

ACME ENGINEERING COMPANY *and* UNITED AUTOMOBILE WORKERS OF AMERICA, AFL, Petitioner. Case No. 13-RC-3732. April 29, 1954

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

On January 22, 1954, 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 Thirteenth Region among employees in the agreed appropriate unit. Following the election, the Regional Director served on the parties a tally of ballots, which showed that of approximately 22 eligible voters, 8 cast votes for, and 11 against, the Petitioner; and 10 ballots were challenged.

Because the challenges were sufficient in number to affect the result of the election, the Regional Director investigated the challenges and, on March 11, 1954, issued and duly served on the parties his report on challenges, making no finding with respect to the validity of one challenge and recommending that the Board sustain all other challenges but one, and certify the results of the election. On March 19, 1954, the Petitioner filed exceptions to the Regional Director's report.

The Board has reviewed the stipulation of the parties, the challenges, the Regional Director's report on challenges, and the Petitioner's exceptions thereto, and upon the entire record in this case, makes the following findings of fact:

1. The Employer is engaged in commerce within the meaning of the Act.
2. The Petitioner claims to represent certain employees of the Employer.
3. A question affecting commerce exists concerning 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 Section 9 (b) of the Act: All production and maintenance employees at the Employer's casting machining plant at Milwaukee, Wisconsin, excluding office clerical employees, professional employees, guards, and supervisors as defined in the Act.
5. As indicated above, the consent election was conducted among employees in the agreed appropriate unit.

Challenges to the Ballots of Employees Laid Off

Of the 10 challenged ballots, the 8 ballots cast by Hyacinth Zimek,¹ Walter Slogaski, Walter Brodzek, Erwin Parafiniuk,

¹Because of illness, Zimek did not report for work between November 23 and December 12, when he was discharged.

Gyle Stienbring, Lawrence Giebel, Robert Lempke, and Valentine Rosewicz,² respectively, were challenged by the Board's agent in charge of the election because the names of these voters were not on the eligibility list. The Regional Director finds that these 8 voters were released in December 1953, when the Employer discontinued the second shift for lack of work due to substantial curtailment in business operations; and that, at the time of the election, there was no prospect of any expansion of work force except to fill such vacancies as might occur. Since the released employees had no reasonable expectation of employment at the time of the election, the Regional Director recommended that the challenges to their ballots be sustained. The Petitioner excepts to his findings and recommendations.

Although it may be that some employees who were laid off in December were told, or believed, that the Employer's discontinuance of the second shift may be temporary, it clearly appears that, at the time of the election, there were no prospects for an early resumption of the second shift. The plant was then operating at full capacity on one shift. The fact that employees working on the one shift did some overtime work does not, in itself, as the Petitioner suggests, indicate that the Employer would be warranted in reestablishing a second shift. We, therefore, adopt the Regional Director's findings and recommendations, and we sustain the challenges to the ballots of the eight released voters listed above.

The Alleged Supervisors

The Petitioner challenged the ballots of Sylvester Balcerzak and Joseph Schertzel on the ground that they were supervisors, and therefore not within the unit.

Balcerzak served as foreman on the second shift. When the Employer discontinued the second shift in December, Balcerzak became a machine operator, and was so classified on the eligibility date. The Petitioner presented no evidence that Balcerzak had exercised any supervisory authority from the day when he was transferred from foreman to machine operator. Because as a machine operator, Balcerzak was an eligible voter, the Regional Director recommended that the challenge to his ballot be overruled, and we adopt his findings.

Schertzel, an hourly paid employee, does inspection and lay-out work. He was introduced to employees on the shift as assistant foreman. The Employer alleges that he has no authority to hire or discharge, reward, or discipline other employees or responsibly direct them, recommend them, or adjust their

²Rosewicz was hired as a tool grinder when the Employer established its second shift. This work had previously been done on contract outside the plant. When the operation of the second shift was discontinued, the Employer, for convenience and economy, resumed its former practice and discharged Rosewicz.

grievances. Schertzel may discuss with employees mistakes in work discovered in inspection and give corrective measures to be taken if minor adjustments are required. Schertzel on infrequent occasions substitutes for the regular foreman, when the latter is absent. The Regional Director made no recommendation with respect to Schertzel's status.

Because the counting of the ballots of Balcerzak and Schertzel, even if both were valid, would not affect the results of the election, we shall make no finding as to the status and eligibility of Schertzel, and we direct that the ballot of Balcerzak remain uncounted.

Because the Petitioner failed to receive a majority of the valid ballots cast, we certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for United Automobile Workers of America, AFL, and that the said labor organization is therefore not the exclusive representative of employees in the appropriate unit.]

THE GRUEN WATCH COMPANY, THE GRUEN NATIONAL WATCH CASE COMPANY *and* INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL, Petitioner *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW-CIO, Petitioner *and* METAL POLISHERS, BUFFERS, PLATERS AND HELPERS INTERNATIONAL UNION, A. F. OF L., LOCAL NO. 68. Cases Nos. 9-RC-1445 and 9-RC-1359. April 29, 1954

SUPPLEMENTAL DECISION AND CERTIFICATION OF REPRESENTATIVES

Pursuant to a Decision and Order of the Board,¹ which set aside the election of February 1, 1952, a new election was held under the direction and supervision of the Regional Director for the Ninth Region on March 20, 1953, among the employees in voting unit 1.² The results of the election as shown by the tally of ballots, were that of approximately 27 eligible voters, 26 cast valid ballots, of which 21 were for the International Association of Machinists, AFL, herein called the IAM, and 5 were against participating labor organizations. There was 1 challenged ballot.

On March 27, 1953, the Employer filed timely objections to the election in voting unit 1 contending that employees therein were restrained and coerced by (1) threats of harm if they

¹103 NLRB 3.

²An election was also held for voting unit 3 in connection with which the Board issued a certification of results of election.