

IN the Matter of AMERICAN CAMEL COMPANY, EMPLOYER and FOOD,  
TOBACCO, AGRICULTURAL AND ALLIED WORKERS UNION OF AMERICA,  
C. I. O., PETITIONER

*Case No. 4-R-2265.—Decided January 21, 1947*

*Mr. Julius Yablok*, of New York City, for the Employer.

*Mr. Saul C. Waldbaum*, of Philadelphia, Pa., for the Petitioner.

*Mr. William Shuman*, of Lancaster, Pa., for the Intervenor.

*Mr. Lewis H. Ulman*, of counsel to the Board.

DECISION  
AND  
DIRECTION

On August 29, 1946, pursuant to a Stipulation for Certification Upon Consent Election, executed on August 20, 1946, by the Petitioner, the Committee, herein called the Intervenor, and the Employer, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Fourth Region among the employees in the unit agreed upon by the parties, to determine whether they desired to be represented by the Petitioner, by the Intervenor, or by neither for the purposes of collective bargaining. The stipulation provided in part, "that all employees classified as working foremen or working foreladies or assistant working forelady, shall be voted on Board challenge, and the inclusion or exclusion of these classifications in the appropriate bargaining unit shall be determined by the Board after hearing in the event the petitioner wins the election."

Upon completion of the election, the Regional Director issued and duly served upon the parties a Tally of Ballots. The Tally shows that, of the approximately 126 eligible voters, 105 valid votes were cast, 56 for the Petitioner and 49 for the Intervenor. Ten votes were challenged by the Board pursuant to the stipulation mentioned above, and 1 vote was challenged by the Petitioner. Inasmuch as the challenged ballots could affect the outcome of the election, the Board directed a hearing thereon which was held at Lancaster, Pennsylvania, on October 29, 1946, before John H. Garver, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in the case, the National Labor Relations Board makes the following:

### FINDINGS OF FACT

#### I. THE BUSINESS OF THE EMPLOYER

American Caramel Company is a Pennsylvania corporation engaged in manufacturing candy at its sole plant at Lancaster, Pennsylvania. Annually, the Employer purchases raw materials valued at more than \$50,000, of which more than 50 percent represents shipments from points outside the State of Pennsylvania. The Employer's annual sales exceed \$75,000 in value, of which more than 50 percent represents shipments to points outside the State.

The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

#### II. THE ORGANIZATIONS INVOLVED

The Petitioner is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

The Intervenor is an unaffiliated labor organization claiming to represent employees of the Employer.

#### III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize the Petitioner as the exclusive bargaining representative of employees of the Employer until the Petitioner has been certified by the Board in an appropriate unit.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

#### IV. THE APPROPRIATE UNIT

The parties agree that the appropriate unit consists of all production and maintenance employees, including the firemen-watchmen but excluding office clerical employees, the forelady of the chocolate department, executives, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action. The parties disagree, however, on the 11 challenged voters whom the Employer and the Intervenor would include within the unit, and whom the Petitioner would exclude as supervisors. As noted above, the results of the election may be affected by the challenged ballots. Accordingly, we shall consider the challenges:

*Victor Bartholomew:* The Petitioner alleges that Victor Bartholomew, a diesel engineer who has been employed for 7 years in the plant's engine room, is a supervisory employee. There are seven employees in the engine room, one of whom, the break-down mechanic, is paid at a higher hourly rate than Bartholomew. Another is taking in-job training under the Servicemen's Readjustment Act of 1944,<sup>1</sup> and the remaining four fire the boilers. The Employer's purchasing officer exercises direct supervision over the engine room, and while Bartholomew once hired a new employee when the purchasing officer was on vacation, and from time to time instructs the firemen, we are not persuaded, on the record in this case, that he is a supervisory employee within our usual definition of that term. We shall, therefore, overrule the challenge and direct that the ballot of Victor Bartholomew be opened and counted.

*Nellie Mowery:* The Employer's chocolate department consists of approximately 50 employees under the supervision of a forelady whom all the parties have agreed to exclude from the unit. Nellie Mowery is employed in this department as a sample wrapper, but the majority of her time is spent in instructing new employees. The Petitioner contends that she exercises supervisory authority because of her duties as an instructress and because she occasionally assists the forelady in preparing a work tally at the end of the day. However, there is another female employee within the department who receives a higher hourly rate than Mowery, and the Petitioner did not contradict the direct testimony of the Employer's factory superintendent that Mowery has no authority to hire or discharge employees, or to make any effective recommendation concerning their status. The record, therefore, does not, in our opinion, support the Petitioner's position. Accordingly, we shall overrule the challenge and direct that the ballot of Nellie Mowery be opened and counted.

*Charles Lind, Catherine Gerstly, Rachel Merkt, Joseph Bryson, Walter Bolbach, James Ferguson, Jr., Florenz Rehm, Frank Trommer, and Fred Aumont:* The remainder of the challenged voters are all experienced employees who, for the most part, have been employed at the plant for a number of years. They work separately or as the chief cook or chief technician of a small department and are all under the direct supervision of the factory superintendent or the general foreman. While they are generally paid a higher hourly rate than other employees in the same department, the factory superintendent's testimony reveals that their higher pay is due to their individual skills and long service with the Employer. He also testified without contradiction that these employees, like Nellie Mowery, have no authority to

<sup>1</sup> 58 Stat 284, 38 U S C 1940 ed., Sup V, Sec 693, et seq

hire or discharge fellow employees, or to make effective recommendations concerning their status. We are of the opinion, therefore, that they are merely more experienced workers who function as leaders in their respective departments, and that their relationship to the other workers is not, as the Petitioner contends, one of supervisor to subordinate. Accordingly, we shall overrule the challenges and direct that the votes of Charles Lind, Catherine Gerstly, Rachel Merkt, Joseph Bryson, Walter Bolbach, James Ferguson, Jr., Florenz Rehm, Frank Trommer, and Fred Aumont be opened and counted.

#### DIRECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with American Caramel Company, Lancaster, Pennsylvania, the Regional Director for the Fourth Region, shall, pursuant to Section 203.55 of National Labor Relations Board Rules and Regulations—Series 4, within ten (10) days from the date of this Direction, open and count the ballots of Victor Bartholomew, Nellie Mowery, Charles Lind, Catherine Gerstly, Rachel Merkt, Joseph Bryson, Walter Bolbach, James Ferguson, Jr., Florenz Rehm, Frank Trommer, and Fred Aumont, and thereafter prepare and cause to be served upon the parties a Supplemental Tally of Ballots, including therein the count of said challenged ballots.