

We find that all technical employees at the Employer's Milwaukee, Wisconsin, plant, including time-study men, time-study analysts, process engineers,⁸ process planners,⁹ and tool designers, but excluding technical clerks,¹⁰ time-study clerks,¹¹ file clerks and all other clerical employees, time-study engineers, all other professional employees, tool control men, all other employees, and all guards and supervisors as defined in the Act,¹² 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.]

MEMBER MURDOCK took no part in the consideration of the above Decision and Direction of Election.

⁸ Including *Beck*, who is assigned to the tool design department.

⁹ Including *Gaffney* in the tool design department, *Tanko* in the development engineering department, and *Obst* assigned as staff man to the quality control manager in the manufacturing division.

¹⁰ Nelson is excluded as a technical clerk.

¹¹ Although the Petitioner in its petition sought to include time-study clerks, no testimony was elicited at the hearing to justify their inclusion. In view of their classification as clerks, we shall exclude them.

¹² The classifications of technical employees specifically included encompass junior and senior grades. The record does not indicate that other classifications of technical employees are present in the plant.

Le Roi Division, Westinghouse Airbrake Co. and Sam C. Corso, et al., Petitioner and International Union, United Automobile, Aircraft & Agricultural Implement Workers of America, CIO.
Case No. 13-RD-238. November 2, 1955

SUPPLEMENTAL DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Pursuant to a Decision and Direction of Election¹ dated July 25, 1955, an election by secret ballot was conducted in this proceeding on August 15, 1955, under the direction and supervision of the Regional Director for the Thirteenth Region among the employees of the Employer in the unit found appropriate by the Board. At the conclusion of the election, the parties were furnished with a tally of ballots. The tally shows that of approximately 11 eligible voters, 2 voted for, and 6 voted against, the Union, with 3 ballots being challenged.

On August 17, 1955, the Union filed timely objections to the election and conduct affecting the results of the election. In accordance with the Board's Rules and Regulations, the Regional Director conducted

¹ *Le Roi Division, Westinghouse Air Brake Company*, 113 NLRB 271.

an investigation of the objections, and on September 20, 1955, issued and served upon the parties his report on objections in which he found that the Union's objections were without merit and in which he recommended that the Board dismiss the objections and issue a certification of results of the election. The Union thereafter filed timely exceptions to the Regional Director's report.

In its objections and exceptions the Union contends that: (1) The petition herein should be dismissed because it was filed within 6 months of the dismissal of another decertification petition for the unit here involved; (2) the petition should be barred because of the pendency of an appeal from the dismissal of unfair labor practice charges filed by the Union; and (3) the Petitioner's showing of interest was insufficient to support the petition.

As to contention (1), which was also raised by the Union before the election, the Board noted in the Decision and Direction of Election herein that the earlier decertification petition had been found to have been improperly filed and had been dismissed "without prejudice." The Board there stated that under such circumstances no waiting period is required for the filing of a new petition. No matter not previously considered by the Board has now been advanced by the Union to support its present contention. The contention is therefore found to be without merit.

The substance of the Union's present contention (2) was also addressed to the Board before the election was held. In its Decision and Direction of Election herein, the Board rejected the Union's contention that the petition herein should be dismissed because of the pendency of unfair labor practice charges filed by the Union, the Board stating that the Regional Director had refused to issue complaints upon the Union's charges, and that the General Counsel had thereafter sustained this action on appeal. It now appears that the latter statement was erroneous, as the Union's appeal was in fact pending at the time the Decision issued. The appeal, however, has since been denied.²

That the election herein was held during the pendency of the Union's appeal is not a sufficient reason to set it aside. The Regional Director states in his report that he noted the erroneous factual statement in the Board's Decision and Direction of Election, that he considered the matter, and that, exercising his discretion he advised the Union on August 5, 1955, that the election would proceed even though the Union's appeal was still pending. Under established Board rule, an election may be held during the pendency of an appeal from the

² Letters with respect to Cases Nos. 13-CA-1874 and 13-CA-1927, dated October 6, 1955, from the General Counsel to the Union.

dismissal of unfair labor practice charges.³ Accordingly, in all these circumstances we are satisfied that the Union was not prejudiced either by the erroneous factual statement in the Board's Decision nor by the Regional Director's action in proceeding with the election which the Board had directed. We therefore find no merit in the Union's contention (2).

As to the Union's contention (3), the Board found appropriate in the Decision and Direction of Election herein a unit larger than the one designated in the decertification petition. The Board noted in the Decision that the Petitioner had made an adequate showing of interest in the unit designated in the petition; and also instructed the Regional Director not to proceed with the election until he had first determined that the Petitioner had made an adequate showing in the enlarged unit. In his report, the Regional Director states that before the election he made the determination which the Board instructed him to make. In its exceptions, the Union asks the Board to reverse its rule that showing of interest is an administrative matter "insofar as that rule relates to decertification proceedings." It further asks for a ruling "that under such circumstances as are here found, the sufficiency of interest in support of the decertification petition should be a condition for proceeding with the hearing, rather than the election."

We perceive no valid reason for granting the Union's requests. We adhere to the view that a showing of interest is just as much an administrative matter in the case of the processing of a decertification petition as it is where a representation petition is being processed. As to the procedure that was here followed, it is not at variance with the Board practice of proceeding to an election if a petitioner makes an adequate showing in a unit as enlarged by the Board.⁴ We therefore find that the Union's contention (3) lacks merit.

In view of the foregoing, we shall adopt the Regional Director's recommendations. As the Union failed to receive a majority of the valid ballots cast, we shall certify the results of the election.

[The Board certified that a majority of the valid ballots was not cast for International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, and that this union is not the exclusive representative of the technical employees at the Employer's West Allis, Wisconsin, internal combustion engine and air compressor plant, in the unit found to be appropriate.]

MEMBER MURDOCK took no part in the consideration of the above Supplemental Decision and Certification of Results of Election.

³ *Stewart-Warner Corp.*, 112 NLRB 1222; *McQuay Incorporated*, 107 NLRB 787.

⁴ See *S. S. White Dental Manufacturing Company*, 109 NLRB 1117 at 1123; and *Comfort Slipper Corporation*, 111 NLRB 188 at 190.