

In the Matter of ADVANCE TRANSFORMER Co., EMPLOYER and UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA, CIO, PETITIONER

*Case No. 13-R-3906.—Decided March 14, 1947*

*Epstein & Epstein*, by *Mr. Bernard Epstein*, of Chicago, Ill., for the Employer.

*Mr. Leo Turner*, of Chicago, Ill., and *Mr. David Scribner*, of New York City, for the Petitioner.

*Joseph M. Jacobs*, by *Mr. Jacob N. Gross*, of Chicago, Ill., and *Mr. Albert Weisbord*, of Chicago, Ill., for the Intervenor.

*Mr. Robert J. Freehling*, of counsel to the Board.

DECISION  
AND  
DIRECTION

On October 2, 1946, pursuant to a Stipulation for Certification Upon Consent Election, executed by the Petitioner, the Employer, and International Brotherhood of Electrical Workers, Local 1031, AFL, herein called the Intervenor, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Thirteenth Region among the employees in the agreed unit, to determine whether they desired to be represented by the Petitioner, or by the Intervenor, for the purposes of collective bargaining, or by neither. Upon completion of the election, the Regional Director issued and duly served upon the parties a Tally of Ballots.

The Tally showed that, of the approximately 123 eligible voters, 112 cast valid votes, of which 56 were for the Petitioner, 55 were for the Intervenor, and 1 was for neither; in addition, 5 ballots were challenged.

No objections to the conduct of the election were filed by any of the parties within the time provided therefor. However, inasmuch as the counting of the challenged ballots was sufficient to affect the results of the election, the Regional Director, in accordance with the Board's Rules and Regulations, investigated the challenges. He thereupon issued and duly served upon the parties a Report on Challenges, dated October 18, 1946, recommending therein that the challenges be sustained. Subsequently, the Employer filed exceptions to this report.

On November 22, 1946, the Board, having duly considered the Regional Director's Report on Challenges and the Employer's exceptions thereto, directed that a hearing be held to resolve the issues raised with respect to the challenged ballots. Thereafter, a hearing was held at Chicago, Illinois, on December 20, 23, and 26, 1946, before Leon A. Rosell, hearing officer. All parties appeared and participated. 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

1. 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.

2. All production and maintenance employees of the Employer, including watchmen and oilers, but excluding office and clerical employees, superintendents, full-time foremen, 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, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

3. As noted hereinabove, the results of the election may be affected by the challenged ballots. Accordingly, we shall consider the challenges:

The ballots of the following employees were challenged: Rose Rivas, Bertha Herold, John Di Menna, Walter Ritter, and Ben Goldberg. All challenges were made by the Petitioner for the asserted reason, in each instance, that the individual challenged exercises supervisory authority.

The Employer is engaged in the manufacture and sale of electrical transformers. Its plant is housed in a converted one-story garage and consists of offices, and a single large room in which substantially all production and maintenance operations are performed. Its hierarchy of admitted supervisors includes the president, plant superintendent, electrical engineer, assistant plant superintendent, and 4 full-time foremen. The president and the plant superintendent maintain general supervision over the various plant functions and the approximately 123 production and maintenance employees; the electrical engineer is concerned mainly with design and quality control. The assistant plant superintendent, who spends virtually all his time overseeing the manufacturing operations, holds himself primarily responsible for approximately 20 percent of the production and main-

tenance employees and relies upon the foremen for assistance in supervising the balance of these employees. The individuals whose ballots were challenged are assigned to sections for which the assistant plant superintendent holds himself principally responsible.

*Rose Rivas*—Rivas is employed in the coil picking section, along with a normal complement of five other employees. The functions performed in this section involve probing for, and twisting, the loose ends of wires in the coils, and subsequently welding the wires of properly matched coils. Rivas, who is the senior coil picker, is hourly paid, receives no sick pay,<sup>1</sup> and is generally subject to the same conditions of employment as the other production and maintenance employees.<sup>2</sup> Her duties include exposing and twisting the ends of the wires, inspecting the products after welding,<sup>3</sup> aiding in the instruction of new employees, and submitting group production records to the assistant plant superintendent based on information received from the welder. She also performs such functions as rendering first-aid to, and assisting in preparing coffee for, all the Employer's workers. Although her inspection and miscellaneous additional duties preclude her participation in the section group bonus plan, her hourly pay is approximately 10 to 15 cents more than that of her fellow workers, and, consequently, she receives comparable wages. And, although Rivas has transmitted wage increase requests of other employees in the section to the assistant plant superintendent, she has no authority to hire, promote, discharge, or change the status of any employee, or effectively to recommend such action. In view of the foregoing, and on the entire record in the case, we are of the opinion that Rose Rivas fails to exercise supervisory authority within the Board's customary definition of that term and, accordingly, we find that she was entitled to participate in the election.

