

SEMET-SOLVAY DIVISION, ALLIED CHEMICAL & DYE CORPORATION *and*
UNITED GAS, COKE & CHEMICAL WORKERS OF AMERICA, CONGRESS OF
INDUSTRIAL ORGANIZATIONS, PETITIONER. *Case No. 9-RC-1056.*
November 7, 1951

Supplemental Decision and Direction

On February 15, 1951, pursuant to a Decision and Direction of Election¹ issued by the Board on January 22, 1951, an election by secret ballot was conducted under the direction and supervision of the Regional Director for the Ninth Region. Upon completion of the election, a tally of ballots was issued and duly served by the Regional Director upon the parties concerned. The tally reveals that of approximately 257 eligible voters, 245 cast valid ballots, of which 125 were cast for the Petitioner and 120 were against the Petitioner. Seven ballots were challenged. No objections to the conduct of the election were filed within the time provided therefor.

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 April 26, 1951, issued and duly served upon the parties a report on challenged ballots. In his report, the Regional Director recommended that the challenges to the ballots of James E. White, W. T. Robinson, Henry E. Deskins, Newton Wileman, Benjamin F. Spradlin, Ernest Brown, and Robert W. Mittendorf be overruled. Thereafter, the Petitioner filed timely exceptions to the Regional Director's recommendations as to all seven ballots. On May 23, 1951, the Board directed that a hearing be held on all the issues raised by the challenges and exceptions and directed the hearing officer to resolve credibility issues and to make findings of fact and recommendations to the Board as to the disposition of the challenges.

Thereafter, a hearing was held on June 20, 21, and 22, 1951, before William Naimark, hearing officer. The Employer and the Petitioner appeared and participated. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues, was afforded the parties.

On August 9, 1951, in accordance with the Board Order, the hearing officer issued and duly served upon the parties his report. The hearing officer found that White, Robinson, Deskins, Wileman, and Spradlin were not supervisors within the meaning of the Act, at the time of the election. He also found that Brown exercised supervisory

¹ Unpublished.

authority only sporadically during 1950 and was eligible to vote in the election. The hearing officer further found that Mittendorf, while performing his work as a draftsman or his other duties in the engineering department or in the laboratory, was not a professional employee within the meaning of the Act. He recommended that the challenges to all seven ballots be overruled. The Petitioner filed timely exceptions to the hearing officer's report, and thereafter, by special leave of the Board, the Employer filed a reply brief in opposition to the Petitioner's exceptions.

The Board² has reviewed the rulings made at the hearing by the hearing officer and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the hearing officer's report, the Petitioner's exceptions, the Employer's reply brief, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the hearing officer.³ The Petitioner contends that the hearing officer erred in crediting the testimony of several witnesses. A hearing officer in a proceeding such as this, like a Trial Examiner in an unfair labor practice case, has the advantage of seeing and hearing the witnesses and we attach great weight to his credibility findings. We do not overrule them except where the preponderance of all the relevant evidence convinces us that he is incorrect. No such conclusion is warranted in this case.⁴ Accordingly, we shall overrule the challenges to all seven ballots and direct that they be opened and counted.

Direction

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Semet-Solvay Division, Allied Chemical & Dye Corporation, the Regional Director for the Ninth Region shall, pursuant to the Rules and Regulations of the National Labor Relations Board, within ten (10) days from the date of this

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

³ In its exceptions, the Petitioner asserts that the hearing officer misconstrued its position as to the eligibility of Mittendorf. Although the Petitioner challenged Mittendorf as a professional employee it now concedes that he is not a professional employee but, nevertheless, should be held ineligible to vote because he is a technical employee. The record clearly shows that Mittendorf, during the time of the election and several months prior thereto, spent the majority of his time in the performance of draftsman duties. As the Employer and the Petitioner at the original hearing in this proceeding stipulated the inclusion of draftsmen and no persuasive reason has been advanced for holding that such agreement is not binding upon the Petitioner, we have adopted the hearing officer's recommendation that the challenge to Mittendorf's ballot be overruled. See *Oliver Machinery Company*, 93 NLRB 731.

⁴ See *American Twine & Fabric Corporation*, 91 NLRB No. 168. See also *Colonial Shirt Corporation*, 96 NLRB No. 104; *Standard Dry Wall Products, Inc.*, 91 NLRB 544; *N. L. R. B. v. Universal Camera Corp.*, 190 F. 2d 429 (C. A. 2).

Direction open and count the challenged ballots of James E. White, W. T. Robinson, Henry E. Deskins, Newton Wileman, Benjamin F. Spradlin, Ernest Brown, and Robert W. Mittendorf, and shall thereafter prepare and cause to be served upon the parties a supplemental tally of ballots, including therein the count of these challenged ballots.

WESTERN EQUIPMENT COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL LODGE No. 1712, AFL, PETITIONER

WESTERN EQUIPMENT COMPANY *and* INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL No. 370, AFL, PETITIONER

WESTERN EQUIPMENT COMPANY *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL No. 983, AFL, PETITIONER. *Cases Nos. 19-RC-824, 19-RC-825, and 19-RC-862. November 8, 1951*

Decision and Direction of Elections

Upon petitions duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Daniel J. Harrington, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.¹

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with these cases to a three-member panel. [Chairman Herzog and Members Houston and Murdock].

Upon the entire record in these cases, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.
3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.²

¹ International Union of Operating Engineers, Local No. 370, AFL, herein called the Operating Engineers, moved to dismiss the intervention by International Association of Machinists, Local Lodge No. 1712, AFL, herein called the IAM, in Case No. 19-RC-825, on the ground of surprise. By its intervention in Case No. 19-RC-825, the IAM seeks to represent the employees covered by its separate petition in Case No. 19-RC-824. As the Operating Engineers was served with a consolidated notice of hearing, its motion is denied.

² The Operating Engineers urges a current contract between the Employer and Pocatello (Idaho) Building Trades Council as a bar to the IAM's petition and to its intervention based on the Operating Engineers' petition in Case No. 19-RC-825. The Operating Engineers is party to this contract as a member of the Pocatello Building Trades Council. As the Operating Engineers itself raised a question concerning representation as a petitioner herein, its own contract assertedly covering the employees involved cannot now bar the proceeding. We therefore find it unnecessary to pass upon the sufficiency of the contract as a bar to the IAM's petition.