

In view of the related nature of the work performed by the air-conditioning operator and the maintenance handyman and the engineers and firemen, and in light of their common supervision and working conditions, we find, contrary to the Petitioner's contention that these employees may be included in the unit.⁴

The oilers in the production area: The Employer would include three employees classified as oilers who work throughout the main plant oiling machinery and equipment. As it does not appear that the oilers are closely associated with the powerhouse employees, we shall exclude them from the unit.⁵

The assistant chief engineer: This employee performs the regular duties of an engineer. In the absence of the chief powerhouse engineer, he had the authority to make routine assignments and to pass along instructions issued by the chief plant engineer. He has no authority to hire, discharge, or discipline powerhouse employees, but may recommend promotions to the chief powerhouse engineer who, in turn, has the authority effectively to recommend changes in the status of powerhouse employees. Admittedly, the only recommendation accorded substantial weight is that of the chief powerhouse engineer.

On the foregoing facts, we find that the assistant chief engineer does not possess the supervisory authority contemplated by Section 2 (11) of the Act.⁶ Accordingly, we will include him in the unit.

We find that all powerhouse employees at the Employer's Cambridge, Massachusetts, plant, including firemen, engineers, the air-conditioning operator, the maintenance handyman, and the assistant chief engineer, but excluding all other employees, maintenance department employees, the oilers in the production area, the chief powerhouse engineer, and all other supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication.]

⁴Cf. Consolidated Vultee Aircraft Corporation, Pamona Division, 108 NLRB 159 (air-conditioning operators); Westinghouse Electric Corporation, 108 NLRB 556.

⁵Chrysler Corporation, 98 NLRB 1105, 1108.

⁶Cf. The Clinton Construction Company, 107 NLRB 946; Warren Petroleum Corporation, 97 NLRB 1458, 1460-1461.

WEILL'S, INC. *and* RETAIL CLERKS' UNION, LOCAL 137,
RETAIL CLERKS' INTERNATIONAL ASSOCIATION, AFL,
Petitioner. Case No. 21-RC-3327.

DECISION AND CERTIFICATION OF REPRESENTATIVES

On December 5, 1953, pursuant to a stipulation for certification upon consent election, an election by secret ballot was

conducted under the direction and supervision of the Regional Director for the Twenty-first Region among employees at the Employer's retail department store at Bakersfield, California, in the agreed unit. Following the election, the Regional Director served on the parties a tally of ballots, which showed that of approximately 126 eligible voters, 60 cast votes for and 57 against the Petitioner; 3 ballots were challenged; and 1 ballot was void.

The Petitioner, on December 9, and the Employer, on December 14, filed timely objections to conduct affecting the results of the election. Thereafter, on December 28, the Regional Director issued his report on challenged ballots and objections to conduct of election,¹ in which he recommended that the Board certify the Petitioner as exclusive bargaining representative of the employees in the agreed unit. On January 4, 1954, the Employer filed exceptions to the Regional Director's report.

The Board has reviewed the stipulation of the parties, the objections of the Employer and the Petitioner, respectively, the challenges of the Board agent, report on challenged ballots and objections to conduct of election, and the Employer's exception thereto.

On the entire record in this case, the Board makes the following findings of fact:

1. The Employer is engaged in commerce within the meaning of the Act.²

2. The Petitioner claims to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of the Act: All regular full- and part-time employees at the Employer's Bakersfield, California, department store, excluding guards, watchmen, and supervisors as defined in the Act.

5. The Board's agent in charge of the election challenged the ballots of Ruth Jones, Beatrice Whitten, and Mable Harris because they were not on the list of eligible employees submitted by the Employer.

¹The objections relate to the void ballot and to the omission of the names of challenged voters from the eligibility list. These issues are resolved below.

²The Employer operates a retail store at Bakersfield, California. For the 9-month period ending September 30, 1953, it is estimated that the Employer purchased from suppliers outside the State merchandise valued at \$445,799.67. During a 12-month period, the Employer's out-of-State purchases will reasonably exceed \$500,000. Contrary to the Employer's contentions, we find that it will effectuate the purposes of the Act to assert jurisdiction in this case. Federal Dairy Co., Inc., 91 NLRB 638, Chairman Farmer and Board Member Rodgers join in this decision, but are not to be deemed thereby as adopting the Board's present jurisdictional standards.

