

but excluding the secretaries to the plant manager, the chief engineer, the manager of the order department, the production control manager, and the plant superintendent, sales employees, technical employees, professional employees, employees in the personnel department, production and maintenance employees, and the chief clerk of the purchasing department³ and other supervisors as defined in the Act.

[Text of Direction of Election omitted from publication.]

³As noted above, the parties agree that this clerk should be excluded from the unit. It is not clear, however, whether they agree to exclude her as a confidential employee or as a supervisor. Because the record discloses that, *inter alia*, she hires employees, we find that she is a supervisor within the meaning of the Act and exclude her as such.

ANIMAL TRAP COMPANY OF AMERICA *and* DISTRICT NO. 98,
INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, Pe-
titioner. Case No. 4-RC-2095. February 18, 1954.

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

On December 21, 1953, pursuant to a Decision and Direction of Election¹ issued by the Board, an election by secret ballot among the employees of the Employer, in the maintenance unit found appropriate, was conducted under the direction and supervision of the Regional Director of the Fourth Region. The tally of ballots showed that of 25 votes cast, 13 were for the Petitioner, 6 against the Petitioner, and 6 were challenged. On December 24, 1953, the Employer filed objections to the election, alleging that: (1) The Board's agent exceeded the scope of his authority in permitting to vote under challenge 3 individuals whom the Board, in its Decision, excluded from the unit;² (2) by such action the Board's agent enlarged upon the scope of the unit; (3) this action could create a conflict between the Employer and the Petitioner when collective-bargaining negotiations begin; and (4) the presence in the voting room of these 3 individuals, 2 of whom the Employer asserts are supervisors, could be deemed to be coercive and could have intimidated other voters who were present.

After an investigation, the Regional Director on January 13, 1954, issued a report on objections, in which he found that even assuming 2 of them were supervisors, there is no evidence that

¹107 NLRB No. 58.

²The Board excluded 2 of the individuals from the maintenance unit found appropriate because they are engaged solely in production work, and excluded the third individual because he is engaged solely in developing new production equipment. The Board did not rule upon the Employer's contention that 2 of them were supervisors.

the presence of these 3 individuals at the polls had any coercive effect upon the other voters or in any way interfered with their free choice in the selection of a bargaining representative. He further found that the Employer's other objections also were without merit; that the challenged ballots cannot affect the results of the election; and recommended that the objections be overruled and that the Petitioner be certified as the exclusive representative of the Employer's employees in the unit found appropriate. Thereafter, the Employer filed timely exceptions to the Regional Director's report. We find no merit in these exceptions.

In its exceptions, the Employer renews its contention that the 3 individuals who had been excluded by name from the unit by the Board in its Decision should not have been permitted to vote. While it would have been better practice for the Board agent to refuse to permit them to vote, even under challenge, as the Board had already ruled on their eligibility, we do not consider the fact that they nevertheless were permitted to vote in itself sufficient ground for setting aside the election. The Employer contends further that the Petitioner has indicated that, in view of the fact that the 3 had voted, it would be necessary to redetermine the bargaining unit in negotiations between the parties. We fail to see how this could occur inasmuch as we have already determined that these 3 employees are excluded from the unit. The Employer urges, however, that if the election is not set aside, the Board should remand the case for further hearing on the supervisory status of 2 of these 3 employees and of 5 other leadmen, 3 of whom also voted under challenge.³ In our opinion, no useful purpose would be served by holding a further hearing with respect to such of these leadmen (4 in number) as were expressly excluded from the unit in the Board's Decision herein. As to the remaining 3 leadmen, as to whose unit placement the Board reserved decision pending the outcome of the election, it is not generally the Board's policy to resolve unit placement in such cases unless the votes of the employees involved could affect the result of the election. As the votes of these 3 could not alter the outcome of the election, the Employer's request for a remand is denied.

As the tally of ballots shows that a majority of the valid votes have been cast for the Petitioner, and as the challenged ballots cannot affect the results of the election, the Board will certify the Petitioner as the collective-bargaining representative of the employees in the appropriate unit.

[The Board certified District No. 98, International Association of Machinists, AFL, as the designated collective-bargain-

³These three are Buchter, Kemper, and Walters. Because of the dearth of evidence in the record on their supervisory status, the Board's Decision and Direction of Election herein provided that they vote under challenge, subject to further investigation of their status if their votes were determinative of the outcome of the election.

ing representative of the employees in the unit found to be appropriate at the Employer's Lititz, Pennsylvania, plant.]

Member Rodgers took no part in the consideration of the above Supplemental Decision and Certification of Representatives.

LAND O'SUN DAIRIES, INC. *and* ALBERT P. B. KERR, EUGENE E. RHODES AND MYER GOLDBERG, Petitioners *and* TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL NO. 390, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL. Case No. 10-RD-138. February 18, 1954

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before John S. Patton, 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 Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The Petitioners assert that the Union, which has been certified and is being currently recognized by the Employer as the bargaining representative, is no longer a representative as defined by Section 9 (a) of the Act.

3. No 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 for the following reasons:

The Union contends that a collective-bargaining agreement with the Employer covering the employees involved herein, which is effective until July 1, 1954, is a bar to this proceeding. On July 1, 1950, the Employer and the Union entered into a 2-year bargaining agreement, renewable annually thereafter unless written notice to terminate or modify was given by either party at least 60 days before any anniversary date. In July 1952, the contracting parties entered into an agreement which provided that certain modifications of the 1950 contract which were still being negotiated would "be added to this agreement by way of addenda thereto . . . Any such addenda shall be effective from July 1, 1952 to June 30, 1953, unless such addenda provide otherwise." On August 5, 1952, the parties signed such an addendum, modifying some of the substantive provisions of the agreement.

No notice of intention to terminate or modify was given by either party prior to May 1, 1953, the operative date of the automatic renewal clause, although the Union failed to do so only through a clerical oversight. On June 5, 1953, the Union informed the Employer that it wished to negotiate certain