parties to a collective-bargaining agreement may at any time during its term renegotiate or modify any of its provisions without opening up the contract to an otherwise untimely petition. However, there the Board further pointed out that rival union petitions would continue to be timely if appropriately filed in relation to the expiration or automatic renewal date of the original contract. That is a situation which confronts us here. Accordingly, as the Petitioner's bargaining demand was made before the Mill B date of the earlier contract and was followed by a timely petition, neither that contract nor supplement V can bar a present determination of representatives.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production and maintenance employees employed in the glass plant at the Employer's Fairmont works on Hoult Road, Fairmont, West Virginia, including group leaders, but excluding office clerical employees, laboratory technicians, guards, professional employees, and all supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

Chairman Farmer took no part in the consideration of the above Decision and Direction of Election.

WRIGHT MANUFACTURING COMPANY and UNIVERSAL MANUFACTURING COMPANY *and* UNITED STEELWORKERS OF AMERICA, Petitioner. Case No. 21-RC-3073. October 2, 1953

SUPPLEMENTAL DECISION AND DIRECTION

Pursuant to a Decision and Direction of Election issued by the Board on June 22, 1953,[1] an election by secret ballot was conducted on July 7, 1953, under the direction of the Regional Director for the Twenty-first Region, among the employees of the Employer in the unit found appropriate by the Board. At the close of the election, the parties were furnished a tally of ballots. The tally shows that there were approximately 169 eligible voters and that 136 cast valid ballots, of which 62 were for the Petitioner, 68 for the Intervenor (Sheet Metal Workers International Association, Local 359, AFL), and 6 for no union. In addition, there were 1 void and 16 challenged ballots. The Petitioner filed timely objections to the election.

In accordance with the Board's Rules and Regulations, the Regional Director investigated the objections and the challenges, which were sufficient in number to affect the election results. On August 18, 1953, the Regional Director issued a report on

[1] Not reported in printed volumes of Board Decisions.

challeged ballots and objections, which he duly served upon the parties. In this report, the Regional Director found that the Petitioner's objections were without merit and recommended that they be overruled. He further found that, of the employees who cast challenged ballots, 10 were ineligible, and 6 eligible, to vote. Accordingly, he recommended that challenges to the ballots cast by the ineligible employees be sustained and those cast by the eligible employees be overruled and the latter ballots be opened and counted. The Petitioner thereafter filed timely exceptions to part of the Regional Director's report.

The Objections

1. As no exceptions were filed to the Regional Director's recommendation that the Petitioner's objections based on allegations 2, 3, and 4 therein be overruled, we adopt this recommendation.[2]

2. With respect to the allegation in the objections concerning the activities of Henry Hartley and Milton O'Grady, the Regional Director found that Hartley, in response to direct questions by employees on the subject on the day before and during the election, expressed a personal opinion that the Employer would not have to pay the vacation benefits and holiday pay provided for in its contract with the Intervenor if the Petitioner won the election; he also found that O'Grady expressed the same opinion to an employee under similar circumstances. The Regional Director concluded that the aforementioned activity involves but "an isolated incident" which, even assuming the supervisory status of both Hartley and O'Grady,[3] is of such nature that it does not constitute sufficient basis for setting aside the election. In its exceptions, the Petitioner does not dispute the Regional Director's findings as to the statements made by Hartley and O'Grady, but contends in effect that Hartley and O'Grady are supervisors within the meaning of the Act and that by their remarks they prevented employees from exercising a free choice in the election.

Although, for the reasons appearing below, we agree with the Petitioner's contention regarding the supervisory status of both Hartley and O'Grady, we reject its further contention that these individuals influenced employees improperly. For the facts make it clear that the remarks complained about were mere expressions of opinion, solicited by employees and unaccompanied by threats of reprisal or promise of benefit, as to the Employer's obligation under its contract with the Intervenor in the event of a victory by the Petitioner. We there-

[2] Allegation 6 in the Petitioner's objections concerns the right of Maida Watkins to vote in the election. As the ballot cast by Watkins was challenged by the Petitioner, the matter of Watkins' voting eligibility is discussed hereinafter in the section entitled "The Challenges."

[3] As appears hereinafter, the Regional Director found that Hartley, but not O'Grady, is a supervisor as defined in the Act.

fore adopt the Regional Director's conclusion,[4] and overrule the Petitioner's objection, in this connection.

3. As for the allegation in the objections that E. Paul Wolfe "openly instructed employees under his jurisdiction how to vote," the Regional Director found that Wolfe simply told employees that they could vote as they pleased but that he would vote for the Intervenor. He therefore concluded that this objection was without merit. In its exceptions, the Petitioner does not dispute the Regional Director's findings of fact, but appears to contend that because Wolfe is a supervisor, as the Regional Director himself found, his statements expressing a preference for the Intervenor unlawfully interfered with the election. We find no merit in this exception, for we believe that an employer does no improperly interfere with an election by merely expressing a preference for 1 of 2 competing unions.[5] We therefore overrule the objection.

The Challenges

1. As no exceptions were filed to the Regional Director's recommendation that the challenges to 10 ballots be sustained,[6] we adopt that recommendation.