Ruth Jones and Beatrice Whitten: The Regional Director found that Jones and Whitten were employees of the Employer's lessees and not employees of the Employer and therefore sustained the challenges.³ The Employer excepts to his finding, contending that employees of leased departments were within the unit description.

Jones works in the drug department and Whitten in the millinery department of the Employer's store.⁴ These two departments are leased by the Employer to lessee operators of concessionaires. The leases are terminable upon notice by the Employer. The rent charged is based on the percentage of sales made. Each lessee fixes the method and rate of pay for its employees. Each selects its own employees and discharges or otherwise changes their status without intervention by, or permission from, the Employer. The Employer, however, may effectively demand the discharge of any employee of a lessee whose appearance or conduct fails to meet the Employer's standards. The lessee of the drug department pays his employees' wages directly to them. The Employer pays the wages to the employees of the millinery department, and in turn is reimbursed by the lessee of that department. Employees of the lessees punch the same time clocks, work the same hours, use the same facilities, observe the same dress regulations, attend the same store meetings, participate in the same sales campaigns and contests staged by the Employer, and have the same storewide discount privileges as the employees of the Employer. They do not receive the same sick benefits as the employees of the Employer, but they are eligible for membership in the same hospital service plan.

We agree with the Regional Director and find that the lessees and not the Employer control the essential terms and conditions of employment of employees in their departments and that the employees of the lessees are not within the agreed unit.⁵ We therefore sustain the challenges to the ballots of Jones and Whitten.

Mabel Harris, who, as noted above, was challenged because her name did not appear on the eligibility list, was not a regularly scheduled worker. During the past year, however, Harris worked more hours than any regular extra employee. First employed during the payroll period ending December 12, 1952, she worked during 15 of the following semimonthly payroll periods. During those payroll periods in which she was actively employed, her hours worked ranged from $5\frac{1}{4}$ to $83\frac{1}{2}$ hours. The Regional Director found that, although

³No other leased departments' employees attempted to vote in the election. The Employer had informed employees in leased departments that they were not eligible to vote in the election. The names of these persons did not appear on the eligibility list furnished by the Employer for the purposes of the election.

⁴On election day Whitten worked as a temporary employee for the Employer. During the eligible period, however, she was employed as usual in the leased millinery department.

⁵Herpolsheimer Company, 100 NLRB 1452, 1455.

Harris did not work a regular full or part-time schedule, Harris was a contingent employee whose work history and job status demonstrates that she has a regular employee's interest in the outcome of the election.⁶ No exception has been filed to his finding. We therefore overrule the challenge to Harris' ballot.

The "void" ballot: The Board has examined the certain disputed ballot which was declared void by the Board's agent at the election over the Petitioner's objection, and which the Regional Director submitted to the Board. We believe that, inasmuch as the number of "X's" may be either meaningless lines or crossings out of what may have been an original "X," the intent of the voter is not clearly expressed on the face of the ballot. We find, therefore, that this ballot is void.

It appears that the Petitioner has clearly received a majority of the valid votes cast. Because the ballot of Harris will not affect the results of the election, we shall not direct that it be opened and counted. We therefore certify the Petitioner as exclusive bargaining representative of the employees in the appropriate unit.

[The Board certified Retail Clerks' Union, Local 137, Retail Clerks' International Association, AFL, as the designated collective-bargaining representative of the employees of Weill's, Inc., Bakersfield, California.]

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

⁶Bonwit Teller & Company, 101 NLRB 358.

THE STANLEY WORKS *and* LODGE 1433 OF THE INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL. Case No. 1-CA-1407. May 5, 1954

DECISION AND ORDER

On November 13, 1953, Trial Examiner Sidney Lindner issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in certain unfair labor practices, as set forth in the Intermediate Report attached hereto, but recommending, for the reasons set forth in the Intermediate Report, that the complaint be dismissed. Thereafter the Union filed exceptions to the Intermediate Report and Recommended Order, and the Respondent filed a reply to the Union's exceptions.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was