*Bertha Herold*—This individual, an employee of long standing with the Employer, divides her time between working in the 40 watt transformer assembly section, where she assembles and inspects transformers and assists in the instruction of new employees, and performing such additional duties as rendering first-aid, making coffee, and orienting new female personnel with respect to the plant and its facilities. She also serves generally in the capacity of confidante to all the Employer's female workers and by reason of this relationship has authority to grant such employees time off. Although, like Rivas, the nature of her duties prevents her participation in the group bonus

<sup>1</sup> The four foremen are paid during reasonable periods of absence due to sickness

<sup>2</sup> Approximately once each month, Rivas attends the regular weekly meetings conducted by the Employer after working hours. The record indicates that, contrary to the contention of the Petitioner, these meetings are not essentially supervisors' meetings, inasmuch as the discussions usually relate to production, not personnel, problems, and admittedly non-supervisory employees are frequently in attendance.

<sup>3</sup> Other inspectors voted without challenge.

plan enjoyed by the other approximately 14 employees in the assembly section, her wages are comparable to those received by these employees. From time to time, Herold is enlisted by employees to convey their wage increase requests and their grievances to the assistant plant superintendent and the foremen. She also regularly attends the weekly instruction meetings conducted by the Employer. However, the record indicates that she has no authority to hire, promote, discharge, or change the status of any employee, or effectively to recommend such action. Under the circumstances, we are of the opinion that Bertha Herold is not a supervisor within the Board's usual definition of that term and we find, therefore, that she was eligible to vote in the election.

*John Di Menna*—This employee works in the coil winding department, operating and making adjustments, set-ups and minor repairs on the coil winding machines. In addition, he instructs new employees, requisitions the necessary supplies for this department, assigns men to machines in order to effect even production of the various coils, and collects and submits to the assistant plant superintendent production reports prepared by the individual operators. Di Menna is hourly paid, receives no sick pay, and is generally subject to the same conditions of employment as the other production and maintenance employees. Although he checks the time cards of the seven or eight coil winding department employees, transmits wage increase and time-off requests to the assistant plant superintendent, and is considered by some of his fellow workers to be in charge of this department, he apparently has no authority to hire, promote, discharge, or change the status of any employee, or effectively to recommend such action.<sup>4</sup> We believe that the record fails to establish that John Di Menna exercises supervisory authority within the Board's customary definition and, accordingly, we find that he was eligible to participate in the election.

*Walter Ritter*—Ritter, a skilled machinist, spends approximately 75 percent of his time in repairing, and making parts for, the Employer's machines; during the balance of his time, he instructs the other three machinists and, in the absence of the assistant plant superintendent, distributes drawings to these employees. He is hourly paid, receiving approximately 15 cents an hour more than the next highest paid machinist; he is not paid during absences caused by sickness. The record indicates that he has no authority to hire, promote, discharge, or change the status of any employee, or effectively to recommend such action. In view of the foregoing, we are of the opinion

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<sup>4</sup>The evidence shows that, on one occasion, Di Menna, in effect, recommended the discharge of an employee, but such recommendation was not adopted by the Employer. While there is also some evidence that Di Menna has at times urged employees to attend to their assigned tasks, it does not appear that such action was followed by any disciplinary measures

that Walter Ritter is not a supervisory employee and, therefore, we find that he was entitled to vote in the election.

*Ben Goldberg*—This individual is employed in the shipping room, filling customers' orders, labeling cartons, and checking bills of lading; in addition, he assigns tasks, such as heavy lifting and moving, to the other two shipping room employees. He is hourly paid, punches a factory time clock, normally receives no sick pay, and is generally subject to the same conditions of employment as the other production and maintenance employees. Although Goldberg, who is the senior shipping room employee, checks the time cards of his fellow workers and occasionally transmits wage increase requests to the assistant plant superintendent, he has no authority to hire, promote, discharge, or change the status of any employee, or effectively to recommend such action. Under the circumstances, we believe that Ben Goldberg is a non-supervisory shipping room employee and, accordingly, we find that he was eligible to participate in the election.

In conformance with our foregoing conclusions, we shall overrule the Petitioner's challenges to the ballots of Rose Rivas, Bertha Herold, John Di Menna, Walter Ritter, and Ben Goldberg, and direct that their ballots be opened and counted.

#### DIRECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Advance Transformer Co., Chicago, Illinois, the Regional Director for the Thirteenth 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 Rose Rivas, Bertha Herold, John Di Menna, Walter Ritter, and Ben Goldberg, and thereafter prepare and cause to be served upon the parties a Supplemental Tally of Ballots, including therein the count of said challenged ballots.

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