2. Maida Watkins was challenged by the Petitioner on the ground that she was no longer an employee of the Employer on July 7, 1953, the date of the election. The Regional Director's investigation discloses that Watkins worked for the Employer during a portion of the payroll period governing voting eligibility but that on about June 15 she stopped working for reasons of health. In view of these facts, and because no evidence was uncovered during his investigation that Watkins had quit or been discharged prior to July 7, the Regional Director concluded that Watkins was on sick leave on the day of the election and accordingly recommended that she be found eligible to vote and that her challenged ballot be opened and counted.

In support of its position with respect to Watkins, the Petitioner alleges in its exceptions that "it is common knowledge among several of . . . [Watkins'] former fellow employees that . . . [Watkins] had no desire to return to the employer's payroll" and that "Statements to this effect were made prior to the election and indicated by fellow workers to the Board agent." In our opinion, however, these alleged facts, even if assumed to be true, lack controlling significance, for they do not establish, as the Petitioner appears to contend, that Watkins had actually terminated her employment before the election.

[4] In so doing, however, we do not adopt the Regional Director's finding that only "an isolated incident" is here involved.

[5] Stewart-Warner Corporation, 102 NLRB 1153. Cf. Joy Togs, Inc., 83 NLRB 1024.

[6] These ballots were cast by William Tenney, who was challenged because he was the son of the plant manager, and leadmen Don Bethards, Carl Blair, Marvin Bansbach, Henry Hartley, Morris Hook, Quillian Leslie, Earl Pocock, C. S. White, and E. Paul Wolfe, who were challenged on the ground that they were supervisors.

Under all the circumstances, including the fact that Watkins left work during the payroll period governing voting eligibility for reasons of health, and the absence of any evidence that she thereafter in fact quit her employment or was discharged by the Employer, we agree with the Regional Director that Watkins was on sick leave on the date of the election and thus eligible to vote. We therefore adopt the Regional Director's recommendation that the challenge to Watkins' ballot be overruled and that the ballot be opened and counted.

3. Hattie Lairson, Joe Maierle, Milton O'Grady, Ray Paulus, and Eddie Schrock were challenged by the Petitioner on the ground that they were supervisors and hence ineligible to vote. The Regional Director concluded that these individuals are lead people whose authority does not extend beyond the routine assignment of work and that they therefore lack supervisory status. In its exceptions, the Petitioner contends that the facts set forth in the Regional Director's report afford no adequate basis for distinguishing between the status of the above-named individuals and the nine leadmen, named in footnote 6, who were found by the Regional Director to be supervisors. We find merit in these exceptions.

The Regional Director's recommendation that the challenges to the ballots of Lairson, Maierle, O'Grady, Paulus, and Schrock be overruled, but that the challenges to the ballots cast by the other leadmen be sustained, rests on the findings that the individuals in question, unlike the other leadmen, are not vested with supervisory authority. As the Petitioner correctly points out, however, no facts supporting such a conclusion are set forth in the Regional Director's report. What facts do appear in the report, upon which we must base our determination here, show not only that all the lead people whose ballots were challenged are similarly classified but indicate also that all 14 of them exercise the authority vested in them as lead people over employees working in different departments or on different shifts;[7] that, in the performance of their lead duties, all of them, with the exception of Paulus, are at all times responsible only to the vice president in charge of the manufacturing plant, the plant supervisor, or the vice president in charge of shipping and receiving;[8] and that each of them receives a rate of pay which is 10 percent higher than the top rate paid in his department or on his shift. On the basis of these facts contained in the Regional Director's report, we are unable to draw any distinction between the status of the lead

[7] It appears that at the time of the Regional Director's investigation Lairson was the lead woman over more employees than were under either Marvin Bansbach or Carl Blair, both of whom were found by the Regional Director to be supervisors, and that in Schrock's department there were more employees than in Bansbach's department and as many employees as in Blair's department.

[8] It would appear that, in his capacity as leadman in the repair department, Paulus is also responsible directly to 1 of these 3 employer representatives, but that, when acting as leadman in final assembly, Paulus is responsible to Don Bethards, the leadman on the assembly line who was found by the Regional Director to be a supervisor.

people in question and that enjoyed by the other nine leadmen, whom the Regional Director found to have duties of a supervisory nature, and to which finding no exceptions have been filed. Under all the circumstances, therefore, we find that Hattie Lairson, Joe Maierle, Milton O'Grady, Ray Paulus, and Eddie Schrock are supervisors within the meaning of the Act, and, contrary to the Regional Director's recommendation, we shall sustain the challenges to their ballots.

[The Board directed that, the Regional Director for the Twenty-first Region shall, pursuant to the Rules and Regulations of the Board, within ten (10) days from the date of this Direction, open and count, these ballots and serve upon the parties a supplementary tally of ballots.]

Member Murdock took no part in the consideration of the above Supplemental Decision and Direction.

ROSCOE SKIPPER, INC. *and* INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, LOCAL NO. 234, CIO. Case No. 10-CA-1610. October 5, 1953

DECISION AND ORDER

On July 22, 1953, Trial Examiner Stephen S. Bean issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. Thereafter the Respondent filed exceptions to the Intermediate Report.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.[1]

ORDER

Upon the entire record in this case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Re-

[1] We find, in accord with the stipulation of the parties, that the Respondent, engaged in the business of processing and distributing citrus fruit at Avon Park, Florida, annually sells outside the State products valued in excess of $1,000,000. We find, therefore, as did the Trial Examiner, that the Respondent is engaged in commerce and that it will effectuate the policies of the Act to assert jurisdiction in this case.