled to vote. However, we find, as did the Regional Director, that Henry and Ruff are inspectors of the type the Board usually includes in production and maintenance units¹ and we shall therefore overrule the challenges to their ballots.

Howard Edwards and John Sorbicki.—Upon the basis of his investigation the Regional Director found that Edwards and Sorbicki were not supervisors and recommended that the challenges to their ballots be overruled. In its exceptions, the Petitioner raises material issues of fact as to their supervisory status.

Inasmuch as the three ballots, challenges to which are overruled, may determine the results of the election, we shall direct that they be opened and counted. We shall also direct that, in the event that the above three ballots, when opened and counted, do not determine the results of the election, a hearing be held to determine whether or not Edwards and Sorbicki are supervisors.

¹ *Farrell-Cheek Steel Company*, 88 NLRB 303, *Lindeman Power Equipment Company*, 71 NLRB 647

Direction and Order

IT IS HEREBY DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Acme Staple Company, Camden, New Jersey, at its Camden, New Jersey, plant, the Regional Director for the Fourth Region shall, pursuant to National Labor Relations Board Rules and Regulations, within ten (10) days from the date of this Direction, open and count the ballots of Viola Sharpley, Harry E. Henry, and Catherine Ruff, and thereafter prepare and cause to be served upon the parties a supplemental tally of ballots, including therein the count of the challenged ballots.

IT IS HEREBY ORDERED that, in the event that the ballots of Viola Sharpley, Harry E. Henry, and Catherine Ruff, when opened and counted, do not determine the results of the election, a hearing be held to determine whether or not Howard Edwards and John Sorbicki, whose ballots were challenged in the aforesaid election, were supervisors as of the eligibility date of the election; and

IT IS FURTHER ORDERED that, in the event a hearing is held, the hearing officer designated for the purpose of conducting the hearing shall prepare and cause to be served upon the parties a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of said challenges. Within ten (10) days of receipt of such report, any party may file with the Board in Washington, D. C., an original and six copies of exceptions thereto. Immediately upon the filing of such exceptions, the party filing shall serve a copy thereof upon each of the other parties, and shall file a copy with the Regional Director. If no exceptions are filed thereto, the Board will adopt the recommendation of the hearing officer.

IT IS FURTHER ORDERED that, in the event a hearing is held, the above-entitled matter be, and it hereby is, referred to the said Regional Director for the purposes of such hearing, and that the aforesaid Regional Director be, and he hereby is, authorized to issue early notice thereof.

THE M. H. DAVIDSON COMPANY *and* INTERNATIONAL PRINTING PRESS-
MEN AND ASSISTANTS' UNION OF NORTH AMERICA, AFL. *Cases Nos.*
1-CA-483 and 1-RC-969. May 2, 1951

Decision and Order

On July 21, 1950, Trial Examiner Arthur Leff issued his Intermediate Report in the above-entitled proceedings, finding that the Respondent had engaged in and was engaging in certain unfair labor