

with their helpers, notwithstanding their prior inclusion in an over-all unit of production and maintenance employees.<sup>5</sup>

The fifth group sought by the Petitioner is composed of *firemen*, who work in the boiler room, and their helpers. Except for the occasional assistance of pipefitters on major repair jobs, the firemen and their helpers are the only persons working in the boiler room. There is no interchange between boiler room and other employees. The steam produced in the boiler room is used for the driers on the paper machines and for the operation of two small turbines which generate direct current for drives on two of the smaller paper machines, as well as for heating the plant buildings. We find that the firemen and their helpers constitute a homogeneous, identifiable power-house group and may properly constitute a separate bargaining unit despite a history of collective bargaining on a broader basis.<sup>6</sup>

However, we shall make no final determination with respect to the unit or units appropriate for employees at the Employer's Carthage, New York, plant, deferring such conclusions until separate elections shall have been held among the following voting groups, including helpers in each group, but excluding from each all supervisors as defined in the Act.

1. All millwrights.
2. All pipefitters.
3. All painters.
4. All machinists.
5. All firemen.

If a majority of the employees in any group select the Petitioner the employees in that group will be taken to have indicated their desire to be separately represented.

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

<sup>5</sup>*International Paper Company, supra*. See also *International Paper Company*, 94 NLRB 500 (pipefitters, machinists, millwrights, and painters).

<sup>6</sup>*Crocker, Burbank & Co. Assn.*, 80 NLRB 774.

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F. W. WOOLWORTH Co. and RETAIL CLERKS' INTERNATIONAL ASSOCIATION, LOCAL UNION No. 324, PETITIONER. *Case No. 21-UA-3298.*  
*September 25, 1951*

### Second Supplemental Decision and Certification of Results

On November 30, 1950, pursuant to Section 9 (e) (1) of the Act, an election was conducted under the supervision of the Regional Director for the Twenty-first Region to determine whether the em-  
96 NLRB No. 56.

ployees at the Employer's Compton, California, store wished to authorize the Petitioner to enter into an agreement with the Employer requiring membership in the Union as a condition of employment. The Petitioner did not receive a majority of the eligible votes, and the Board in its Decision and Order, dated March 27, 1951,<sup>1</sup> set aside the election on the ground that the Employer had interfered with the election and that the employees were prevented from exercising a free choice in the election.

On June 22, 1951, a second election was held pursuant to the Board's Supplemental Decision and Direction of Election dated May 25, 1951. The Employer refused to permit the election to be held on company property. The Regional Director directed that the second balloting be conducted by mail. The Petitioner won this election, receiving 22 votes out of a total number of 39 eligible voters.

On June 21, 1951, the Employer filed timely objections to the election, and the Regional Director investigated the objections and issued his report on July 5, 1951, in which he recommended that the objections be dismissed. Thereafter, the Employer filed timely exceptions to the Regional Director's report.

The Employer objects to the use of mail ballots in the election and contends that the election is, in consequence, invalid because the Board's Rules and Regulations, Series 6, and Statements of Procedure, effective March 1, 1951, make no provision for conducting a referendum election by mail balloting. The Board's rules do not expressly provide for such balloting. However, the Board has held that a Regional Director has broad discretion in arranging the details of an election, including provision for balloting by mail.<sup>2</sup> In its objections the Employer did not contend that the Regional Director abused his discretion in the instant case.

The Employer further contends that the election was invalid under Section 3 (a) (2) of the Administrative Procedure Act,<sup>3</sup> which requires every agency to publish in the Federal Register "the general course and method by which its functions are channeled and determined." As mail balloting was not specifically provided for in the Board's published Rules and Regulations, Series 6, and Statements of Procedure,<sup>4</sup> the Employer contends that such balloting is invalid.

We do not believe that mail balloting is a "general course and method by which [the Board's] functions are channeled and determined" within the meaning of Section 3 (a) (2) of the Administrative

<sup>1</sup> 93 NLRB 992.

<sup>2</sup> *Harold F. Gross d/b/a Southwestern Michigan Broadcasting Co.*, 94 NLRB 30; *Pacific Gas & Electric Co.*, 89 NLRB 938.

<sup>3</sup> 60 Stat. 237, 5 USCA 1001, Pub. Law 404, 79th Congress.

<sup>4</sup> 16 F. R. 1934-1948, March 1, 1951.

Procedure Act.<sup>5</sup> Moreover, the Employer has failed to allege in what manner it has been prejudiced as a result of the Board's failure to publish in the Federal Register the fact that a Board election may be held by mail balloting at the Regional Director's discretion. Consequently, the Employer is in no position at this time to attack the election on the grounds of the Board's alleged noncompliance with Section 3 (a) (2) of the Administrative Procedure Act.<sup>6</sup>

Accordingly, we find that the Employer's objections do not raise substantial and material issues with respect to the conduct of the election, and they are therefore overruled.

### Certification of Results

Upon the basis of the tally of ballots and the entire record in the case, the Board finds:

1. A majority of the employees eligible to vote in the unit described below have voted to authorize Retail Clerks' International Association, Local Union No. 324, to make an agreement with F. W. Woolworth Co., Compton, California, requiring membership in such labor organization as a condition of employment, in conformity with Section 8 (a) (3) of the Act, as amended.

2. The appropriate bargaining unit in which the election was conducted comprises: All employees at the Compton, California, store of F. W. Woolworth Company, but excluding the store manager, assistant store manager, sales floor supervisor, personnel supervisor, office supervisor, stockroom supervisor, learner, seasonal employees, and other supervisors as defined in the Act, as amended.

CHAIRMAN HERZOG and MEMBER MURDOCK took no part in the consideration of the above Second Supplemental Decision and Certification of Results.

<sup>5</sup> In any event, Section 3 (a) does not provide for invalidation of administrative action taken pursuant to an unpublished procedure. The only sanction there provided is that "no person shall be required to resort to organization or procedure" not properly published. As the use of mail ballots did not require resort by the Employer to any organization or procedure, application of the foregoing sanction can have no effect on the validity of the election.

<sup>6</sup> See: *Market Street Railroad Co. v. Comm'n.*, 324 U. S. 548, 561-562.

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DE SOTO HARDWOOD FLOORING COMPANY and LOCAL 400, INTERNATIONAL WOODWORKERS OF AMERICA, CIO. *Case No. 32-CA-152.*  
*September 26, 1951*

### Decision and Order

On June 11, 1951, Trial Examiner Frederic B. Parkes, 2nd, issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair